

Using this guide

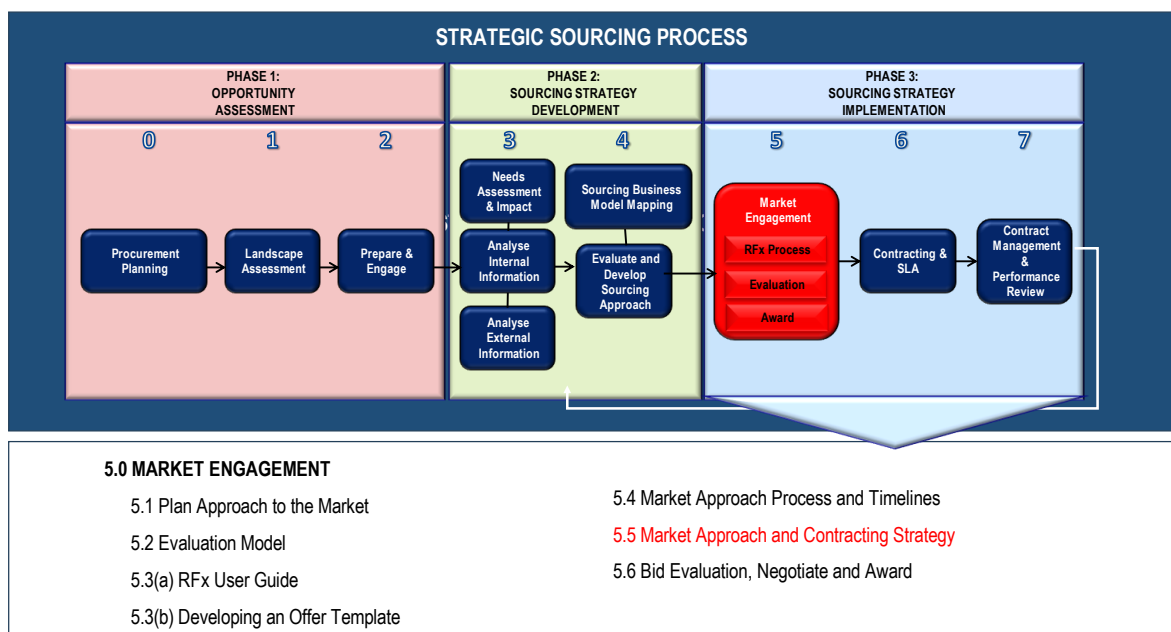
This guide accompanies the National Treasury's Strategic Procurement Framework (SPF) for Strategic Sourcing in the Public Sector. For more information, visit the

National Treasury website at <http://ocpo.treasury.gov.za/>

The SPF can be found here:

http://ocpo.treasury.gov.za/Resource_Centre/Documents/1A.%20Strategic%20Procurement%20Framework.pdf

MARKET APPROACH AND CONTRACTING STRATEGY



1.0 Introduction

- i. A good procurement system allows for the use and adoption of the most appropriate procurement method.
- ii. The following good practice guides apply to this stage of determining the market approach:
 - a. Market approach practices
 - b. Procurement methods

1.1 The objective

- i. To assist procurement practitioners with deciding the best and most appropriate procurement method for the commodity.

- ii. There is no one-size-fits-all in procurement. So deciding on the appropriate method will assist the organization to deploy the most suitable approach that will bring about value for money and deliver the procurement need.

1.2 Output

- i. Appropriate procurement method

2.0 Good practice guides

2.1 Market approach practices

- i. When approaching the market, consider the following factors:

2.1.1 Minimising the cost for suppliers in preparing a submission

- i. Preparing a submission is a cost to suppliers.
- ii. Use quotation processes wherever appropriate.
- iii. Adopt simplified processes, standard terms and conditions relevant to the market sector, early market notification and briefing sessions where appropriate.

2.1.2 Using familiar and consistent processes

- i. Familiarity with the process will encourage supplier participation in the procurement process, reduce costs for both parties and manage the risk to the organisation.
- ii. Make best use of standard bidding documents, templates, conditions for participation and contract requirements where appropriate.

2.1.3 Maximising participation from enterprises

- i. The different sizes of enterprises are an important market sector with a strong potential for job creation.
- ii. They can drive innovation and often offer leading-edge technology solutions, high levels of service and value-for-money outcomes.
- iii. Structure procurement requirements in a way that is relevant and familiar to the market sector.
 - a. Identify relevant components within larger procurement requirements to allow for separate supply opportunities.
 - b. Make the most of other government initiatives such as transversal contracts, the e-tender portal, the central supplier database, etc. to reduce the cost of preparing a submission.

