

Prior market consultations

Summary

Before launching a procurement procedure, public procurers may engage with suppliers in a preliminary market consultation as part of a wider market-analysis process. Prior market consultations aim at informing the tender-preparation process by gathering information directly from suppliers. Specifically, market consultations allow public buyers to get a better sense of the market structure, the capabilities of suppliers, and price developments. Furthermore, public buyers are allowed to seek expert opinion from independent authorities and market participants, as well as informing them of upcoming procurements. According to the Procurement Directives, 'preliminary market consultations' have the twofold purpose of gathering information from market suppliers and informing economic operators of procurement plans.

Prior market consultations are particularly relevant for complex procurements that require significant preparation, such as framework agreements and the procurement of innovative solutions. In particular, the contracting authority may need to assess whether the procurement it is planning is feasible from a technical, financial and operational point of view. In terms of market structure, the consultations may assess whether there is a sufficient number of players in the market to guarantee effective competition. Based on the input gathered from the consultation, the contracting authority can develop more accurate tender specifications and is better informed of the choice of the most suitable procedure and timing for the procurement process. The contracting authority may also gauge whether the proposed contract, or a similar one, has been delivered on the market before.²

Importantly, prior market consultations must be conducted in a transparent manner and must avoid unequal treatment of economic operators, as defined in the 2014 Public Procurement Directives.³ Similarly, a call for expression of interest is also used to engage with market participants as part of the preliminary market consultation process. Alternatively, the contracting authority may decide to contact economic operators directly, but this must be handled carefully due to potential risks of unequal treatment, lack of transparency or even potential allegations of corruption.

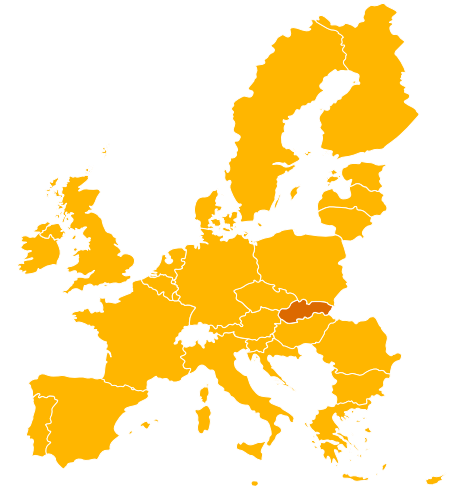
Contracting authorities can put in place several methods for prior market consultations, such as:

- Desk-based contact: usually in the form of a questionnaire for economic operators;
- Telephone contact: telephone interviews based on standard questions, possibly conducted by a third party to ensure equal treatment;
- Web-based contact: online platform for consulting with economic operators; and
- Open days: live events at which economic operators are invited to participate.

When used appropriately, prior market consultations are an important tool for designing complex procurements that need input and exchange with suppliers, enabling contracting authorities to have effective communication channels with economic operators and to achieve best value for money in their procurement.

Good Practice Examples

✓ Slovakia



Impact

Enhance value for money



To design the best procurement procedures and thus achieve better procurement results, public buyers need in-depth knowledge of the market structure, its players and the technical and feasibility aspects of the procurement at hand. For complex cases, this information is best gathered through direct contact with suppliers by way of a preliminary market consultation.

Promote professionalisation



Public buyers capable of running prior market consultations are highly skilled professionals who are knowledgeable about the procedural aspects of procurement as well as of technical and market-related aspects.

Incorporate strategic procurement



Prior market consultation can aim specifically at gathering information from suppliers on incorporating secondary procurement goals (e.g. environment, social or innovative). In particular, in the case of innovation procurement, maintaining contact with economic operators is key to determining the technical feasibility of innovative solutions.

Increase competition



If run in a transparent and open manner, prior market consultations provide an incentive for suppliers to participate in the procurement process, as they are informed about the upcoming procurement and the expectations of the contracting authority.

