

# NSW Procurement Board

## Industry Engagement Guide

Document number:	Version number: 1.2
Date: Thursday, June 21, 2018	

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# 1. Introduction

## 1.1 What is industry engagement

In the procurement context, industry engagement involves NSW Government agencies exploring the capabilities of suppliers and potential suppliers of the goods and services which may be needed by those agencies in the future.

The purposes of industry engagement are to:

- develop and maintain an informed understanding of the capabilities of the industries with which government does or may do business and of the individual suppliers and potential suppliers within those industries
- review and understand the needs of government, how those needs are currently being met and by whom, and what is the potential for creating a better match between government needs and industry capabilities in responding to and meeting those needs
- provide suppliers and potential suppliers to government a better understanding of an agency's:
  - current and anticipated needs
  - interest in ensuring that the benefits of competition (particularly competition between smaller and larger businesses) can be accessed in the way the agency is likely to go about its procurement activities
  - commitment to exploring and encouraging innovation in the type of product or service it intends to procure and/or in the way in which this product or service can be delivered and/or in the type of commercial arrangements that would be entered into in buying this product or service.

Industry engagement involves pre-procurement activities, and so needs to be kept separate from the formal procurement processes and activities which an agency may be conducting.

While potential suppliers receive real benefits from industry engagement, NSW government agencies receive commensurate benefits. The benefits include a broader and deeper view of the capability of suppliers to deliver goods and services, the potential to explore new ways to meet business needs and potentially reduced transactional costs when it comes time for the actual procurement activity.

Industry engagement is a planned and structured pre-procurement activity, with defined goals, activities and outputs. It requires resources, skills and knowledge, particularly in developing and building upon a 'knowledge bank' through which government gains and builds upon its understanding of the capabilities and potential of industry, and through which this understanding is passed on to succeeding generations of government agency personnel.

**Industry engagement is the core enabler of government becoming, and gaining benefit from being, an 'informed buyer'.**

## **1.2 Distinguishing industry engagement from other procurement activities**

Industry engagement is *not* vendor management. It involves more than the existing suppliers and their current goods and services. While it is likely that existing suppliers will be included in any industry engagement activity, there is no rule that they must be.

Industry engagement is *not* just listening to potential suppliers pitching their current and planned offerings. This is only a small stage of a wider engagement activity.

Industry engagement is *not* market engagement. Market engagement involves decisions by an agency about how to best procure goods or services in a defined procurement activity (for example, using an open tender process). Industry engagement is different from market engagement because it is a process which is focused on enabling the procuring agency to become an informed buyer.

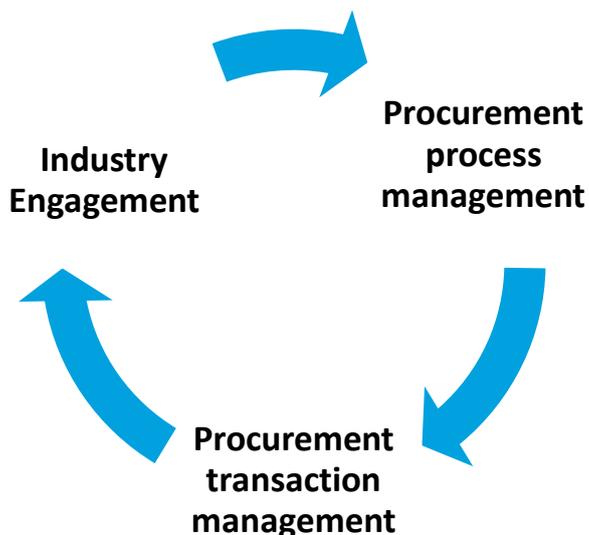
To be an informed buyer in this context, the agency will need to actively create, confirm or build upon the government's knowledge base around relevant industries for which they already procure from or for which they foresee procuring from in the future, without relying upon the trigger of a specific procurement activity.

Industry engagement can also be both an ongoing commitment to ensure an up-to-date understanding of the relevant markets for which an agency may seek to procure, as well as a targeted activity during the planning stages of a specific procurement opportunity.

### 1.3 Why is industry engagement important?

Effective industry engagement is critical to the success of the procurement model implemented by the NSW Procurement Board. It offers the opportunity for NSW Government agencies to better align their procurement sourcing strategies with the current and emerging activity in the markets which deliver the goods and services needed to provide government services.

Management of relationships with potential suppliers, which is at the heart of industry engagement, is a core part of the procurement cycle. The following diagram highlights the position of industry engagement within the procurement cycle. Industry engagement influences the eventual procurement of goods and services ('procurement process management'). In turn, the experiences of an agency with managing goods and services procurements and contracts ('transaction management') influences current and future industry engagement.



### 1.4 Why industry engagement must be planned

Ad hoc, poorly planned or badly executed industry engagement can, at best, be a waste of time for agencies and suppliers alike. At worst, it poses a serious reputational risk to agencies and government. Good planning prior to engagement is the key to avoid poor engagement outcomes.

There is no single style of industry engagement which works best. However, industry engagement strategies which deliberately aim to foster innovation in the supply of goods and services, build appropriate and collaborative relationships between agencies and suppliers and develop competition amongst suppliers, are generally most likely to lead to better outcomes for government.

## 1.5 Where this Industry Engagement Guide fits

This Industry Engagement Guide provides a high-level view of industry engagement strategies and approaches. Other documents issued by the NSW Procurement Board and its working groups also deal with aspects of industry engagement.