- c. Investigate the supply chain arrangements operated by a principal contractor to ensure all parties have fair access to the supply chain.
- d. Involve the Department of Trade and Industry and Competition (DTIC), Department of Small Business Development (DSBD) and Department of Economic Development (DED) to identify opportunities.

2.1.4 Market research and process integrity

- i. 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.
- ii. Fully disclose market research information, and supplier briefing sessions, and define requirements in generic terms to mitigate 'insider knowledge'.

2.1.5 Eliminating bias when engaging with the market

- i. An overly complicated or costly procurement process can discourage supplier participation.
- ii. Specifying particular technical standards, specifications or conditions for participation may eliminate suppliers in the market making value-for-money outcomes less likely.
 - a. Adopt procurement requirement processes that do not create a barrier to participation for a market sector or suppliers.
 - b. Ensure that technical specifications are detailed in terms of performance and functional requirements wherever possible, rather than referring to model, trade name, patent, copyright, design, model or from a specific producer.
 - c. Use the term 'or equivalent' to enable alternative responses to a specified technical requirement.

2.1.6 Supplier questions

- i. Always provide prompt responses to questions from suppliers.
- ii. Where the answer provides more information than is published in the RFx, and the information is material and of value to other suppliers, this should be made available to all suppliers so that no supplier gains an unfair advantage.

- iii. Usually the information is made available by publishing supplementary information relating to a listed tender on open tender platforms such as the e-Tender portal, Government Tender Bulletin or the media in which the original invitation was published.

2.1.7 Adopting an approach that encourages innovative responses

- i. Encouraging innovation from the market can generate cost savings, result in the transfer of intellectual property and facilitate better response to the needs of the end-users of the procuring institution.
 - a. Build on the consideration and appetite for innovation embedded in the culture of the procuring institution.
 - b. Initiate early market engagement and early supplier engagement to provide the market with time to understand the organisation's needs better and to formulate an innovative response.
 - c. Innovation should be considered fairly and transparently.

2.1.8 Adopting the Appropriate Sourcing Business Model

- i. The use of the appropriate sourcing business model involves the ability to drive supplier innovation.
- ii. There are three categories of sourcing business models:
 - d. Transactional-based business approach does not incentivise the supplier to be innovative.
 - e. Outcome-based business approach is based on long-term relationships and if designed properly, can foster a culture of innovation from the supplier, based on trust and long-term relationships.
 - f. Investment-based business approach is based on a long-term relationship with shared benefits and risks. As a result, the suppliers are most likely to introduce and apply innovative ways of meeting the project objectives to the benefit of both the supplier and the procuring institution.

2.1.9 Requiring compliance with international and local accreditation standards where applicable

- i. Accreditation standards detail the performance standards to be performed or delivered by parties in particular market sectors.

- ii. Having accreditation gives a buyer a degree of assurance that the supplier can provide a level or range of services of relevance to the procurement activity.
- iii. Where relevant to the procurement activity, inform the market that suppliers will need to comply with the appropriate accreditation standards to participate in the procurement process.

2.1.10 Market notification

- i. The process for notifying the market about supply opportunities needs to balance the nature of the procurement requirement and the relevant market sector dynamics with the costs and benefits to buyers and suppliers.
- ii. A limited invitation to supply involves a direct approach to the market. Such an approach should not be used to avoid competition.
- iii. Market notification is relevant where:
 - a. The procurement requirement can only be provided by an extremely limited field of suppliers;
 - b. The procurement requirement is related to accessing specific intellectual property, specific technical requirements or maintaining a common operating platform;
 - c. There is an opportunity to build on market-based solutions and to develop strategic partnership arrangements; and
 - d. There is a requirement to address security requirements and protect patents, copyrights, propriety information or intellectual property.
- iv. 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.

2.1.10.1 Considerations

- i. Consider a multi-stage bidding process that involves pre-qualification requirements with which suppliers must comply as a minimum. For example, from mandatory, functionality and price evaluations.
- ii. Obtain sufficient bid documents to assess the degree to which the engagement can satisfy a value-for-money outcome.

- iii. Ensure the number of bid submissions reflects the relevant market sector's ability to supply.
- iv. Obtain sufficient participation to establish a competitive environment and to compare bid documents.
- v. Adopt a strategic negotiation framework to drive innovation and value-for-money outcomes.

