

Guide to Market Approach

Contents

What is Market Approach?	2
Market Approach protocols	2
Minimising the cost for suppliers in preparing their submission	2
Using familiar and consistent processes	2
Maximising participation from small to medium enterprises	2
Market research and process integrity	3
Process contract.....	3
Eliminating bias when engaging with the market	3
Adopting an approach that encourages innovative responses	3
Requiring compliance to Australian Standards (where applicable)	4
Market notification	4
Market submission periods	4
Suggested submission periods.....	4
Invitation to supply information	5
Proceeding with an open invitation to supply.....	5
Informing suppliers in the process	5
Supplier debriefs.....	6
Managing change to published process.....	6
Emergency Procurement	6
More information	6
Disclaimer	6

What is Market Approach?

Market approach is how you interact with the market. It can involve extensive consultation and sharing of information.

How you approach the market is primarily based on the complexity assessment and the market analysis and is determined and approved in the sourcing strategy stage of the procurement process. Execution of the sourcing strategy, that is the market approach, requires a structured approach that satisfies both probity and fairness standards.

Market approaches – Invitation to Supply

There are a range of market approaches e.g. quotation, tender, registers, expressions of interest etc. Invitation to Supply falls into two broad areas:

- Open - Public Invitation to all potential parties
- Limited - Invitation to nominated/selected parties.

Market Approach protocols

When approaching the market, consider the following factors:

Minimising the cost for suppliers in preparing their submission

Preparing a submission is a cost to suppliers

Considerations

- Use quotation processes wherever appropriate. Adopt simplified processes, terms and conditions relevant to the market sector. Initiate early market notification and briefing sessions where appropriate.

Using familiar and consistent processes

- Familiarity of process will encourage supplier participation in the procurement process, reduce costs for both parties and manage the risk to the organisation.

Considerations

- Maximise use of standard forms, templates, conditions for participation and contract requirements where appropriate.

Maximising participation from small to medium enterprises

- Small to medium enterprises (SMEs) are an important market sector. They can drive innovation and often offer leading-edge technology solutions, high levels of service and value-for-money outcomes.

Considerations

- Structure procurement requirements in a way that is relevant to and accessible for the SME market sector, and, where relevant, not-for-profit (NFP) businesses
- Identify SME relevant components within larger procurement requirements to allow for discrete supply opportunities
- Investigate the supply chain arrangements of a principal contractor to understand the involvement of SME's in their operations

- Access the services of the Industry Capability Network (ICN), Business Victoria (BV), other government initiatives and industry and local business associations to identify potential local suppliers

Market research and process integrity

If you engage a supplier to conduct market research in developing project requirements/specifications or to design a prototype or conduct a trial, ensure that the supplier is not given an unfair advantage over other suppliers, should the research propose market testing.

Considerations

- Fully disclose market research information, supplier briefing sessions and define requirements in generic terms to mitigate 'insider knowledge'
- Consider engaging a probity advisor to determine impact of including the said supplier in the market engagement process.

Process contract

An invitation to supply and a responding offer potentially establishes a legal relationship between the health service and the supplier(s). This is known as a 'process contract', with the invitation to supply documents, including the evaluation criteria, forming the terms and conditions of the contract. Changes to the process can be a major risk and hence health services should be careful, if altering the process, to be fair to all respondents to mitigate the risk of a successful challenge to the outcome. Consider engaging legal or probity advice to inform any decision to process change.

Eliminating bias when engaging with the market

An overly cumbersome or costly procurement process can discourage supplier participation. Specifying particular technical standards, trade/product names or conditions for participation may eliminate suppliers in the market to the detriment of value-for-money outcomes.

Considerations

- Adopt processes that do not create a barrier to participation for a market sector or suppliers relevant to the procurement requirement
- Ensure that technical specifications are detailed in terms of performance and functional requirements wherever possible rather than referring to model or trade names, patent, copyright, design model or from a specific producer
- Use the term 'or equivalent' to enable alternative responses to a specified technical requirement
- Consider any obligations under the Victorian Government's commitment to Free Trade Agreements.

Adopting an approach that encourages innovative responses

Encouraging innovation from the market can generate cost savings, result in the transfer of intellectual property and facilitate better response to the needs of clients of the organisation.

Considerations

- Build on the consideration for innovation embedded in the culture of the organisation
- Initiate early market engagement and early supplier engagement strategies to provide the market with time to better understand the organisation's needs and formulate an innovative response of Therapeutic Goods

Requiring compliance to Australian Standards (where applicable)

Accreditation standards detail the performance standards to be performed or delivered by parties in particular market sectors. Having accreditation gives a buyer a degree of assurance that the supplier is able to provide a level or range of service relevant to the procurement activity.

Considerations

- Where relevant to the procurement activity, inform the market that suppliers will need to comply with the appropriate accreditation standards in order to participate in the procurement process
- For pharmaceuticals, medical devices and prostheses, registration on the Australian Register of Therapeutic Goods is generally a requirement
- Compliance with the requirements of the Australian Council of Health Care Standards (ACHS) is also common for suppliers to health services.