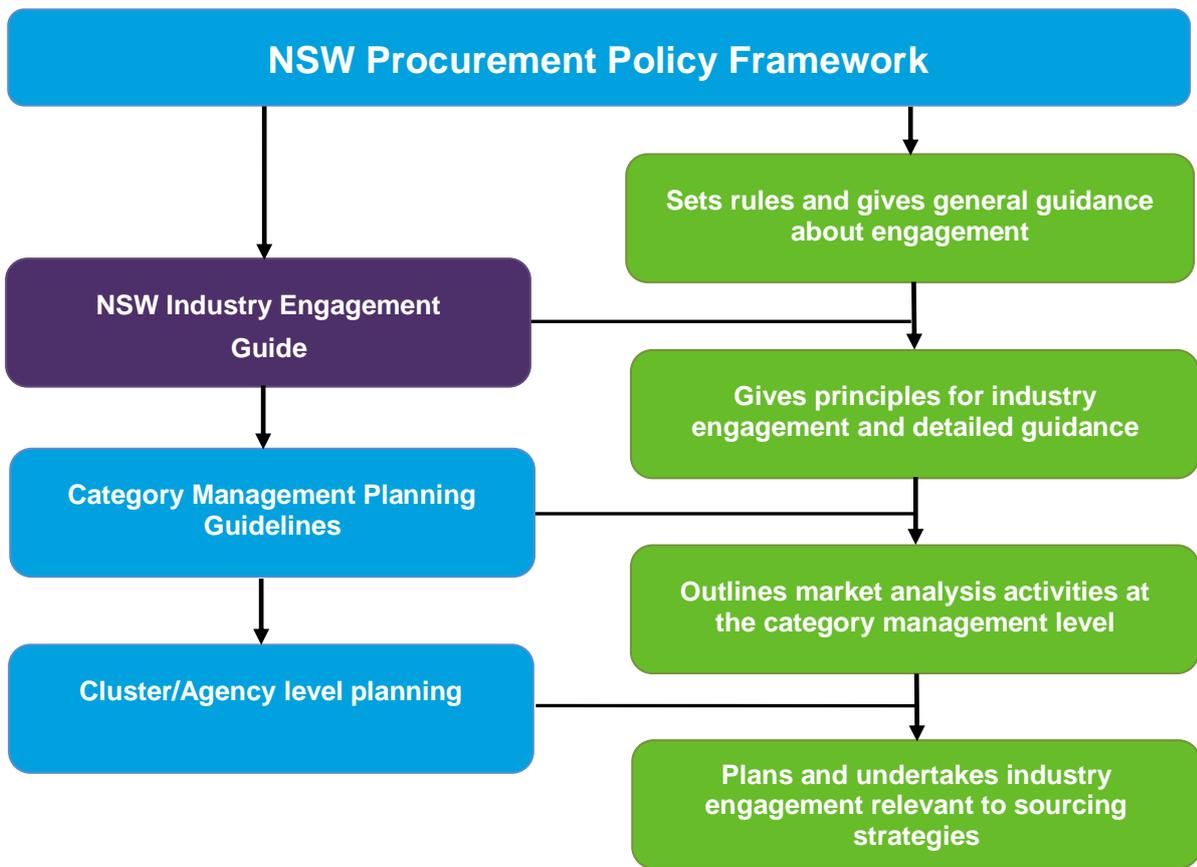
The [Procurement Policy Framework](#) issued by the Procurement Board sets rules to be applied to all industry engagement activities. It also contains guidance for agencies, which has been largely incorporated into this guide.

The Procurement Board's [Strategic Directions Statement](#) sets out the background to the Board's decision to focus on industry engagement.

Industry engagement is also a consideration for category management working groups established by the Procurement Board. The Board's Category Management Planning Guidelines outline market analysis activities at a category management level.

Thus, this Industry Engagement Guide outlines the sorts of issues that category management working groups may wish to consider when implementing category management plans, alongside the issues that agencies may wish to consider when planning industry engagement at cluster or agency level.

The following diagram demonstrates how this guide fits within the governance framework established by the NSW Procurement Board for the NSW Government's procurement system.



This Industry Engagement Guide:

- outlines the background to the development of the Procurement Board’s commitment to industry engagement and describes the reasons why the Board considers industry engagement to be an important element of the NSW public sector procurement system
- suggests ways in which agencies can go about planning an industry engagement strategy or activity
- summarises some of the major techniques and processes available to agencies when engaging with industry
- sets principles to guide agencies when engaging with industry
- outlines some of the major risks of engagement
- suggests ways in which the outputs and outcomes of industry engagement may be identified, assessed and incorporated into the formal procurement process.

This guide has been written specifically for the procurement system established by the NSW Procurement Board and links within the governance framework existing in the NSW public service. It may not be generally relevant to other public services or private sector bodies.

This guide is not a how-to guide to be applied by agencies in every instance. The issues dealt with in this guide are not exhaustive, and agencies are not required to follow all the elements of this guide when engaging with industry.

Put at its simplest, this guide is a 'thought starter' for NSW procurement and business managers who may be contemplating developing an industry engagement strategy as part of developing a better alignment between the NSW Government as a customer and its suppliers.

