

PROCUREMENT POLICY OFFICE

Directive No 25 (issued pursuant to section 7 of the Public Procurement Act)

Early Market Engagement by Public Bodies

1. Pre-Procurement Market Engagement

Pre-procurement engagement comprises a range of activities undertaken by public bodies to engage with the market before starting a formal bidding procurement process.

As the Public Procurement Act does not prohibit public bodies to hold pre-procurement engagement with the market, they may therefore conduct market consultations prior to inviting bids following a transparent process.

2. Purpose of Market Engagement

The purpose of the consultation is to enable public bodies to gather knowledge of what the market can offer, build suppliers' awareness of a procurement well before the formal invitation to bid and choose the appropriate procurement approach that would deliver the desired outcome.

3. Circumstances favouring market engagement

The following circumstances favour market consultations:

- There is a need for a technical dialogue so that the public body may draft the specifications properly and objectively.
- The public body does not have full knowledge of the market. The exercise would provide a better understanding of the feasibility of the requirement, the best procurement approach, the capacity of the market to deliver and possible risks involved with different procurement approaches.
- The public body is procuring a high value or complex item for the first time and it has limited knowledge on the subject matter.

4. Principles underlying market engagement

The market consultations should be conducted through a transparent process embedding the principles of fair competition, non-discrimination and equity by:

- Informing the participants on the key objectives of the market consultation exercise.
- Informing suppliers at an early stage that the exercise would result in a competitive bidding process.
- Maintaining the commercial confidentiality of information received during discussions with suppliers.

- Providing a fair and equitable treatment to all bidders at the time of the formal bidding process. No bidder, including those participating in the market consultation exercise, would enjoy a privileged treatment as a result of his contribution during the market engagement.
- Informing suppliers that the market engagement involves no element of supplier selection and involves no commitment from either side.

5. Methods of engaging with the markets

Public bodies may resort to engaging with the markets in the following ways:

- Market Sounding Exercises – including the use of Request for Information containing a brief description of the purpose of the project, its expected outcome and implementation schedule and directing potential suppliers to respond to essential information through questionnaire, if need be.
- Prior Information Notice – inform the market of the upcoming procurement need and provide an opportunity to seek feedback from potential suppliers.
- Face-to-face meeting with potential bidders to capture their views on the requirements including viability and possible delivery options. The event should be advertised through the media and public procurement portal.

6. Two Stage Bidding

Notwithstanding the above, the two stage bidding process remains a procurement process under the Public Procurement Act that public bodies may have recourse to. It applies for complex projects and the public body has a general knowledge of its purpose and output but is unable to adequately define the specifications and evaluation criteria for solutions that the market knows better, especially in a dynamic market that is subject to continuous technological changes.

Two stage bidding is a formal bidding process contrary to market engagement which is not a bidding process, but facilitates better procurement outcomes.

**Procurement Policy Office
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