# **Market approach – Goods and services procurement guide**

## What is market approach?

Market approach is how you choose to interact with the market. It can involve extensive consultation and sharing of information. It requires a structured approach that satisfies probity and fairness standards.

How you approach the market is primarily based on the assessment of complexity and the market analysis and review stage of the procurement process. the following table describes the stages of sourcing affected by market approach.

|  |  |  |
| --- | --- | --- |
| Phase in procurement process | Stage in procurement process | Market approach activity |
| Sourcing phase | Review procurement requirement | Specification and market analysis |
| Sourcing phase | Conduct market analysis | Specification and market analysis |
| Sourcing phase | Develop plan for market approach | Market approach |
| Sourcing phase | Evaluate negotiate and select supplier | Evaluation negotiation and selection |
| Contract management phase | Create a contract | Contract management |
| Contract management phase | Commit to a contract | Contract management |
| Contract management phase | Manage contract | Contract management |
| Contract management phase | Contract review or closure | Contract management |

Note: There are a range of market approaches e.g. quotation, tender, registers, expression of interest, etc. An invitation to supply falls into two broad areas:

* Open – Invitation to all potential parties
* Limited – Invitation to nominated/ selected parties.

## [Procurement Activity Plan](https://buyingfor.vic.gov.au/future-procurement-opportunities)

All organisations are required to publish a procurement activity plan. A procurement activity plan outlines an organisation’s anticipated procurement activity, over 12 to 24 months. This is a core component of an organisation’s procurement strategy. Refer to the VGPB’s [Governance policy](https://buyingfor.vic.gov.au/goods-services-supply-policies#governance-policy) for more information.

## Market approach protocols

When approaching the market, consider the following factors:

### Minimising the cost for suppliers in preparing a submission

Preparing a submission is a cost to suppliers.

Considerations

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

### Using familiar and consistent processes

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

Considerations

* Maximising use of standard forms, templates, conditions for participation and contract requirements where appropriate.

### Local Jobs First Policy (LJF) – Under the Local Jobs First Act 2003

[Local Jobs First](https://localjobsfirst.vic.gov.au) comprises the Victorian Industry Participation Policy (VIPP) and the Major Projects Skills Guarantee (MPSG). (LJF - MPSG is applicable to construction procurement projects therefore is not included in this guide). LJF ensures that Australia and New Zealand small to medium size enterprises (SMEs) are given a full and fair opportunity to compete for both large and small government contracts, helping to create job opportunities, including apprentices, trainees and cadets, while still achieving value for money.

LJF requires all government departments and agencies to consider competitive SMEs, when awarding contracts valued at:

* $1 million or more in regional Victoria, or
* $3 million or more in metropolitan Melbourne or for state-wide activities

Projects that meet the above thresholds are classified as standard projects. In addition, LJF gives particular attention to Strategic Projects, which are government procurements valued at $50 million or more, or as otherwise agreed as strategic by government.

### Maximising participation from small to medium enterprises

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

Considerations

* Structure procurement requirements in a way that is relevant and familiar to the SME market sector, and where appropriate, not‑for‑profit (NFP) businesses.
* Identify SME relevant components within larger procurement requirements to allow for discrete supply opportunities.
* Make the most of other government initiatives such as State purchase contracts, eTender box, etc. to reduce the cost of preparing a submission.
* Investigate the supply chain arrangements operated by a principal contractor.
* Access the services of the Industry Capability Network (ICN), Business Victoria (BV) and industry associations to identify potential Australia and New Zealand SMEs.
* Applying Local Jobs First where relevant.
* Assess social procurement objectives.

### Market research and process integrity

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

Considerations

* Fully disclose market research information, supplier briefing sessions and define requirements in generic terms to mitigate ‘insider knowledge’.