## 2. Industry engagement in 9 steps

This guide outlines the nine key steps of industry engagement to ensure that government becomes 'an informed buyer' before an agency undertakes a specific formal procurement initiative.

The nine steps of industry engagement – and the types of questions which are answered in each step of engagement - are summarised in this section of the guide.

### Prior to contact with industry

1. **Define the procurement grouping:** What is the nature of the procurement group or sub-group within the procurement category, and what are the boundaries which set it apart from other similar groups or sub-groups?
2. **Define the users:** Who are the end users and what are all the material end-uses of the procurement group or sub-group within those agencies?
3. **Understand the users' needs and the existing procurement approach:** What are the histories, characteristics and underlying features of the end-user needs? What are the current approaches to procurement and to specifying the procurement outcomes? Who are the current suppliers? From the users' viewpoints, what are the important features of and opportunities within the current suppliers' product/service industry sector? What are users' views of the strengths and weaknesses of the current procurement approach?
4. **Analyse the suppliers' product/service industry:** What are the structural, economic, financial and competitive characteristics of the industry sector? What is the business system today? Where is value added? How do costs and prices behave? What are the sources of profits? Where are assets committed? What characterises the market as a whole and its important segments? Who are the key competitors and what are the competitive forces at work? Do SMEs have a viable competitive position and how do they compete? What are the points of competitive leverage and competitive vulnerability? What are the key risks and who carries risk responsibility in each?
5. **Assess significant industry developments and trends:** In each of the elements in steps 3 and 4 above, what are the significant trends and the consequent implications? What is the nature and level of product-service innovation? Is there likely to be unexplored opportunities for innovation?

*Commit the information gained from steps 1 to 5 to the agency's Procurement Knowledge Bank (see page 14).*

## Contact with Industry

6. **Meet face-to-face with key existing and potential suppliers:** The aim in this significant step is to explore the basics developed in Steps 3, 4 and 5 above: approaching suppliers and potential suppliers individually; asking to be educated; using simple questions; not displaying a lot of existing knowledge, respecting confidential information and supplier intellectual property. In handling contacts with industry, it is important to observe the probity and confidentiality protocols set out in this guide.
7. **Commit the learning to the procurement knowledge bank:** In the light of step 6, re-assess the agency's Procurement Knowledge Bank.
8. **Assess the potential for innovation:** For example, should user needs be modified or changed significantly, and if so, what is involved in gaining user acceptance for such change? Is there potential for useful innovation in the structuring or segmentation of the existing product/service procurement? Is there potential for significant innovation in the nature or scope of the product/service outcome being sought? Is industry likely to be responsive to the innovation involved? What is the risk profile and how might it be allocated? Is the likely timeframe and uncertainty involved in exploring the innovation potential likely to be acceptable to the principal parties involved?
9. **Decide the procurement strategy:** Should the procurement strategy be based on a traditional 'specification driven' tender? If so, what is the most appropriate structure of the tender or tenders, and in what role should each agency be placed? Are there elements of the tendering invitation/ request/conditions and/or tender documentation that should be changed to better exploit the potential for more cost-effective procurement? Alternatively, should the procurement strategy be 'outcomes-based'?

## 3. The case for industry engagement

### 3.1 The NSW Procurement Board's Strategic Directions Statement

The NSW Procurement Board's [Strategic Directions Statement](#) (the Strategic Directions Statement) notes that effective industry engagement is critical to the success of the new procurement model. It is nominated as one of the six broad areas for reform and action.

The Strategic Directions Statement argues that effective industry engagement will improve alignment between agencies' sourcing strategies and market structure and dynamics. This will also make it easier for suppliers to respond to government needs, both in terms of service attributes and service volumes, and for suppliers to forward plan their own investment decisions. The Strategic Directions Statement also acknowledges that there is a need for government to open up lines of communication with industry and non-government organisations in order to develop more effective approaches to the delivery of public services.

### 3.2 What made 'Engaging with Industry' a strategic direction?

When developing the Strategic Directions Statement, the following issues were raised in submissions to the NSW Government by industry:

- providing opportunities for suppliers and industry to engage with government and suggest new ideas is critical
- greater involvement of end users and potential suppliers throughout the procurement and project design phase increases certainty and opportunity for better quality and price
- there is benefit in preparing and releasing agency level forward procurement plans so that innovative solutions can be developed to address medium to long term needs - the longest possible forecast of demand assists in the planning and investment decisions of supplying industries and a long-term procurement timetable of major projects would enable industry to more effectively manage demand and associated supply chain impacts
- suppliers and potential suppliers would benefit from education on how to do business with government, and this would be particularly useful for those who have not supplied to government previously, or after major changes to procurement policy

- the interpretation of what constitutes probity is not always consistent, and this has the effect of making innovation much more difficult to promote
- industry engagement can ensure that non-incumbent suppliers are provided with all necessary information to enable them to prepare an informed tender - this will assist in developing more competitive markets.

### **3.3 Industry engagement is part of a wider engagement strategy**

In response to these issues, the Strategic Directions Statement outlines an overarching industry engagement strategy which is designed to build better communication with businesses and enhance transparency of government procurement actions. In turn this is anticipated to increase industry awareness and support industry planning to capitalise on government business opportunities.

