

**NEW ZEALAND
INFRASTRUCTURE
COMMISSION**

T E W A I H A N G A

Market Engagement Guidance

October 2019

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<https://infracom.govt.nz/commercial/sector-guidance>

Contents

1	About this guidance	1
1.1	The Infrastructure Transactions Unit.....	1
1.2	Government Procurement Rules	1
1.3	Purpose	1
1.4	Structure	2
1.5	Questions and further information.....	2
2	What is market engagement?	3
2.1	Purpose of market engagement.....	3
2.2	Importance to procuring entities.....	3
2.3	Getting started	3
2.5	What a market engagement process looks like	3
3	Market engagement strategy	4
3.1	Defining objectives.....	4
3.2	When to develop a market engagement strategy	5
3.4	Who to involve in developing the strategy.....	6
3.5	Scaling the process	6
3.6	Continuous improvement.....	7
3.7	Probity and confidentiality.....	7
3.8	Documenting the strategy	8
4	Informal market engagement	9
5	Prior to structured market engagement	11
5.1	Identify potential suppliers	11
5.1.1	Open invitation.....	11
5.1.2	Direct approach	11
5.2	Engagement materials	11
5.2.1	Process summary.....	12
5.2.2	Presentation	12
5.2.3	Project information memorandum.....	12
5.2.4	Questionnaire	13
6	Forms of structured market engagement	14
6.1	One-to-many.....	14
6.1.1	Purpose	14
6.1.2	Inviting participants.....	14
6.1.3	Procuring entity attendees	14
6.1.4	Hosting the session	15
6.1.5	Follow up comments.....	15

6.2	Written	15
6.2.1	Purpose	15
6.2.2	Inviting participants	15
6.2.3	Running the process	15
6.3	One-to-one	16
6.3.1	Purpose	16
6.3.2	Inviting participants	16
6.3.3	Procuring entity attendees	16
6.3.4	Hosting the meeting	16
6.3.5	Follow up comments	17
7	Market engagement outcomes	18
7.1	Interpretation	18
7.2	Reporting outcomes internally	18
7.3	Feedback to market	18
7.4	Lessons learned	19

Glossary

Expressions of Interest (EOI)	The stage of the procurement process in which the procuring entity conducts an open process to short list a predetermined number of respondents to participate in the request for proposals stage.
Government Electronic Tenders Service (GETS)	The New Zealand Government Electronic Tenders Service (GETS) is a free online service designed to promote open, fair competition for New Zealand government contract opportunities. www.gets.govt.nz
Government Procurement Rules	Standards of good practice for government procurement as published by the Ministry of Business, Innovation and Employment, many of which are mandatory. These include a requirement that agencies considering the procurement of infrastructure with a (total cost of ownership over \$50 million) must consult with the Infrastructure Transactions Unit and follow relevant ITU guidance. (Rule 64). The rules apply to all contract types, including PPPs (Rule 10). https://www.procurement.govt.nz/procurement/principles-and-rules/government-procurement-rules/
Infrastructure	Fixed, long-lived structures that facilitate economic performance and wellbeing. Infrastructure includes buildings and physical networks (principally: transport, water and energy), social assets such as hospitals and digital infrastructure such as mobile and broadband infrastructure.
Market Engagement	The range of activities through which a Procuring Entity engages with suppliers before the procurement of a major infrastructure project. It is about facilitating a two-way conversation between a Procuring Entity and its Potential Suppliers for a major infrastructure project.
Market Engagement Report	A document, as described in Section 7.2 that provides a summary of the market engagement process undertaken and the outcomes.
Market Engagement Strategy	A document, as described in Section 3.7, owned by the Procuring Entity to outline the objectives and approach to undertaking a market engagement process.
Participant	A Potential Supplier that participates in a structured market engagement process through activities such as attending market engagement sessions, responding to written questionnaires or otherwise communicating with the Procuring Entity about aspects of the project.
Potential Supplier	A private sector entity that may have the capability, capacity and willingness to provide services required for a major infrastructure project.
Procuring Entity	A public sector entity responsible for the procurement of a major infrastructure project; specifically, those staff involved in the development and internal approval of the project business case and procurement process. The Procuring Entity may refer to multiple entities if the delivery of the project is a joint mandate or partnership.
Project Information Memorandum (Project IM)	A document, as described in Section 5.2.3 that describes key aspects of the project for the purposes of informing Participants in a market engagement process.