2.1.11 Invitation to supply information

- i. Documents (including specifications, conditions for participation etc.) should be scaled to reflect the complexity of the procurement requirement and market factors.
- ii. Core requirements for any market approach should address the following:
 - a. Scope and quantity of goods and services required, including outputs required for services, or the functional and performance requirements for goods;
 - b. Conditions for participation: ensuring that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement;
 - c. Information and documents to be submitted by suppliers;
 - d. Criteria for evaluating responses and the evaluation process;
 - e. The importance given to different criteria (if relevant);
 - f. Delivery/submission/lodging instructions;
 - g. Project contact person and governance/management arrangement;
 - h. Detail preferred levels of liability, indemnity and ownership of intellectual property;
 - i. Tender briefing opportunities;
 - j. Contract type to be used;
 - k. Encouraging innovative solutions that contribute to the procuring institution's ability to carry out its business in a more cost-effective manner;
 - l. Reporting on generic requirements or against KPIs, environmental factors, etc.; and
 - m. Supply chain relationships (if relevant).

2.1.12 Informing suppliers during the process

- i. A procurement activity with a long period for assessment or with a high degree of complexity, should (where relevant) inform suppliers of:
 - a. The processes for managing clarification of issues and conduct of negotiations;
 - b. The estimated period for conducting certain process stages, i.e. shortlisting, project briefing, process conclusion;
 - c. How the outcome of the process will be communicated; and
 - d. The outcome of the selection process.

2.1.13 Managing change to published process

- i. Changing market approach documentation (e.g. specifications, scope of requirements, conditions for participation or management arrangements, etc.) needs to be considered carefully, as conditions for a process contract may have been established.
 - a. The original intent/desired outcome of the procurement should remain the same.
 - b. Inform all parties invited or registered to participate in the changes.
 - c. Provide all parties with the same information.
 - d. Give sufficient time to respond to changes.
 - e. Changes should not favour or disadvantage a particular party.
 - f. Maintain standards of correctness and integrity.

2.1.14 Management of submissions received

- i. Your institution must:
 - a. Provide a secure, physical submission facility and/or the facility to receive electronic submissions;
 - b. Allocate responsibility for managing either system to a business unit in the institution;
 - c. Implement a process to inform suppliers of successfully receiving their submission:
 - i. Through the public tender opening process;
 - ii. Immediately in the case of an electronic system; or

- iii. Within five working days of submission close in the case of a physical receipt facility;
- d. Apply procedures for late submissions.
- e. Late submissions are not acceptable.
- f. Have procedures in place for opening and closing of tender boxes, public opening of tender documents, the recording of received tenders in a tender register/log, and checking that each tender offer meets the process requirements (e.g. several copies, two envelopes, etc.), and storing of tenders in a secure environment until evaluation starts.

2.2 Procurement methods

- i. A good procurement system allows for the use and adoption of the most appropriate procurement method.
- ii. The procurement methods provide the institution with an opportunity to assess the most appropriate method that provides the best fit for the institution as indicated in the following table.
- iii. The different procurement methods allow for a differentiated approach to the procurement of goods and services.
- iv. Table 1 indicates various procurement methods.
- v. The procurement method should also be in line with section 217 of the Constitution, the institution's procurement strategy and policy.
- vi. The procurement methods can be applied or used in different procurement processes.
- vii. The sourcing business models can also be applied across the various procurement methods (refer to stage 4.1 sourcing business model mapping).
- viii. The choice of procurement method depends on:
 - a. The nature of the goods, services or works to be procured;
 - b. The value of the procurement;
 - c. The approved spend threshold.
 - d. Transparency of procedures proposed.

Method	Description	When to use the Method
Open tendering	<ul style="list-style-type: none"> Allows any bidder to submit their bids without prior selection. Normally advertised via the open platform such as e-tender portal, institutional website, newspapers, or any public media platform Any bidder who meets the tender criteria is evaluated. 	<ul style="list-style-type: none"> It can be used for large projects that require significant investment. Where there is a high number of capable suppliers.
Request for Proposals (RFP)	<ul style="list-style-type: none"> A solicitation document that is used as a tool to gather specific information leading to firm proposals and how the suppliers will meet the buyer's requirements. The sourcing strategy might describe at a high level what you are going to do but does not have sufficient information. Caution must be exercised though to remain ethical standards. An RFP invites a supplier to bid for business, seeks a solution to a problem, conveys key business requirements and is focused on the supplier's experience, qualifications, and proposals. 	<ul style="list-style-type: none"> It is meant to open up competition and encourage a variety of alternative proposals that might be considered by the project's planners. Can be used as a mechanism to solicit ideas and forms of expertise, hence the suppliers are better placed for that.
Multi-stage tendering	<ul style="list-style-type: none"> The first stage may include Expression of Interest (EOI) Those suppliers who respond and meet the minimum technical criteria, qualify for the price evaluation. Uses a two-envelope system. One envelope deals with the technical aspects and the other deals with the financial proposal. 	<ul style="list-style-type: none"> The EOIs can be useful when you need to find a supplier quickly or when seeking to determine the most suitable supplier based on technical ability. The EOI can also be helpful when looking for a supplier who is a specialist in a particular area.
Request for quotations (RFQ)	<ul style="list-style-type: none"> A solicitation document which is used as a tool to ask for specific commercial or pricing proposals. Such information is gathered on pricing and availability for specific goods or services, with clear specifications identified and tends to be highly competitive. 	<ul style="list-style-type: none"> The National Treasury from time to time issues instructions on the spending threshold which determine when to use the RFQ.