Other engagement activities outlined in the Strategic Directions Statement include:

- establishing a Procurement Industry Advisory Group as an independent ongoing source of advice to the Procurement Board;
- training public service procurement staff and business managers in engagement strategies as part of the wider procurement capability framework;
- trialling supplier forums at an early 'approach to market' phase of significant procurement activities;
- developing the ProcurePoint website as a single point of reference for suppliers and potential suppliers; and
- developing a capacity for agencies to publish significant planned procurements well in advance of the approach to market stage.

### **3.4 Industry engagement and corruption risk**

As noted above, the Strategic Directions Statement identified the need to open communication lines with potential suppliers in order to improve procurement outcomes. Balanced against this, some have argued that increasing engagement inherently increases risks around the potential for corruption of public officials.

The Independent Commission Against Corruption (ICAC) has identified 'dealing with suppliers' as part of one of the three 'pillars' of corruption control in government

procurement, the others being strengthening procurement structures and designing procurement processes that also minimise risks and enhance efficiency.

When considering how to manage suppliers, the ICAC observed:

The current state of relationships between public officials and suppliers appears to be unsatisfactory to many parties. Concerns about probity appear to have constrained engagement between public officials and suppliers. The Commission's research and the submissions received for this project demonstrate that contact with suppliers creates uncertainty in the minds of public officials, primarily because they worry about conflicts of interests, unsolicited gifts and/or benefits, and whether they are being groomed to participate in future improper activities. These fears have caused some public officials to minimise contact and communication with suppliers....

... Contact and communication between public officials and suppliers is useful and necessary. It can also occur within clear parameters and in circumstances where risks for corruption are managed. Engagement with suppliers where public officials take the initiative and set the rules improves both corruption control and overall procurement (Independent Commission Against Corruption, 2011).

This guide also adopts the view that there is no trade-off between industry engagement and procurement probity. A properly designed and implemented engagement strategy can both improve the probity of the procurement process and lead to enhanced procurement outcomes, simultaneously.

## 4. Principles when engaging with industry

### 4.1 Setting principles before engaging

An industry engagement strategy has three parts:

- a description of what is to be discussed in the engagement process
- a description of the way in which the agency will conduct itself in the process
- particularly where industry engagement is likely to be with suppliers who are unfamiliar with supplying to the NSW Government, a description of how the agency expects suppliers to act in the engagement.

Once an industry engagement activity has commenced, it is too late to signal to industry the way in which an agency intends to conduct itself or to set expectations about how it wants suppliers to act.

While agencies will already have clear expectations about how their own staff are to act (in codes of conduct, etc.) many of these sorts of documents are internally focussed. It is therefore sensible to consider issuing a consolidated document setting out the principles for engaging with suppliers, and to make this available throughout the process.

Once a set of engagement principles has been established by an agency for a particular engagement strategy, it is likely that it will also be suitable for future activities.

### 4.2 Core principles

The following are principles which are likely to apply in most industry engagements.

- **Be well-informed right from the outset**

A procuring agency needs to be an informed buyer. A solid and contemporary understanding of the relevant industry sector is integral to ensure the procuring agency targets their industry engagement activities accordingly. This understanding may be obtained from an already existing knowledge base within the government, or may need to be created from scratch by the agency.

This knowledge base will represent a statement of collective knowledge and insights of the team and into which new knowledge and insights are to be integrated and shared within the agency,

- **Have clear objectives**

Clear definable objectives provide a focus point and structure to industry engagement activities. The objectives enable discussions to be targeted, and therefore provides the opportunity for both government and suppliers to adequately prepare themselves for informal or formal methods of industry engagement. This makes the process more productive for both government and suppliers.

- **Be broad based and not exclusive**

Engaging with the widest range of suppliers encourages innovation and refutes any suggestion of favouring particular suppliers or products. Most importantly, diversity ensures that a broad cross section of responses is received and that the government is armed with all the available knowledge of the market when developing their formal approach to market strategies.

- **Be open about past procurement activities, but focus on the future**

Industry engagement is not a de facto acknowledgement by an agency of dissatisfaction with past procurement activities. While potential suppliers will usually be assisted by understanding how the agency has approached the market previously, industry engagement is better focussed on future ways in which anticipated business needs may be satisfied.

It is reasonable, as part of any engagement process, to provide information about past purchasing decisions. The purpose of supplying this information is to put suppliers in a position where they can provide meaningful insights into products, services and industry.

- **Be transparent, even-handed and consistent**

To preserve the government's reputation and to ensure continued interest in government procurement activities, it is important that any industry engagement process is open and transparent. Given the inherent flexibility and discretion, decisions regarding industry engagement processes should have a strong evidentiary basis. In addition to this, it is important that the procuring agency is consistent in their approach to suppliers to ensure that all suppliers are, and are perceived to be, treated equally.

- **Have the highest level of probity and behavior**

It is imperative that procuring agencies maintain the highest standards of probity and behaviour throughout the industry engagement process so as to reinforce their neutral stance. Not only will probity concerns taint the government's reputation in the market, but it will work as a disincentive for suppliers to engage in future government business opportunities.

Therefore, throughout this process it is important not to provide any suppliers with unjustifiable influence over the process or to be perceived to be doing so (i.e. through the acceptance of gifts or benefits).

- **Handle others' intellectual property properly**

As explained in more detail later in this guide, a supplier who participates in industry engagement is likely to be providing the agency with their intellectual property without financial gain. Dealing with intellectual property appropriately is an essential part of all engagement activities.