1 About this guidance

1.1 The Infrastructure Transactions Unit

On 20 February 2019, the Government announced that it would be establishing the New Zealand Infrastructure Commission – Te Waihanga. The Commission will help improve how New Zealand coordinates and plans its infrastructure, makes the most of the infrastructure it already has, and ensures that investment in infrastructure delivers what New Zealand needs.

The Infrastructure Transactions Unit (ITU) was initially established within the New Zealand Treasury in advance of the Commission to provide support to agencies and local authorities in planning and delivering major infrastructure projects with a total cost of ownership exceeding \$50 million. It now forms part of the New Zealand Infrastructure Commission – Te Waihanga.

The ITU's primary role is to support agencies and local authorities to procure and deliver major infrastructure projects; supplementing rather than replacing existing capability.

Another key function is to prepare research and best practice guidance on major infrastructure procurement and delivery, to provide guidance on specific issues, beyond the more general procurement guidance already available from other agencies.

The overarching purpose for the ITU publishing this guidance and its project support is the same: to lift the performance of New Zealand's public and private sectors in procuring and delivering major infrastructure projects.

1.2 Government Procurement Rules

Public sector staff responsible for construction procurement are required to comply with the Government Procurement Rules (the Rules) and the overarching principles that apply to all government procurement and provide the foundation of good practice for procurement planning, approaching the supplier community and contracting. These include being fair to all suppliers and getting the best deal for everyone (including the contractor).

Anyone can use the Rules to help drive good procurement practice. If a procurement is worth more

than \$100,000 (or \$9 million for new construction works) they are mandatory for:

- government departments
- New Zealand Police
- the New Zealand Defence Force, and
- most Crown entities.

All other government agencies are encouraged to follow the Rules.

The Chief Executive of the Ministry of Business Innovation and Employment (MBIE) is the Procurement Functional Leader, responsible for driving procurement performance across the State Services by helping government agencies to deliver better public value, and MBIE's New Zealand Government Procurement team supports the Chief Executive in that role.

Changes currently underway to the Cabinet Office requirements (CO (19) 6) for investment performance and asset management, as well as changes to the Government Procurement Rules that took effect on 1 October 2019, make following the ITU's guidance mandatory for government departments as well as the Police and Defence Force and most Crown entities.

1.3 Purpose

This document (the Guidance) is intended for use by public sector Procuring Entities and their advisers. It provides guidance on establishing appropriate governance arrangements for major infrastructure projects from inception to delivery and benefits realisation. Major infrastructure projects usually refers to infrastructure projects with total cost of ownership of more than \$50 million.

The Guidance forms part of a suite of guidance documents issued by the ITU relevant to the planning and delivery of major infrastructure projects in New Zealand. It should be read in conjunction with other ITU guidance and requirements of the Treasury's Investment Management and Asset Performance team (IMAP).

The Guidance is intended to complement, rather than be a substitute for, more general procurement guidance issued by MBIE as part of its role as the functional lead for government procurement.

1.4 Structure

The Guidance details the relevant considerations for a Procuring Entity in developing and executing a Market Engagement Strategy, in the following structure:

Section 2: **What is market engagement?** – summarising the purpose and importance of market engagement and providing an example of a market engagement process for a major infrastructure project

Section 3: **Market Engagement Strategy** – outlining the considerations relevant to forming the market engagement approach

Section 4: **Informal market engagement** – outlining expectations for how Procuring Entities should engage informally with the market to ensure consistent and transparent messaging about the Procuring Entity's upcoming pipeline of work

Section 5: **Prior to structured market engagement** – outlining the important actions required before engaging the market, including the identification of potential parties, preparation of engagement materials and addressing probity and confidentiality

Section 6: **Forms of structured market engagement** – outlining the key methods and best practice protocols for engaging the market, respectively considering One-to-Many, Written, and One-to-One engagement with Potential Suppliers

Section 7: **Market engagement outcomes** – detailing considerations for interpreting and using the market engagement outcomes effectively.