Input

Cost – €€€

- Medium set-up cost
- High operation cost: complex and resource-intensive process requiring specialist skills



Time – Over 12 months

- Over 12 months to develop electronic support platform
- Between 3 and 6 months for the consultation process



Complexity – High

- Need for internal team and external support to set up the procedures and tools for consultations (e.g. creating IT support tools, such as an online platform for consultation)
- Administrative requirements to ensure transparency and equal treatment
- Involvement of suppliers and/or other market players
- Increased risks of legal challenges



Impact

Advance modernisation and digitisation



Prior market consultations are often supported through a digital platform, which ensures transparency and contributes to the overall modernisation and digitisation of the procurement process.

Strengthen anti-corruption efforts



The contracting authority has a considerable amount of discretion when setting up prior market consultations, which enhances the risks of providing an unfair advantage to an economic operator or even outright corruption.

Key success factors and potential pitfalls

Justify the decision to engage with economic operators

Prior market consultation is a complex undertaking that is appropriate only in certain cases, i.e. when the procurement is highly complex and requires first-hand information from market participants. To avoid the risk of treating economic operators unfairly or lacking transparency, this decision must be justified and documented.

Mind the legal business: transparency, equal treatment and prior involvement

The contracting authority must ensure that it is compliant with principles related to transparency, equal treatment and prior involvement of economic operators. This entails making sure that the consultation does not distort competition, is accessible to economic operators and its outcomes are disseminated.

Develop appropriate communication tools

Prior market consultations rely on effective communication between contracting authorities and suppliers, which guarantees a constructive exchange but is also widely accessible and transparent. Specific tools, such as an online consultation platform, can be helpful to support the consultation process.

Conduct a pilot

The introduction of new processes and tools always requires a degree of change management and testing for successful implementation. Therefore, it is best to introduce gradual steps and pilot the approach by setting step-by-step objectives and measuring performance before fully rolling out a prior market consultation tool.

Set up a standardised methodology for the consultation process

To conduct an online consultation, there are a number of procedures that must be followed, which can be compiled into a general methodology for wider use. This enables quick learning for staff who may not be acquainted with the procedures.

Related Good Practices

Make better use of framework agreements

Case Study

Slovakia – Web-based prior market consultations for medical equipment*

In 2015, the Eastern Institute of Cardiovascular Disease (VUSCH) in Slovakia developed its own website to conduct prior market consultations with suppliers of medical equipment. The key objective was to streamline the preparatory phase of procurement and strengthen its effectiveness. In addition, web-based market consultation serves as a tool for increasing transparency with economic operators and gathering greater interest for participating in the tender.

As a specialist medical centre, VUSCH needed a way to communicate with suppliers about its special needs and supplies in medical equipment. The online market consultation gives VUSCH an effective channel for conducting this communication in a way that is transparent and non-discriminatory, ultimately allowing the medical centre to ensure high participation in its tenders and best value for money in its procurements. The exchange through the consultation process gives VUSCH the opportunity to discuss its demands, while receiving feedback from suppliers on the current market offer. Market consultations are also useful for determining appropriate parameters and avoiding setting discriminatory criteria.

This fully electronic tool grants the general public access to the entire consultation process, thus ensuring transparency and participation. Interested participants can easily ask questions or submit electronic comments to ongoing consultations. Importantly, the online tool significantly reduces the duration of prior market consultations from 180 days to approximately 90 days.

Additionally, the web-based tool enables significant price reductions in the procurement of medical equipment. Lastly, the use of the online tool has been expanded from the procurement of medical supplies to all other contracts for goods, services and works, where it provides added value.

***Feasibility study on implementing prior market consultations based on the Slovakian case study - available on the [e-library of public procurement good practices](#).**



Contact

East Institute of Cardiovascular Disease, **Slovakia**

<http://www.vusch.sk/>

+421 55 789 1011

¹ Article 40 "Preliminary market consultations", Directive 2014/24/EU

² OECD-SIGMA, "Public Procurement Brief, Market Analysis, Preliminary Market Consultations, and Prior Involvement of Candidates/Tenderers" (2016)

³ *Ibid*