Market notification

The process for notifying the market about supply opportunities needs to balance the nature of the procurement requirement and relevant market sector dynamics with the costs and benefits to buyer and supplier.

A limited invitation to supply involves a direct approach to the market but should not be used to avoid competition. It is appropriate where:

- The procurement requirement can only be provided by an extremely limited field of suppliers
- The procurement requirement is related to accessing specific intellectual property, specific technical requirements or maintaining a common operating platform
- There is an opportunity build on market based solutions and to develop strategic partnership arrangements
- There is a need to address security requirements, protect patents, copyrights, propriety information or intellectual property.

When carrying out a limited invitation to supply involving a direct approach to more than one selected/nominated supplier, you need to determine the appropriate number of suppliers to notify to generate value for both buyer and supplier.

Considerations

- Obtain sufficient submissions to assess the degree to which the engagement can satisfy a value for money outcome
- Ensure the number of submissions reflects the relevant market sector's ability to supply
- Obtain sufficient participation to establish a competitive environment and to compare submissions
- Adopt a strategic negotiation framework to drive innovation and value for money outcomes

Market submission periods

Suppliers need sufficient time to prepare their submission taking into account the complexity of the procurement, the scope of information sought from the market, the scope of information required by the market from the organisation and the operation of the market sector relevant to the procurement requirement.

Suggested submission periods

- Eight working days for low-risk transactional procurement activity, unless a lesser period is supported by the chief procurement officer or during a period of critical incident

- Fifteen working days for medium risk procurement activity, generally of a transactional/leveraged level of complexity
- Twenty to twenty-five plus (20/25+) working days for higher risk procurement activity of a focused/strategic level of complexity.

Suggested periods

The suggested periods relate to each stage of a multi- stage market approach.

Invitation to supply information

Documents (including specification of requirements, conditions for participation, etc.) should be scaled to reflect the complexity of the procurement requirement and market factors. Core requirements for any market approach should address the following:

- Scope and quantity of goods and services required including outputs required for services or the functional and performance requirements for goods
- Conditions for participation - ensuring that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement
- Information and documents to be submitted by suppliers
- Criteria for evaluating responses and the evaluation process
- The importance given to different criteria (if relevant)
- Delivery/submission/lodgement instructions
- Project contact person and governance/management arrangement
- Detailing preferred levels of liability, indemnity and ownership of intellectual property
- Project briefing opportunities
- Contract type to be used
- Encouraging innovative solutions that contribute to the organisation's ability to carry out its business in a more cost- effective manner
- Reporting on generic requirements or against KPIs, environmental factors, etc.
- Supply chain relationships (if relevant)

Proceeding with an open invitation to supply

This requires posting a notification of the procurement requirement in all the following places (where the estimated value exceeds \$100,000¹):

- On the Victorian Government Tenders, or other website as nominated by HSV
- In the government tenders section of a nominated newspaper (subject to Whole of Victorian Government contract or HSV agreement)
- A market trade-related medium if this will increase the potential supplier base.

Informing suppliers in the process

As a minimum, suppliers should be informed that their submission has been received, whether or not they have been shortlisted (if this is a process step) and the outcome of the process, including debrief, if requested.

Procurement activity with a long period for assessment or with a high degree of complexity should, where relevant, inform suppliers of:

¹ Referenced from the [Victorian Government Purchasing Board \(VGPB\)](#)

- The processes for managing clarification of issues and the conduct of negotiations
- The estimated timetable for conducting certain process stages, i.e. shortlisting, project briefing, process conclusion
- How the outcome of the process will be communicated
- The outcome of the selection process
- The availability and timing of debriefs
- Any significant changes to the process timetable.

Supplier debriefs

Providing a debrief to suppliers responding to the ITS is an opportunity to provide feedback to the supplier on their submission, ensure the supplier understands the process that gave rise to the outcome and to obtain feedback on the procurement process from their point of view.

To be effective, debriefs should be conducted within a month of the end of the procurement process, if possible.

Managing change to published process

Changing market approach documentation (e.g. scope of requirements, conditions for participation or management arrangements, etc.) needs to be considered with care given that conditions for a process contract may have been established.

Considerations

- The original intent/desired outcome of the procurement should remain the same
- All parties invited or registered to participate are informed of the changes
- Providing all parties with the same information
- Give sufficient time to respond to changes
- Changes should not favour or disadvantage a particular party
- Maintain standards of probity and integrity

Emergency Procurement

The purpose of Emergency Procurement is to enable procurement of goods and services in a manner that enables urgent and effective response to an emergency while maintaining transparency, responsibility, and accountability for the spending of public money.

More information

Related documents and templates are available on the HSV website.

Disclaimer

The information presented in this document is general in nature and based on HealthShare Victoria's interpretation of the *Health Services Act 1988 (Vic)* and any ancillary legislation and regulations in effect at the time and should not be relied upon as legal advice. Please consider seeking professional and independent advice from your legal representative as to the applicability and suitability of this information and the legislation to your own business needs or circumstances.