1.5 Questions and further information

General enquiries about the information contained in this guidance can be sent to itu@treasury.govt.nz. Other guidance documents and useful information can be found at www.infrastructure.govt.nz.

2 What is market engagement?

Market engagement refers to the range of activities through which a Procuring Entity engages with suppliers before the procurement of a major infrastructure project.

2.1 Purpose of market engagement

When done well, market engagement benefits both the Procuring Entity and Potential Suppliers. The process allows a Procuring Entity to seek feedback from the market on a proposed project, including to consider potential opportunities, risks and solutions associated with procuring and delivering the project that will ultimately lead to improved contract outcomes. Market engagement can also stimulate market interest among, and competition between, Potential Suppliers which will improve the outcomes of a subsequent competitive procurement process.

2.2 Importance to procuring entities

For large scale infrastructure projects, the benefits to the Procuring Entity of investing in appropriate and effective market engagement are likely to far outweigh the direct costs of undertaking the engagement process. Some of the main benefits can include:

- 1 Confidence that the preferred procurement approach will generate sufficient market interest to result in a successful project outcome.
- 2 Enhanced competition between bidders due to market engagement generating increased market interest and offering greater lead times for market positioning.
- 3 Development of greater value contracting arrangements which reflect the views of both the Procuring Entity and Potential Suppliers.
- 4 Tighter pricing due to Potential Suppliers being more informed of the project's scope and risk profile and hence pricing in less uncertainty.
- 5 Reduced risk of major project delays or cost increases as a result of a well-run market engagement process avoiding duplicated procurement phases, material changes to project requirements, or loss of Potential Suppliers.

Procuring Entities should be aware that market engagement, and in particular structured market engagement, requires them to commit substantial time

and resources to the process. Often, particularly for large scale projects, dedicated resources (internal and/or external) are required throughout the market engagement process to ensure it receives the focus that it deserves.

2.3 Getting started

If a Procuring Entity is making project decisions based on assumptions about market appetite or conditions, they should be engaging with the market. For many projects this occurs during the business case development phase where the assessment of procurement approaches is required. However, in some instances where optionality exists around fundamental aspects of scope (e.g. if a Procuring Entity is considering bundling transport and housing projects), or the commercial structure is relatively novel, market engagement can occur much earlier to help define the project's scope and approach.

At first, informal discussions can be the most valuable method of engaging with Potential Suppliers to test and validate a Procuring Entity's assumptions. As project clarity and delivery certainty increase, a formal Market Engagement Strategy should be developed (refer Section 3.2).

Regardless of project size, it is important to consider the implications of probity on market engagement from day one – the Procuring Entity must treat all Potential Suppliers with fairness and equality. From a practical perspective, this includes:

- maintaining a register of all conversations that a Procuring Entity has with Potential Suppliers, including details of participants and topics discussed
- giving all Potential Suppliers an equal opportunity to discuss or access information (i.e. information that is provided to one Potential Supplier should not be withheld from another).