	<ul style="list-style-type: none"> • Informed by a pre-determining spending threshold. • The procuring institution may also set up a quotation committee to deal with the RFQ processes. 	
Selective/closed tendering	<ul style="list-style-type: none"> • Only the suppliers invited to submit the bids would be considered. • Already proven their capability and have an excellent verifiable track record • Suitable for specialist or complex contracts 	<ul style="list-style-type: none"> • This method is only restricted to the suppliers that have been pre-approved.
Single sourcing	<ul style="list-style-type: none"> • A deliberate strategy to only source the goods or services from one supplier despite having many suppliers capable of supplying the same. • This method must be applied with caution. • A cost-benefit analysis must be conducted to justify the decision. 	<ul style="list-style-type: none"> • Appropriate where the Most Economically Advantageous Tender (MEAT) requirements can be justified and realized by the procuring institution.
Sole/direct sourcing	<ul style="list-style-type: none"> • Sole sourcing happens when there is only one supplier available for the required product or service that the procuring institution needs. • Caution must be exercised when justifying the sole sourcing, normally an extensive supply market analysis must have been conducted. • A cost-benefit analysis must be conducted to justify the decision. 	<ul style="list-style-type: none"> • Normally applicable where the original contract was with the Original Equipment Manufacturer (OEM), and the subsequent orders are in line with the supplier conditions such as the warranty and guarantee. • The installed infrastructure is linked to the existing supplier, switching or changeover costs are prohibitive.
Competitive dialogue	<ul style="list-style-type: none"> • Is a procurement method that allows the procuring institution to have a dialogue with suppliers to help them better understand the specific requirements of a contract. • The dialogue helps the supplier offer a solution that is tailor-made to the business requirement. 	<ul style="list-style-type: none"> • The competitive dialogue is normally applicable where innovation is critical.

Piggybacking	<ul style="list-style-type: none"> It is defined as “the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. 	<ul style="list-style-type: none"> A government institution or an organ of state participates in a tender process initiated by another state institution
Buying from one organ of the state	<ul style="list-style-type: none"> There are instances where one organ of state procures goods or services from another organ of state. Although this makes sense to do, care must be exercised to ensure the competitiveness of the process. 	<ul style="list-style-type: none"> Such services could be of a specialised nature. Further, such procurement could be based on a strategic nature.
Framework agreements (Framework contracts)	<ul style="list-style-type: none"> Normally, a framework agreement is not a contract. It is not binding to the procuring institution. An agreement is established with one or more suppliers to provide goods or services over a period, often at pre-agreed prices and terms. Most appropriate in education, training and development programmes which may require contracts in line with the qualification programme. This method is mostly used for emergencies in infrastructures, i.e. a water pipeline breaks or a hospital needs urgent blood reserves. The Procuring Institution does not necessarily intend to immediately or ever enter into a contract, rather, the intention is merely to establish the best source of a future supply, based upon firm prices and predetermined conditions over a specified validity period. 	<ul style="list-style-type: none"> The framework agreement can be used where continuity of supply with minimal disruptions to service delivery is critical. Mostly useful where turnaround time is paramount and consistency in quality is critical. Works well where the procuring institution often has instances of emergency procurement and deviations.
Framework agreement (call-off)	<ul style="list-style-type: none"> A call-off is a contract that exists within a framework agreement Mini-competition can be applied but only limited to the suppliers within the framework agreement. 	<ul style="list-style-type: none"> This can be used where urgent response is required such as water pipe bursts.