### Eliminating bias when engaging with the market

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

Considerations

* + Adopt processes that do not create unnecessary barriers to participation for a market sector or suppliers relevant to the procurement requirement.
  + Ensure that technical specifications are detailed in terms of performance and functional requirements wherever possible rather than referring to model, trade name, patent, copyright, design, model or from a specific producer.
  + Use the term ‘or equivalent’ to enable alternative responses to a specified technical requirement.

Procurement is also governed by Victoria’s commitment to comply with various Free Trade Agreements, including a Government Procurement Chapter whereby: A procuring entity may not seek, take account of, impose, or enforce offsets in the qualification and selection of suppliers, goods or services, in the evaluation of tenders or in the award of contracts before or in the course of a covered procurement.

### Adopting an approach that encourages innovative responses

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

Considerations

* + Build on the consideration for innovation embedded in the culture of the organisation.
  + Initiate early market engagement and early supplier engagement strategies to provide the market with time to better understand the organisation’s needs and formulate an innovative response.

### The Supplier Code of Conduct

The Victorian Government (the State) is committed to ethical, sustainable and socially responsible procurement. The State views its suppliers as partners and cares about the way they do business. The [Supplier Code of Conduct](https://buyingfor.vic.gov.au/supplier-code-conduct) is applicable to all suppliers, contracts, agreements and purchase orders, for the supply of goods and services, from 1 July 2017, and describes the minimum standards in ethical behaviour that suppliers must aspire to meet when conducting business with or on behalf of the State.

Considerations

* + All suppliers who provide goods and services to the State, must acknowledge the Code by signing and returning a commitment letter, issued as part of the invitation to supply documentation. Failure to submit a commitment letter will disqualify the offer from evaluation.
  + Suppliers should be encouraged to raise concerns or seek clarification on any elements of the Code during the market approach process.

### The Victorian Government Call Centre Code

The [Call Centre Code](https://www.vic.gov.au/victorian-government-call-centre-code) has been developed to assist people to understand the Victoria Government’s requirements and expectations in relation to the Victorian call centre industry. It aims to ensure that work is carried out lawfully, fairly, efficiently and safely for the benefits of all people within the call centre industry.

Considerations

* The Call Centre Code is a Victorian Government policy that applies to both government operated call centres and private sector organisations contracted to the Victorian Government to provide call centre services.
* Compliance with the Call Centre Code is a condition of any contract in which a private sector organisation provides call centre services to the Victorian Government. To ensure businesses supplying call centre services to the Victorian Government are complying with the Code, invitees are required to lodge a completed Checklist for Compliance with the Call Centre Code and a signed Declaration of Compliance with their offer. Failure to submit a completed Checklist for Compliance with the Call Centre Code and a signed Declaration of Compliance will disqualify the offer from evaluation.
* Government buyers must include the model contract clause in procurement contracts with suppliers providing call centre services to this will create a binding contractual obligation on the supplier to comply with the Call Centre Code.

### Requiring compliance with International and Australian Accreditation Standards where applicable

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

Considerations

* + Where relevant to the procurement activity, inform the market that suppliers will need to comply with the appropriate accreditation standards in order to participate in the procurement process.

Note: an offer to supply potentially establishes a legal relationship between the Organisations and the supplier(s). This is known as a ‘process contract’.

### Market notification

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 buyer and supplier.

A limited invitation to supply involves a direct approach to the market. Such an approach should not be used:

* + to avoid competition; or
  + other than in accordance with applicable [International Agreements](https://buyingfor.vic.gov.au/guide-government-procurement-under-international-agreements)

A limited invitation to supply may be relevant where:

* + one or more of the Special Circumstances apply, as detailed in ‘Government procurement under International Agreements – procurement guide’;
  + the procurement requirement can only be provided by an extremely limited field of suppliers;
  + the procurement requirement is related to accessing specific intellectual property, specific technical requirements or maintaining a common operating platform;
  + there is an opportunity to build on market‑based solutions and to develop strategic partnership arrangements; and
  + there is a requirement to address security requirements, protect patents, copyrights, propriety information or intellectual property.

