

Guidance Note: Early Market Engagement

PURPOSE

The purpose of this guidance note is to encourage and support NSW Government agencies to proactively engage with the market when developing infrastructure projects to deliver on key Government priorities.

WHY USE EARLY MARKET ENGAGEMENT?

Early market engagement involves seeking external feedback to inform early project decisions, ensuring broader industry insights, context and experience are taken into consideration. It also provides the market an opportunity to prepare to respond effectively to the opportunity.

Early market engagement can include but is not limited to:

- identifying, mitigating and nominating risks that cannot be readily quantified or priced in lump sums
- contributing to identifying the most effective delivery solutions
- influencing preferred solutions and reference designs as well as proposed delivery approach.

It should be undertaken efficiently over a defined period commensurate with the requirements of the project to avoid unwarranted costs or delay.¹

Agency engagement with the market should address key Government priorities including value for money, innovation, social and local procurement objectives, environmental sustainability and best outcomes for the people of NSW.

METHODS OF EARLY MARKET ENGAGEMENT

The table below explains key methods for engaging early with industry. Each method should be chosen with consideration given to the size and stage of the project, ensuring that engagement maximises the opportunity for constructive collaboration.

Method	Description
Horizon scanning	Horizon scanning involves analysing a market's near-term potential opportunities, developments, threats and driving forces, including: <ul style="list-style-type: none">• strategically discussing future market conditions with suppliers• examining wider issues, such as global and domestic political agendas.
Market sounding	Market sounding involves testing idea/s with the market or seeking their input into questions the procuring agency needs answered. It should be undertaken early enough for industry feedback to have an impact on project procurement decisions and before formally approaching suppliers

¹ NSW Government, M2021-10 Premier's Memorandum on Procurement for Large, Complex Infrastructure Projects, 2021, <https://arp.nsw.gov.au/m2021-10-procurement-for-large-complex-infrastructure-projects/>

Method	Description
	<p>with a request for tender or quote. Market sounding can help develop a more achievable and specific statement of requirements, incorporating industry feedback on:</p> <ul style="list-style-type: none"> the feasibility of the procurement activity benefits between different proposed procurement strategies the market's capacity and capability to achieve what agencies need whether a competitive market exists.
Market creation	<p>Market creation can work well where:</p> <ul style="list-style-type: none"> the market is too small or large the geographical scope is too broad or remote the risks may be extreme suppliers don't initially see the engagement as financially viable.
Bidder conferences	<p>A bidder conference lets suppliers respond to a tender, in order to participate in discussions about a procurement's commercial and technical aspects and risks.</p>
Indicative approach to market	<p>This involves publishing information about a proposed procurement well before agencies undertake a formal process. That way, suppliers can register their interest and provide feedback. An indicative approach to market can help agencies understand the level of supplier interest. It can also help agencies amend and refine the procurement specifications before releasing them.</p>
Concept viability	<p>Concept viability involves using suppliers' knowledge to test a proposed procurement's technical viability. Agencies can ask suppliers to respond to their specific need with solutions they've already developed. Or, agencies can ask them to come up with their own.</p>
Early contractor involvement	<p>Selecting a single or competitive (e.g. two or more) contractor(s) to provide early design input to refine project structure, cost and deliverability prior to the formal request for tender.</p> <p>Early contractor involvement is recommended on complex major infrastructure projects, where there is significant unknown scope, risks or interfaces, or a need for accelerated delivery timeframes.</p>

Source: NSW Government, Methods of Industry Engagement, 2023, <https://info.buy.nsw.gov.au/buyer-guidance/plan/industry-engagement/types>²

² NSW Government, Methods of Industry Engagement, 2023, <https://info.buy.nsw.gov.au/buyer-guidance/plan/industry-engagement/types>

KEY CONSIDERATIONS

The Premier's Memorandum on Procurement for Large, Complex Infrastructure Projects³ and the NSW Infrastructure Procurement Framework⁴ prescribe an 'if not, why not' approach to engaging with industry early. Key considerations include:

- Has the agency allowed enough time in the schedule for meaningful market engagement? E.g. to allow time for joint ventures/consortia to form, particularly involving international and local bidders. Noting, time may need to be allowed for the in-project programs to re-tender the work if market feedback indicates the proposed project is not viable.
- Has the agency analysed the need against other projects in that agency coming up for procurement and the market's capacity and capability to supply in the required timeframes?
- Does the agency have an initial understanding of the market appetite, where industry can add most value and their preferred allocation of risk? Can risks be mitigated or quantified through investigations or other activities?
- Has the agency tested the outline packaging and contracting strategy with the market and does the procurement process enable the agency to engage with a wide range of industry providers including second tier/sub-tier supply chain members and subcontractors and set out how they will be engaged through the procurement?
- Has the agency considered a variety of market engagement methods? E.g. meetings with the market, issuing requests for information, early contractor involvement?
- If market appetite is lower than expected, does the agency know why? Having found out the reasons, how far is the agency willing to go to de-risk the project? E.g. allowing a longer procurement schedule to allow joint ventures and consortia to form, avoiding changes mid-way through the procurement process etc.

Agencies are reminded to consider their obligations under all relevant legislation, regulations, policies and Procurement Board Directions.

The following sections include specific considerations for key NSW Government priorities.

Local market testing

Procurement Board Direction 2024-02⁵ requires that government agencies must assess opportunities for NSW-based suppliers to supply to government in all procurement processes valued \$7.5 million or more.

Government agencies must, for projects or contracts with a budget of \$7.5 million or more:

³ NSW Government, M2021-10 Premier's Memorandum on Procurement for Large, Complex Infrastructure Projects, 2021, <https://arp.nsw.gov.au/m2021-10-procurement-for-large-complex-infrastructure-projects/>

⁴ NSW Government, Framework for Establishing Effective Project Procurement for the NSW Infrastructure Program, 2021, https://www.infrastructure.nsw.gov.au/media/fgt1ght1/procurement-framework_3-june-21_final.pdf

⁵ NSW Government, PBD 2024-02 Increasing opportunities for local suppliers to supply to government, 2024, <https://arp.nsw.gov.au/pbd-2024-02-increasing-opportunities-for-local-suppliers-to-supply-to-government/>

- embed upfront local market testing in procurement plans
- provide NSW-based suppliers with full and fair opportunity to participate in the procurement process
- state, in decision-making documents, on an 'if not, why not' basis, why a NSW-based supplier has not been selected if one is available.

Decarbonisation

The [*Decarbonising Infrastructure Delivery Policy*](#) requires early engagement to promote innovative decarbonisation approaches for all NSW Government building projects over \$50 million and all other infrastructure projects over \$100 million.

Key considerations in undertaking this engagement include:

- What are the relevant areas of innovation that may reduce the project's carbon emissions, including design and construction?
- What are the emerging or innovative best practice decarbonisation solutions relevant to your scope of works (e.g. low carbon concrete, electrified plant & equipment, renewable diesel)?
- Who are the relevant suppliers or industry bodies that can deliver the decarbonisation solutions? Is there a competitive market for these solutions?
- Are decarbonisation solutions commercially and technically viable?
- Can the market deliver the decarbonisation solutions within the project timelines?
- Is there an opportunity to undertake pilots or feasibility studies to test a proposed procurement approach or new idea?