



DEVON &
SOMERSET
FIRE & RESCUE SERVICE

Preliminary Market Engagement Guidance

(Procurement Act 2023)

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Section One – What is preliminary market engagement?

- 1.1 Preliminary market engagement (PME) is the process by which contracting authorities conduct consultation/s prior to the publication of a Further Competition with a view to preparing for procurement. It is where the Contracting Authority engages with the Framework Suppliers to help prepare for the procurement. PME must comply with the Procurement Act 2023 and the [National Procurement Policy Statement](#) (NPPS).
- 1.2 The Procurement Act 2023 sets out the requirement to be open, fair, non-discriminatory and transparent when procuring goods or services and/or works, which includes during preliminary market engagement.
- 1.3 A myth has emerged in the public sector that it is somehow unethical to talk directly with suppliers in relation to a procurement. This is not correct and market engagement is actually encouraged (prior to entering any competitive element of a procurement). However, any engagement must be conducted in a way that does not give a supplier an unfair advantage or distort competition. Fairness and transparency is vital to the success of PME and to reduce the risk of challenge from any supplier.
- 1.4 As each Emergency Response Vehicle is bespoke to each Contracting Authority, the Contracting Authority is **strongly encouraged** to carry out PME by contacting all Suppliers awarded under the framework lot for the proposed vehicle. In particular, we suggest the following should be included in PME:
 - Communicate your plans, i.e. the date (or estimated date) you plan to publish the further competition. There have been circumstances in the previous framework where no suppliers have bid because numerous other further competitions have also been published at the same time. Communicating early with suppliers ensures they have capacity to respond or provides an opportunity to move the dates for further competitions if the feedback from suppliers suggests they may not respond.
 - Discuss openly and transparently the outcomes needed and/or possible solutions to assist development of your final specification
 - Ask any questions to ensure that your requirements are achievable, which may include sharing your draft Statement of Requirements
 - Ask for feedback on your draft Statement of Requirements
- 1.5 If a Contracting Authority plans to conduct PME with additional Suppliers outside of Framework Suppliers on the selected lot, the Contracting Authority must follow [PME Guidance](#).

Section Two – Why engage with the market?

2.1 Effective PME can provide the following benefits:

- allows you to gather information on how the market is structured and how it operates
- allows the market to better understand your business and your needs
- allows you to openly and transparently discuss the outcomes needed and/or possible solutions and get feedback on your requirements - this can inform the development of your final specification
- allows you to test the feasibility of your needs against what is available in the market, i.e. whether or not a new approach is necessary
- opens discussions about developing or refining solutions that will meet your needs
- allows suppliers time to plan and prepare to respond to a tender opportunity, and be ready to meet your demands
- provides an opportunity for suppliers to partner with others to provide better solutions
- allows you to discuss how your requirements may be presented so as to make them more attractive to the market
- allows you to identify any potential barriers that can be removed or reduced to encourage Small and Medium Sized Enterprises (SMEs) to bid
- stimulates competition and innovation in the design and delivery of the solution
- informs you of any risks and issues
- expands understanding of market capacity, competitiveness, capability and trends to help you plan the optimal approach-to-market strategy i.e. you become a more intelligent customer
- gain information to design an appropriate, effective and proportionate procurement process and whether stages such as negotiation, dialogue or testing/demonstrations should be built into the procurement
- increase your trust and credibility with suppliers and become a customer of choice.

Section Three – What are the consequences/risk of poor preliminary market engagement?

3.1 Consequences or risks of poor PME:

- Unfairly advantaging one or more supplier(s)
- Distorting competition
- Exclusion of a supplier or suppliers from bidding if they have gained information which gives them an unfair advantage or distorts competition, which cannot be openly shared with the market
- Heightening the potential for challenge to the procurement process if performed incorrectly, which could result in significant legal costs and reputational damage for the Service, delay the procurement, and/or the contract being set aside as null and void
- Locking in a particular solution too early / becoming tunnel visioned
- Failing to protect a supplier's intellectual property rights or commercially sensitive information
- Engaging in a way that disadvantages/advantages a group of suppliers e.g. SME's
- Shaping your specification or requirement in favour of a particular supplier or solution
- Performing PME poorly, creating an atmosphere of mistrust and disengaging suppliers from working with the Service
- Setting unreasonable expectations in the market
- Investigation by the Procurement Review Unit (a formal body for suppliers to lodge complaints and raise concerns about public procurement practice, particularly on transparency and fairness)

Section Four – How and when to engagement with the market?

4.1 PME is carried out prior to the commencement of a procurement process and the Contracting Authority must:

- ensure the PME is fair, open and transparent
- record discussions on all PME undertaken, including the information gained (see below section on [‘What Information Needs To Be Recorded’](#))
- take steps to ensure our integrity, for example, giving the same information to all suppliers, and
- give equal access to all suppliers and treat all suppliers the same.

4.2 PME must stop before inviting suppliers to quote/tender.

4.3 Examples that constitute preliminary market engagement include:

- Liaising with suppliers at trade shows, conferences or other events with interested suppliers
- Seeking expressions of interest
- Obtaining estimates in prices to develop budgets and business plans
- Informal discussions on future scope, technological development possibilities of goods, services and works, current supply chain issues (e.g. lead times)
- Issue a Request for Information (RFI) or Supplier Questionnaire
- Call a ‘show-and-tell’ to allow suppliers to explain or even demonstrate their proposed solutions
- Meet with industry bodies
- Meet with a group of key suppliers or a range of suppliers individually
- Using a consultant to propose and contribute to selected route to market and/or methodologies
- Provide a pre-tender briefing to suppliers who are interested in a contract opportunity

Section Five – What information needs to be recorded?

- 5.1 A PME Log should be used to record all PME activities relating to a procurement. An example PME Log is provided.
- 5.2 The PME Log shall be maintained the PME log throughout the procurement process.
- 5.3 It is important to maintain awareness of any actual, potential or perceived Conflicts of Interest that may arise during a PME process between those involved in the PME process and suppliers who you may engage with. Any Conflicts of Interest identified during PME must be recorded and Procurement made aware (if they are not leading the PME).