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

Considerations

* + Assess whether any International Agreements apply to the procurement and, if so, whether any special circumstances permit a limited invitation to supply under each applicable International Agreement.
  + Obtain sufficient submissions to assess the degree to which the engagement can satisfy a value‑for‑money outcome.
  + Ensure the number of submissions reflects the relevant market sector’s ability to supply.
  + Obtain sufficient participation to establish a competitive environment and to compare submissions.
  + Adopt a strategic negotiation framework to drive innovation and value‑for‑money outcomes.

### Possible considerations in selecting the optimal path to market

The following table indicates the possible paths to market based on the complexity of the procurement.

Potential path‑to‑market options for each complexity quadrants

|  |  |  |
| --- | --- | --- |
|  | Quadrant | Typical sourcing methods in suggested order of preference |
| 1 | Transactional | Quotes, open or selective invitation to supply |
| 2 | Leveraged | State purchase contracts, Sole entity purchase arrangements, panels, head agreements, early supplier engagement, open or selective invitations to supply, auctions, e‑systems, brokerage, master vendor, etc. |
| 3 | Focused | Early supplier involvement, multi‑stage invitation process, auctions, e‑systems, direct negotiation, inter government delivery arrangements |
| 4 | Strategic | Alliance arrangement, public private partnerships, inter‑government delivery arrangements, procurement specific designed engagement, multi stage engagement etc. |

The following table indicates the different considerations when choosing the optimal path to market. Where an assessment indicates a range of market engagement options, your approach should apply the most cost‑effective option for buyer and supplier with a focus on encouraging participation by Australia and New Zealand SMEs.

Possible considerations in selecting the optimal path to market

|  |  |
| --- | --- |
| To what extent do the following impact on selecting the optimal path to market? | Comments |
| Is complexity assessed as transactional or leveraged? |  |
| Is complexity assessed as focused or strategic? |  |
| Does the activity require a high degree of customisation? |  |
| What is the risk level associated with the activity? |  |
| Does a competitive market exist and are alternate goods and services available? |  |
| Does the market feature new players/new technologies? |  |
| Can the activity be satisfied by different solutions? |  |
| Is the activity associated with very specific non‑standard requirements? |  |
| Does the activity support a high level of innovation or non‑standard delivery arrangement? |  |
| Is the capability of the organisation assessed as being able to manage the risk level associated with the activity? |  |
| Will the materiality of activity (size, value, scope) have a significant impact on the market? |  |
| Is the cost to the department in conducting market approach a significant factor in the path to the market selection? |  |
| Is cost to suppliers a key factor in the path‑to‑market selection? |  |
| Do market dynamics, intellectual property, or special purpose vehicle delivery support a limited engagement strategy? |  |

### Market submission periods

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

Procurers should resist the temptation to minimise the time period that the Invitation to Supply is open for offers because unduly shortening this element of the schedule creates a barrier. When the submission period is too short for the nature of the procurement, suppliers may choose not to bid or may submit a non-compliant, incomplete or low quality offer. The Government may consequently miss out on competitive offers or spend considerable extra time conducting clarifications and negotiations.

**Suggested submission periods**

The following suggested periods relate to each stage of a multi‑stage market approach:

* + eight working days for low risk and transactional complexity procurement activity unless a lesser period is supported by the chief procurement officer;
  + fifteen working days for medium risk procurement activity generally of a transactional/leveraged level of complexity; and
  + twenty to twenty‑five plus (20/25+) working days for higher risk procurement activity of a focused/strategic level of complexity.

Longer periods may be required if an International Agreement applies to the procurement. See [Government procurement under International Agreements – procurement guide](https://buyingfor.vic.gov.au/guide-government-procurement-under-international-agreements) for further information regarding the application of International Agreements to government procurement.