- **Keep good records**

Good record keeping benefits the agency and suppliers as it promotes confidence in the industry engagement process and removes the evidentiary burden when it comes to justifying procurement decisions. At a minimum, records should capture the purpose of the engagement, details of participants, summary of discussions, key outcomes and actions (Department of Defence, 2013, p. 17).

## 5. Planning for engagement

### 5.1 Why is there a need to plan industry engagement?

Industry engagement is not an activity undertaken for its own purpose. As discussed throughout this guide, industry engagement is a core capability of procurement ultimately directed at supporting an anticipated future procurement activity or range of activities. This being said, industry engagement is not contingent on a specific procurement, but instead a process undertaken with a business need in mind.

Industry engagement has a cost to agencies and suppliers alike, in terms of time and other opportunities forgone. Planning can set reasonable boundaries around the nature of any engagement, the resources to be committed to the process, and the timetable to be pursued.

Proper planning also gives agencies a process to assess risks of industry engagement, and how to manage those risks.

#### ***The Procurement Knowledge Bank***

The material and knowledge gathered in each industry engagement should be recorded and arranged, so that it develops a permanent Procurement Knowledge Bank to which future reference can be made by others. While this takes time and resources, a properly-prepared Procurement Knowledge Bank can be relatively easily updated, and the cumulative knowledge generated can provide important insights for future reference.

The manner and form of every Procurement Knowledge Bank is a matter for the agency undertaking the engagement activity. Generally, it is the responsibility of the chief procurement officer or the person in charge of a procurement category group or sub-group to develop and manage the information contained within the bank, recognising that it will contain commercially sensitive information and be an important resource in any procurement audit trail.

### 5.2 What should the procuring agency consider?

Procuring agencies must plan their industry engagement activities if they hope to utilise the process effectively. A well-developed and structured plan for industry engagement will enable the agency to reap the greatest results. It will also have the added benefit of enabling the procuring agency to clearly communicate the objectives of, and process for, industry engagement prior to its commencement.

Despite the above, the level and type of planning involved will depend upon the subject matter and expected outcomes of industry engagement. For example, regular industry engagement undertaken to understand the current market structure and dynamics is likely

to be less structured and may have different considerations than targeted industry engagement during the planning stages of a specific procurement opportunity.

During the planning process, the procuring agency should consider the following questions:

- Does a market exist for the subject matter?
- What are the fundamental economics, business characteristics and competitive framework of this market segment?
- What are the general trends in relation to supply and demand within the market?
- Whether examples exist of alternative supply models being pursued by similar organisations?
- What are the strengths and weaknesses of the government's position in relation to the market?
- Where is supplier input needed, and from how many suppliers?
- What resources are available to conduct industry engagement?
- What risks exist for the agency from engagement, including risks to other concurrent procurement activities?

The very nature of the above questions requires a level of engagement with both internal and external stakeholders. This engagement will:

- provide insight into the history, context and user needs surrounding the government/agency sector or objective identified
- uncover challenges and encourage discussion about whether agency objectives are being adequately met by the services, products or solutions being currently acquired
- help the procuring agency understand the limitations of any existing products and solutions and any difficulties in supplier management
- uncover the desired improvements and needs, and the desired agency's outcomes.

### **Skills and knowledge needed for industry engagement**

In most cases, agency staff are best placed to plan industry engagement strategies. Using existing in-house knowledge and insights, they can carry out basic analyses of the supply chain and broader industry. This analysis can include appraisal of developments taking place in that industry and in the competitive position of the agency.

An important part of planning for industry engagement is to engage with the people inside the agency who are using the goods or services under review. Frontline operational staff will usually have an important view of:

- the history, characteristics and underlying features of business needs
- the 'what and why' of current approaches to buying goods/services
- supplier products, services and the supply industry.

Background research can also assist the procuring agency to better understand their position in relation to the abovementioned factors.

The information obtained throughout this process will form a knowledge database about the government/agency sector or objective identified. This knowledge database will be the culmination of insights gained through the planning process, including (but not limited to): what has worked, what has not worked, what current solutions have not been fit for purpose?

Collating, analysing, applying and further developing this knowledge database will play a crucial role in building capability and knowledge within the NSW Government. This is especially important considering the NSW Government's decision to shift their focus away from panel contract arrangements towards prequalification schemes. The dynamic nature and flexibility of prequalification schemes has increased the regularity, importance and therefore necessary planning of industry engagement. This is because prequalification schemes are essentially a forum for a series of short term procurements, and if a procuring agency is to achieve the best value for money it is crucial that they have a solid understanding of the market dynamics because that will influence not only the agency's purchasing, but also any decision to expand or contract the scope of the scheme or the addition of new suppliers.

Whilst industry engagement is also relevant throughout the lifespan of a panel contract, the comparatively rigid nature of this arrangement means the bulk of industry engagement will occur prior to the contract award. Stepping back and looking at the role of industry engagement from the perspective of a procuring agency, it is important to remember that industry engagement is an activity undertaken for assisting imminent or proposed future procurement activities. Therefore, having a strong grasp on this type of information will ensure that a procuring agency remains an informed buyer and meets their ongoing commitment to ensure an up-to-date understanding of the relevant markets for which an agency may seek to procure.

