

Early Market Engagement Guidance

Early market engagement (EME) can be a useful tool to assist Tasmanian Government agencies in achieving value for money. When it is undertaken successfully, EME is a collaborative exercise between government and industry which can help agencies to properly identify and define procurement objectives, manage risks, and foster competition in the marketplace.

This guideline provides information to assist Tasmanian Government agencies in undertaking successful EME in the context of the Tasmanian Government procurement framework. It is designed to be read in conjunction with the [Probity Guidelines for Procurement](#), the procurement [Treasurer's Instructions](#), the [Procurement Better Practice Guidelines](#) and the [International Procurement Obligations](#). These documents are available on the Tasmanian Government Purchasing website (www.purchasing.tas.gov.au).

WHAT IS EARLY MARKET ENGAGEMENT?

EME comprises the market engagement activities undertaken after an agency's initial consideration of the procurement activity (budget, timing, agency needs etc) and before any approach to market. It is a strategic exchange of information with the market, conducted prior to procurement.

EME can take many forms, including:

- issuing procurement pipeline information (including through publishing a 'Future Opportunity' on the Tasmanian Government Tenders website;
- advertising a Request for Information on the Tasmanian Government Tenders website;
- establishing a reference group comprising public and private sector representatives;
- conducting industry forums and briefings;
- conducting focus groups;
- conducting one-on-one supplier consultations;
- disseminating online questionnaires or surveys; and
- engaging subject matter experts such as consultants and contractors.¹

¹ Depending on the type of engagement, this may result in the exclusion of the consultant/contractor from consideration in the subsequent procurement process.

Agencies may choose to carry out strategic market scans, as well as some of the activities above, on a regular basis to inform procurement forward-planning.

Direct engagement with suppliers is not prohibited during the pre-procurement stages; however agencies should take care to ensure the engagement adheres to probity principles and does not unduly advantage one supplier above others, disadvantage any other potential supplier or otherwise distort competition.

WHEN SHOULD EME BE USED?

EME will not be necessary for every procurement activity. Agencies may wish to consider EME for projects that are complex, high-risk, involve multiple stages of delivery, require innovative solutions, present unique challenges, or are likely to result in a significant change for the government or industry.

Engaging the market early may reduce the risk of receiving few or no responses to the procurement opportunity, help to avoid protracted contract negotiations, and encourage innovation in the offered solutions.

BENEFITS OF SUCCESSFUL EME

There are many benefits to EME, including:

- Providing an agency with accurate information about the marketplace, allowing it to refine requirements and understand the relevant supply chains and trends.
- Giving an agency a clearer understanding of the market's ability to participate in the procurement, including any barriers to participation or timing concerns in terms of market capacity.
- Managing expectations of both an agency and suppliers. Suppliers can provide early knowledge of labour shortages, evaluation of market practices, and possible risks to timelines, cost and overall feasibility.
- Informing the agency's choice of market approach.
- Increasing the reliability of cost estimates and budgetary considerations.
- Allowing potential suppliers to enter the marketplace, broaden their offerings, and establish more efficient supply chains.
- Increasing competition by generating interest in the relevant industry.
- Enhancing or encouraging innovation in the marketplace by giving potential suppliers enough time to consider and develop innovative solutions for procurement opportunities.
- Giving industry the opportunity to inform the procurement specifications with subject-matter expertise, in particular in cases where the procurement is technically complex or in a new field.

- Reducing the burden for potential suppliers of preparing responses to unnecessarily complex or non-outcome-focused tender documentation.
- Enhancing the market's ability to respond to future procurement requests.