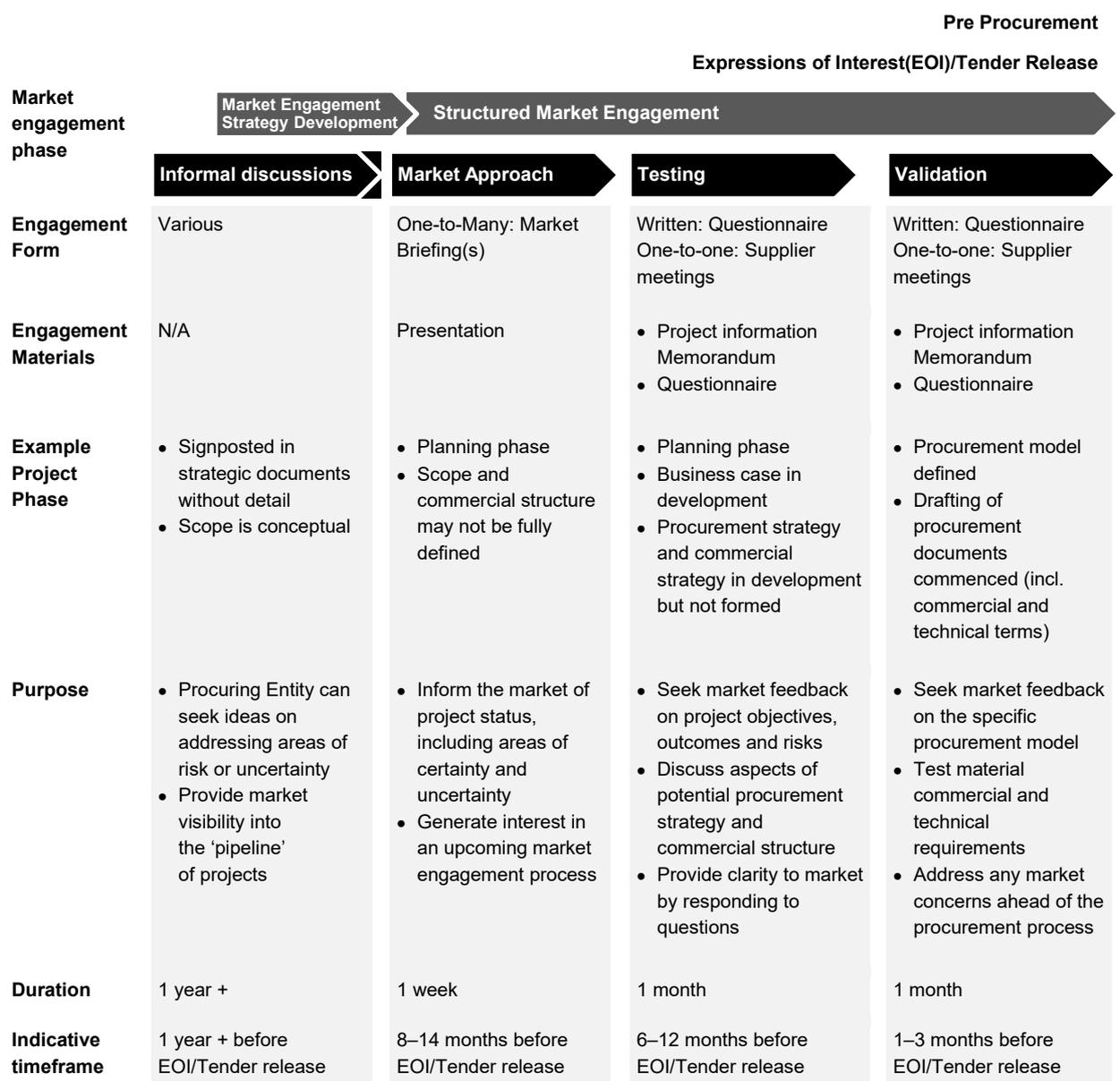
Consideration of probity continues to be important in developing a formal Market Engagement Strategy (refer to Section 3.6).

2.4 What a market engagement process looks like

Figure 1 provides an example of a market engagement process for a major infrastructure project. There are multiple phases, each designed to maximise the mutual benefits of engagement based on the status of the project.

As detailed in Section 3.5, the market engagement process should be tailored and scaled as appropriate for the project during the Market Engagement Strategy development (and regular review). For instance, a major project may require multiple One-to-One meetings during the testing phase to test more and more detailed questions as an understanding of the project matures.