	<ul style="list-style-type: none"> • The mini-competition may be limited only to price as the other contractual terms are already agreed on in the framework agreement. • A call-off is an extension of the framework agreement. 	
Framework agreements (Panels)	<ul style="list-style-type: none"> • In a panel arrangement, is another type of framework agreement. • The suppliers have been appointed to supply goods or services for a set period (has a start and end date) under agreed terms and conditions, including agreed pricing. • The supplier is also subject to rotation during the validity period of the panel. • Ensure supplier performance management is in line with the service level agreement. 	<ul style="list-style-type: none"> • Most effective when dealing with commodities that require a quick turnaround period, for example, pipe bursts or emergency and life-threatening situations.
Framework agreements (Transversal contracts)	<ul style="list-style-type: none"> • The transversal contracts are also another type of framework agreement. • Cost benefits come from leveraging the government's buying power and using the savings achieved for other important programmes. • As well as giving more control over supply and demand, administrative efficiencies lead to indirect cost savings. • As an example this approach is a strategy to source goods and services that are common across government. • These include travel and accommodation, mobile communication and subscription services, banking services and motor vehicles. 	<ul style="list-style-type: none"> • This applies particularly where economies of scale are possible through aggregating volumes or quantities from all participating government institutions.
Electronic reverse auctions	<ul style="list-style-type: none"> • Electronic reverse auctions involve a single buyer wanting to buy goods or services from many suppliers. • The procuring institution indicates its requirements, and suppliers progressively bid downwards for the right to supply. • Normally, the lowest bidder wins the right to supply the goods and services. 	<ul style="list-style-type: none"> • Mostly used for low-value purchases where suppliers are asked to submit a price quote for a specific product or service. • The electronic reverse auctions enhance and improve efficiencies and effectiveness and they

	<ul style="list-style-type: none"> Suppliers will still need to meet all organisational requirements to be onboarded. 	are most appropriate for routine commodities.
Procurement auctions	<ul style="list-style-type: none"> A procurement auction is a process for approaching a competitive market to buy goods or services. The Preferential Procurement Regulations, 2022 (sect. 7.1) refer to income-generating contracts and such contracts must produce revenue for the state and include but are not limited to, leasing and disposal of assets and concession contracts.¹ 	<ul style="list-style-type: none"> Where an organ of the state wants to generate revenue in line with the PPR (2022), Sect. 7.1
Competitive Negotiation	<ul style="list-style-type: none"> This method is used, generally in cases of urgency, for example, a public wall collapsed and a road needs to be cleared. Negotiations must be conducted with a sufficient number of (usually known) contractors. The more urgent the matter the more justified the organ of state will be to negotiate with only a few possible contractors. Negotiations take place with a supplier to agree on terms and conditions for the supply of goods and services. After conducting an extensive supply market analysis and determined that it would be time-consuming and fruitless to use competitive tendering because there will only be one or two suppliers to meet the criteria. 	<ul style="list-style-type: none"> Mostly useful where there is a limited number of suppliers of critical commodities. Also used in cases where only a small number or insufficient number is tendered. The organ of the state then conducts negotiations with those tenderers and asks them to submit "best and final" offers by a specified date.
Public-Private-Partnerships (example of a PPP is a Build, Own, Operate	<ul style="list-style-type: none"> The supplier is responsible for both the design and the construction of a project, often resulting in a faster and more cost-effective process. 	<ul style="list-style-type: none"> The Public-Private Partnership (PPP) is normally applicable to projects that require high investment where the

¹ PREFERENTIAL PROCUREMENT REGULATIONS, 2022

<p>and Transfer – BOOT)</p>	<ul style="list-style-type: none"> • The supplier must meet all the onboarding criteria and agree to strict service level agreements and key performance indicator reporting to ensure the project remains on track. • A commercial transaction between an institution and a private party in terms of which the private party – <ul style="list-style-type: none"> ◦ performs an institutional function on behalf of the institution; and/or ◦ acquires the use of state property for its commercial purposes; and ◦ assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property; and ◦ receives a benefit for performing the institutional function or from utilising the state property, either by way of: <ul style="list-style-type: none"> ◦ consideration to be paid by the institution which derives from a revenue fund or, where the institution is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or ◦ charges or fees to be collected by the private party from users or customers of a service provided to them; or ◦ a combination of such consideration and such charges or fees² 	<p>government wants to meet the service delivery objectives but has funding limitations.</p>
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Table 1. Various Procurement Methods

² National Treasury, 2005, Treasury Regulations, for departments, trading entities, constitutional institutions and public entities Issued in terms of the Public Finance Management Act, 1999. Treasury Regulation 16

3.0 Templates

Not applicable