## 5.3 Engagement within the procurement lifecycle

If a procuring agency intends to undertake a specific procurement, the information obtained during the planning process will in turn enable the procuring body to decide what types of industry engagement, targeted to the specific procurement, would assist in developing the procurement specifications. The timing and type of engagement are critical to ensure active participation by the industry, that the relevant information is obtained and that probity risks are managed appropriately.

There is a significant difference in the formality and structure of industry engagement processes depending on the stage of the procurement lifecycle. The golden rule of industry engagement is: the earlier the stage of the procurement process, the greater flexibility and informality that is allowed. This is because the probity risks increase exponentially as the procurement process develops.

There are two distinct stages in the procurement process which highlight the changing role of industry engagement:

- **First Pass:** at this stage funding is approved to explore potential options for procurement. Therefore, prior to this stage industry engagement is actively encouraged and relatively informal.

The 'rules of engagement' are relaxed to encourage greater collaboration between the procuring agency and the industry, as the focus at this point of the procurement process is on brainstorming potential ideas. Examples of industry engagement include attending trade shows and one-on-one discussions with suppliers.

- **Second Pass:** this stage involves deep analysis of suppliers' proposals.

In the period between First Pass and Second Pass, industry engagement is more structured and formalised than prior to First Pass. This is because the period between First Pass and Second Pass looks to refine the tender specifications and is therefore more vulnerable to influence by suppliers. During this period, typical industry engagement activities consist of Requests for Information (sometimes called RFIs) and Requests for Quotes (RFQs).

It is important to note that when a procurement activity eventuates, the procuring agency may choose to invite participants in the industry engagement process to participate in the procurement activity, however they are under no obligation to do so. This affords the procuring agency the freedom to invite other members of the industry to participate in a formal procurement process.

Keeping in mind the caveats discussed later in the guide, the procuring agency may use the results and learnings of the industry engagement process in the procurement activity, including in the development and publication of its requirements for the procurement

(subject to the terms of any existing confidentiality agreement and the intellectual property rights of industry engagement participants).

## **5.4 Industry engagement needs to be ongoing**

Whilst most of the discussion in this paper is focused on industry engagement prior to the formal procurement process, it is important to remember that industry engagement should not be restricted solely to instances prior to the release of a formal procurement process. Industry engagement is dynamic and strategic relationships with industry should be utilised regularly.

## 6. Engagement activities

### Industry engagement in a nutshell

The basics of industry engagement are to:

- engage with key industry existing and potential suppliers away from the timing of any upcoming procurement activity
- ask to be educated in what the supplier thinks is important that the agency know
- include as many potential suppliers, including small and medium enterprises, as is feasible
- generally avoid meetings with more than one supplier at a time
- always respect the commercial significance and intellectual property of the supplier.

### 6.1 Choosing the right sort of industry engagement

There is no prescription which ensures that adopting a certain type of market engagement delivers a superior outcome to others. However, the nature of the eventual procurement activity can influence the style of industry engagement. Agencies contemplating how to engage with industry may be assisted by considering the IAP2 Public Participation Spectrum published by the International Association for Public Participation (IAP2).

The IAP2 Public Participation Spectrum is used widely to assist with the selection of engagement activities based on desired goals. It shows that differing level of participation are legitimate depending on the goals, timeframes, resources and levels of concern in the decision to be made. In addition, the Spectrum defines the promise being made to the public (in this case potential suppliers) at each participation level (International Association for Public Participation, 2014). The following chart paraphrases this approach.

Conditions existing	Goal of industry engagement	Engagement approach
Business need is well understood and market supply is stable and mature	Engagement to expand range of suppliers about the same or very similar products	To <b>inform</b> the market about the anticipated solution
Business need is well understood, but market offerings are changing	Engagement to identify pros and cons with new and emerging products and services	To <b>consult</b> with the market about the anticipated solution
Business need is changing along, expanding the market range	Engagement in new markets alongside existing suppliers to assess market responses to emerging business needs	To <b>involve</b> the market in fine-tuning the anticipated solution

Conditions existing	Goal of industry engagement	Engagement approach
Changing business needs means that goods and services will come from new markets	Engagement across broad ranges of suppliers to recast supply chains	To <b>collaborate</b> with the market
Business needs can be identified but delivery options are unknown	about delivering anticipated solution	To <b>empower</b> the market to deliver a new procurement solution

Most relevant for NSW Government agencies is the concept outlined in the Spectrum that industry engagement can occur at each of the five levels of engagement activities. That is, industry engagement as part of a procurement strategy can be differentiated by the circumstances of the procurement activity. It is also important to recognise that an industry engagement strategy may use more than one type of engagement approach.

Regardless of the sort of industry engagement chosen, it is important that adequate time be allocated in order to ensure sufficient time to discuss and consider proposed solutions, any alternative options and innovative solutions and to revise the specifications as may become necessary. This will enable the procuring agency to receive the greatest possible benefit from the industry engagement process.

## 6.2 Being innovative in engagement

The Procurement Board's [Strategic Directions Statement 2013-14](#) also recognises the importance of support and promotion of innovation within procurement as a key theme of the NSW Government's procurement reform process. The Statement notes that innovation has the potential not only to deliver value through procurement of goods and services, but also to identify and bring into being transformational projects that can fundamentally change the way that the NSW Government delivers public services.

The statement specifically recognises that the procurement system can promote innovation by seeking new products, processes or services, or by delivering existing services in new ways.