## Invitation to supply information

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

* + name, address and contact details for the procuring prganisation, including the address where relevant documents may be obtained;
  + a description of the procurement, including the nature, scope and quantity of goods and services required including outputs required for services or the functional and performance requirements for goods;
  + the time-frame for delivery of the goods and services;
  + list conditions for participation—ensuring that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement (including mandatory requirements for compliance with applicable codes);
  + if a selective tendering approach is to be taken, the address and final date for the submission of requests for participation in the procurement;
  + if only a limited number of qualified suppliers (who have satisfied conditions of participation) are to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender;
  + information and documents to be submitted by suppliers (including in connection with the conditions of participation);
  + criteria for evaluating responses and the evaluation process;
  + the importance given to different criteria (if relevant);
  + delivery/submission/lodgement instructions (including the date, time and place for any public opening of tenders (if applicable) and time-limits for submission of tenders;
  + project contact person and governance/management arrangement;
  + detailing preferred levels of liability, indemnity and ownership of intellectual property;
  + project briefing opportunities;
  + procurement method to be used (for example, open or selective tendering or electronic auction), including whether it will involve negotiation and any encryption requirements for electronic procurement methods;
  + contract type to be used;
  + encouraging innovative solutions that contribute to the organisation’s ability to carry out its business in a more cost‑effective manner;
  + reporting on generic requirements or against KPIs, environmental factors, etc; supply chain relationships (if relevant);
  + for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
  + the language or languages in which tenders or requests for participation may be submitted, if other than English;
  + a description of any options;
  + any other terms or conditions relevant to the evaluation of tenders, including the intention to negotiate; and
  + indication that the procurement is covered by any relevant International Agreement.

## Proceeding with an open invitation to supply

A thorough market analysis should inform the most suitable methodology for advertising the invitation to supply. The methodology for advertising should give consideration to its cost and the effectiveness. Methods of advertising may include posting a notification of the procurement requirements:

* + in the organisation’s Procurement Activity Plan;
  + on the [Victorian Government Tenders website](https://www.tenders.vic.gov.au/tenders/tender/search/tender-search.do?action=advanced-tender-search-open-tender);
  + a market trade‑related medium, if this will increase the potential supplier base; and
  + via other forms of media as identified through the market analysis.

## Informing suppliers during the process

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

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

* + the processes for managing clarification of issues and conduct of negotiations;
  + the estimated period for conducting certain process stages, i.e. shortlisting, project briefing, process conclusion;
  + how the outcome of the process will be communicated; and
  + outcome of the selection process.

## Managing change to published process

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

Considerations

* + The original intent/desired outcome of the procurement should remain the same.
  + Inform all parties invited or registered to participate in the changes.
  + Provide all parties with the same information.
  + Give sufficient time to respond to changes.
  + Changes should not favour or disadvantage a particular party.
  + Maintain standards of probity and integrity.

## Using this guide

This guide accompanies the [goods and services supply policies](https://buyingfor.vic.gov.au/goods-services-supply-policies). There are 5 supplies policies:

* Governance policy
* Complexity and capability assessment policy
* Market analysis and review policy
* Market approach policy
* Contract management and disclosure policy

This guide supports the [Market approach policy.](https://buyingfor.vic.gov.au/market-approach-policy)

The [Supplier Code of Conduct](https://buyingfor.vic.gov.au/supplier-code-conduct) applies to all procurement from 1 July 2017

For procurement of [Information, Communication and Technology (ICT) goods and services](https://www.vic.gov.au/modernising-governments-approach-ict).

[Local Jobs First Policy (LJF)](https://localjobsfirst.vic.gov.au) – LJF comprises the Victorian Industry Participation Policy (VIPP) and the Major Projects Skills Guarantee (MPSG) and may be applicable to your procurement.

The [Victorian Government Call Centre Code](https://www.vic.gov.au/victorian-government-call-centre-code) applies to procurement involving call centre operations.

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