HOW TO CONDUCT EME

There are many ways to conduct EME. Agencies should tailor EME activities to the circumstances of a particular procurement. Agencies should consider the following principles when planning to undertake EME:

- EME should take the simplest form possible. This will help to ensure that value for money and probity principles are upheld. It is also likely to attract the broadest participation from industry. Agencies should be conscious of minimising pre-market expenses.
- Engage as early as possible, but usually only after conducting initial market research. This will make it easier to target EME activities appropriately.
- Present information clearly and consistently, with a focus on outlining the problem requiring a solution rather than the solution itself, which could take many forms.
- Lead discussions with potential suppliers to ensure that only solutions that are fit-for-purpose and meet agency requirements are discussed at any length.
- Allow for innovative solutions to be presented if they meet basic requirements. Potential suppliers are best placed to indicate any new or important developments in the field.
- Consider individual meetings with potential suppliers, if appropriate. These one-on-one engagements can often provide more detailed and relevant feedback because suppliers may feel inhibited by the presence of their competitors in group briefings.
- Maintain openness, transparency and fairness at all times. Agencies must be mindful of inadvertently tailoring a procurement in a way that unduly favours one potential supplier over others. Accurate record-keeping is important.

PROBITY RISK AND HOW TO MANAGE IT

Tasmanian Government procurement activity should conform to the expected standards of probity. Decisions must be able to withstand external scrutiny. The [Probity Guidelines for Procurement](#) publication provides information about probity in government procurement.

If probity is upheld, the EME process can reflect an agency's commitment to proper process, due diligence and ensuring fit-for-purpose procurement.

Some practical advice to ensure probity standards are maintained when undertaking EME is outlined below.

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Purpose of EME: The purpose of EME is to facilitate the best outcome from the procurement process. Agencies should state clearly at the outset of any engagement with potential suppliers that EME is not for the purpose of selecting solutions or suppliers; the decision-making process will occur during any subsequent procurement activity. No commitments should be made to suppliers during EME.

Access to Information: Ensure all potential suppliers are given access to the same information, and that it is strictly relevant and up to date. While there is no formal list of the type of information that cannot or should not be shared with potential suppliers, it is advisable to share only what is required to achieve the intended purpose of the EME.

Equal opportunity to engage: Ensure all potential suppliers are given an equal chance to participate. Ensure invitations to the market to participate in EME activities are issued in such a way that potential participants are not excluded.

Confidentiality and IP concerns: Communicate to potential suppliers the measures the agency is taking to ensure intellectual property and commercial confidentiality are protected throughout the EME process. Providing this confidence to the market is likely to result in higher levels of participation.

Transparency and record-keeping: Document all processes relating to market engagement. Keep minutes for any information sessions or public engagements. Maintain records of all engagements including the analysis of why, or why not, feedback and advice from industry was integrated into the subsequent approach to market. It is important to ensure agency actions are defensible and can withstand public scrutiny.

Separation of duties: Use separate groups for early market engagement activities and the eventual procurement process, to avoid supplier bias within the procurement team.

Early Market Engagement Plan: In cases where a range of EME activities are being considered or where the procurement is high value or high risk, an EME plan can provide assurance about the scope of planned activities, who will be conducting the EME, what kinds of information will be shared with those outside the agency, how engagement will be documented, any risk mitigation strategies and the expected outcome of planned EME activities.

Engagement of probity adviser: If an agency is considering undertaking EME for a complex, high-risk and/or high value procurement, it is recommended it considers engaging a probity adviser prior to the commencement of any EME activities.

CONCLUSION OF THE EME PROCESS

Agencies should communicate the end of the EME process to those who were engaged during the process. It is also best practice to indicate to those who participated in the EME process that the feedback provided has been received and considered.

While information or feedback received through the EME process can inform the design of a procurement process, it should not influence decisions made as part of the evaluation of that process. In particular, no supplier or industry sector should be discriminated against based on information provided, including through the inclusion of procurement specifications that unfairly exclude a particular supplier. In general, outcome-based specifications are considered best practice as they tend not to disadvantage one type of supplier over another.

Good record-keeping throughout the EME process will allow agencies to use the information and feedback collected in the planning of future procurements, where relevant.