Thus, there are two aspects to consider when planning an industry engagement strategy to ensure that innovation is encouraged:

- an agency needs to allow scope for innovative procurement approaches to emerge within an engagement exercise (and needs to have plans about how to deal with those approaches); and

- having procurement processes that are open to and encourage innovation can give the market the opportunity to offer solutions that may be more productive, a better fit for government's needs and, in some cases, more cost and resource efficient – this is more likely to happen when the agency provides greater details about its business anticipated future needs.

Innovative approaches to market and responses from market bring a range of attendant issues and risks, such as the treatment of intellectual property. These are discussed later in this guide.

### 6.3 Examples of engagement activities

The following industry engagement activities are examples of ways in which agencies can engage industry and, more narrowly, a range of potential and actual suppliers:

- **Horizon scanning**

Horizon scanning refers to the process of examining potential opportunities, developments, threats or driving forces which may influence how a market operates in the near future. Planning for what is on the “horizon” is a form of forward thinking characteristic of an intelligent market participant, because it allows for the development of a strategy or formal approach to market which is capable of both weathering perceived changes in the markets and taking advantage of new opportunities.

This method of industry engagement arms government with important information regarding the operation of the market in the context of the wider economy, and consequently enables the government to prepare and respond appropriately through the means of their procurement activities.

Horizon scanning is two-pronged; it can involve strategic discussions with suppliers about future market conditions, as well as an examination of wider issues, for example global and domestic political agendas (Office of Government Commerce, 2006, p. 2).

The broad coverage of this method of engagement draws the procuring agency's attention to issues they might not otherwise have known, and most importantly, forces the procurement activity to be removed from its “bubble” and considered in the wider context.

- **Market sounding**

Market sounding is the process of floating an idea with the market in order to obtain feedback prior to undertaking the formal approach to market.

Whilst there is no universal method, it is important to consider the following when undertaking market sounding:

- Do not be too prescriptive as it will only dampen the level of innovation
- Focus on suppliers as a group (rather than individual suppliers) to encourage high levels of participation, meaning that discussions should focus around the viability of, and the relevant industry's interest in, a procurement activity rather than a specific supplier's procurement solution
- Clearly define the goals of the engagement upfront and allow suppliers to provide the solutions to the procurement issues.

At the conclusion of market sounding, the procuring agency will be able to develop a statement of requirements that incorporates industry feedback in respect to the feasibility of the procurement activity, the capability of the market to achieve what is required, the existence of a competitive market which can satisfy the requirements and its capacity of the market to meet the requirements (Office of Government Commerce, 2006, p. 3).

- **Market creation**

This form of industry engagement is necessary when there is little (or no) incentive for suppliers to respond to formal procurement approaches. There are many reasons for this, including the scale of requirement (i.e. too large or too small), the geographical or organisational scope, perceived problems in the commercial viability of the resulting contracts, or concerns about associated risks (Office of Government Commerce, 2006, p. 4).

Therefore, the focus of market creation is to promote the idea in a manner which generates interest in the marketplace prior to publishing the formal approach to market.

- **Bidder conferences**

Bidder conferences are held once the formal procurement activity has commenced. This form of industry engagement allows suppliers responding to the tender to

participate in discussions regarding the commercial and technical aspects and risks of the procurement.

Releasing a set of prescribed questions to be discussed prior to the conference will encourage participation by suppliers (Office of Government Commerce, 2006, p. 4).

- **Indicative approaches to market**

This method of engagement involves publishing proposed procurement activities well in advance of the formal procurement activity to enable suppliers to register interest and provide feedback.

The benefit of this process being that it allows procuring agencies to understand the level of interest in the market and amend their specifications before they are formally released.

- **Concept viability**

Concept viability uses the industry's knowledge of suppliers to test the technical viability of a proposed procurement activity. This process is a form of market sounding which provides suppliers with the opportunity to respond to a brief that outlines a certain business need.

Suppliers may be asked to respond to potential solutions that have already been developed, or they may be asked to provide their own solutions.

This process is highly beneficial to procuring agencies who are attempting to implement a new business idea because it enables those who are active participants in the relevant industry to reality test different solutions. This is important because it ensures that the formal approach to market is based on a concept to which the market can respond.

# 7. Dealing with risks of engagement

## 7.1 'Identifying the risks' is part of planning

Industry engagement is not a risk-free activity. At the very least, it consumes scarce public resources, involves a time/cost commitment from private sector suppliers, can raise the prospect of probity risks if handled inappropriately and builds industry expectations about the government's procurement intentions. A misguided industry engagement strategy can not only waste resources, but adversely impact on the ultimate delivery of future public services.

The [Independent Commission Against Corruption](#) has published a number of reports into probity risks associated with procurement activities. These reports were used in the development of the 'probity and fairness' section of the Procurement Board's [Procurement Policy Framework](#). It is recommended that all agency staff engaged in industry engagement are familiar with the directions and guidance set out in the [Procurement Policy Framework](#).

The principles set out in the [Procurement Policy Framework](#) for a consistent and fair procurement management framework apply equally in the planning stage for every industry engagement. Planning should ensure that the industry engagement strategy will:

- treat all suppliers and potential suppliers fairly, and consistently
- clearly explain the engagement process
- make it easy for all suppliers including small and medium enterprise to engage with the agency
- clearly state whether the industry engagement includes a specific intention to proceed to the procurement stage or not
- explain how agency staff and suppliers can report conduct or behaviour during the engagement that is inconsistent with legal obligations, policy, and principles
- provide appropriate levels of security, including protecting the confidential information of suppliers.

## 7.2 Handling others' intellectual property

A supplier who participates in industry engagement is likely to be providing the agency with their intellectual property without financial gain. This is unavoidable in many types of industry engagement – indeed it is a very practical part of most engagement activities.

In some instances, suppliers will be wary of providing this intellectual property and may seek information about how the agency intends to treat it. In other cases, this will not occur to the supplier (especially where the supplier is new to supplying to government). Regardless of the position of the supplier, the agency should have a pre-determined position about how it intends to receive and treat any intellectual property. That is, procuring agencies have a responsibility to ensure that they treat each supplier's ideas, innovations and contributions with due respect. A procuring agency that demonstrates a commitment to preserving intellectual property rights will not only maintain the confidence of supplier's in the industry engagement, but will ultimately encourage participation. Conversely, a procuring agency that uses intellectual property without permission will lose the confidence of suppliers and discourage future participation (Consult Australia, 2013, p. 29).

To ensure that the government continues to benefit from industry engagement, it is important that the procuring agencies recognise and acknowledge the contribution that suppliers are making to the industry engagement process. This can be done by requesting suppliers to explicitly identify any information that they regard as being confidential or their intellectual property, and for that to be recorded. Keeping accurate records will significantly reduce the risk that intellectual property is inadvertently misused by the agency during later procurement processes.

At a minimum, an agency's industry engagement strategy should:

- at the outset of any discussions, explain to the supplier that it is their choice whether to divulge any intellectual property and no adverse inferences will be drawn if the supplier decides to refrain from sharing intellectual property
- not disclose a supplier's intellectual property to any other supplier, whether as part of a subsequent procurement activity or otherwise, without the express permission of the supplier
- explicitly commit to not use a supplier's intellectual property without the supplier's express written permission
- request suppliers who intend providing intellectual property to be explicit about the basis on which it is provided
- explain how intellectual property is treated and stored within the agency

- commit to treating all intellectual property as confidential to the engagement strategy, outside of situations where it is legally obliged to hand over this information by a law or a court.

### **7.3 Giving feedback about engagement**

Industry engagement provides the procuring agency with the knowledge necessary to improve and promote their procurement activities in the marketplace. Potential suppliers play a key role in this process, and for this reason procuring agencies should acknowledge this by providing suppliers with feedback regarding the value and relevance of their contribution to the procurement process. By providing high level feedback, not only is the supplier able to benefit from the process but the procuring agency is able to demonstrate their commitment to working together with industry.

### **7.4 Dealing with disputes**

Relationships established as part of an industry engagement strategy are not immune from disputes – everything from misunderstandings to dysfunctional behaviour. Careful planning and discussions at early stages can minimise the likelihood of disputes arising later in the cycle.

Often potential suppliers are unlikely to raise concerns in an engagement issue until an issue becomes very significant as they do not want to offend a potential customer.

Some of the ways in which agencies can act to minimise serious disputes arising include:

- ensuring that staff leading engagement activities are appropriately trained and confident to handle discussions, even in difficult circumstances
- setting ground rules for engagement at the first meeting with suppliers, including explaining how and why the agency is undertaking engagement strategy
- asking suppliers what their expectations are of the engagement
- using supporting written material to explain complex or public sector-specific issues which are not always well understood in the private sector
- acknowledging that disputes do arise and explaining to the potential supplier(s) how to raise concerns.

## **8. Measuring the outcomes**

### **8.1 Sustaining industry engagement**

Industry engagement has relevance beyond the sphere of a single procurement activity. Procuring agencies should be open to maintaining strategic relationships with key suppliers and stakeholders in the marketplace. Maintaining these relationships enables procuring agencies to keep a “keep a finger on the pulse”, through an increased awareness of changing market conditions. In addition to this, these relationships provide the opportunity for suppliers to give input and feedback on procurement strategy and policies.

### **8.2 Ending engagement**

While there are exceptions, it is considered that most industry engagement strategies should come to an end at some stage. Suppliers who have been engaged throughout the industry engagement process should be notified by the agency when this occurs, and information about the outcomes of the engagement should be provided to all who have participated. The amount and nature of information to be supplied is a matter for the agency concerned.

Where it is an ongoing strategy, agencies should conduct reviews annually or at other significant points in time to ensure that the goals of the strategy remain current and relevant to the agency’s business needs.

### **8.3 Evaluating the impact of engagement**

The purpose of industry engagement is to ensure that the procuring agency is able to meet their business needs through an innovative and competitive procurement process. The ability for industry engagement to impact on the procurement activity is reflective of the effectiveness of the industry engagement process. Therefore, it is important for procuring agencies to undertake an evaluation process.

The evaluation process should consider whether the objectives of the industry engagement were met, what benefits were achieved and if there was anything that should be done differently in future industry engagement processes. This is by no means an exhaustive list, but it provides a good foundation for the evaluation process to evolve from (Department of Immigration and Citizenship, 2008, p. 20).

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# Document control

## Document version control

Version	Status	Date	Prepared By	Comments
1.0	Superseded	31/03/2014	NSWP	
1.1	Superseded	31/03/2015	Service Innovation and Strategy	Minor formatting and updating
1.2	Published	20/6/2018	NSWP	Updated to current DFSI template and NSW Government branding requirements.