Figure 1: Example of a market engagement process



3 Market engagement strategy

As no two projects are identical, there is no 'one size fits all' approach to planning and executing a market engagement process. This section sets out some of the key considerations for the Procuring Entity when developing a Market Engagement Strategy.

From day one it is important to be aware of probity – in particular the perception that certain Potential Suppliers are advantaged by an adopted Market Engagement Strategy. Decision making throughout the development and execution of the Market Engagement Strategy should be formally documented to leave a transparent record of the Procuring Entity's activity and decisions. Refer Section 3.6 for further detail.

3.1 Defining objectives

Market engagement is about facilitating a two-way conversation between a Procuring Entity and its Potential Suppliers in advance of a major infrastructure project. Ultimately, the purpose of market engagement is to improve the efficiency and quality of the project's procurement and delivery processes while maximising public value.

The objectives of market engagement for a Procuring Entity will be project specific, but may include to:

- market the project to domestic and international Potential Suppliers
- validate market interest
- support consortia formation
- test the robustness of current thinking about the project with Potential Suppliers, including aspects such as project objectives, scope, commercial structure, opportunities, risks, timeframes and/or processes (refer Section 5.2.4)
- learn more about market trends and the potential implications for the selection of the appropriate procurement approach
- gain insights into how procurement and project delivery can be structured to maximise market interest, public value and project outcomes.

The objectives of market engagement for Potential Suppliers may be to:

- understand how the project may contribute to the market pipeline, including the potential impact on market risk
- understand the project sufficiently to factor it into their business pipeline, enabling adequate lead-in time to shape their commercial proposition, resourcing, supply chain and partnering opportunities
- inform the packaging and scope of the project so as to improve delivery efficiency and encourage innovation
- understand and provide feedback on the project's risks and uncertainties and intended risk allocation
- influence the packaging and scope of the project so that their chance of being selected as the preferred supplier is improved.

Each party's specific objectives will differ according to the specific project, the phase of the project and the outcomes being sought, and these objectives should be considered as part of developing a Market Engagement Strategy.

3.2 When to develop a market engagement strategy

Ideally, a Procuring Entity will have developed some form of Market Engagement Strategy prior to commencing informal market engagement for a given project. However, it is essential that Procuring Entities have developed and formalised their Market Engagement Strategy before entering the structured market engagement phase.

Examples of project milestones that could indicate a Procuring Entity has sufficient certainty to commence a structured market engagement process include:

- public statements from senior stakeholders that confirm planning of a project is progressing (e.g. announcement by Minister or Mayor)
- approval of an early stage business case (e.g. Strategic Assessment or Programme Business Case)
- approval provided to develop a business case (e.g. Detailed Business Case)
- governance sign-off of a case for change and/or outline scope.

When is a Procuring Entity ready to start a structured market engagement process?

Informal market engagement can be a highly valuable exercise for a Procuring Entity in the early stages of a project's development. That said, it is recommended that all Procuring Entities undertake a structured market engagement process prior to commencing procurement given the greater breadth, depth and robustness of the outcomes to be delivered. Some of the instances where moving into a structured process is recommended are:

- if the Project Team is going to represent the outcomes of market engagement as a "market view" that underpins fundamental project decisions (such as in a business case)
- where there is sufficient project information and certainty that it could shape the strategic behaviour of Potential Suppliers (including the role of the project in forming a wider pipeline and influencing the decision on whether to pursue other projects)
- where there is a clear timeline for project development and a commitment from senior leadership to proceed, including reliable procurement timeframes.

While details of major infrastructure projects are subject to change as project planning progresses, this should not preclude Procuring Entities from proceeding with market engagement. Procuring Entities should make it clear to Potential Suppliers that project details are subject to change and will be shaped by the market's feedback and by ongoing planning processes. Refer to Section 4 for further detail on responding to uncertainty.

3.3 Who to involve in developing the strategy

Generally, those with the closest knowledge of a project (e.g. the Project Team) should lead the development of the Market Engagement Strategy on behalf of the Procuring Entity. They are typically best placed to identify the most relevant objectives and the salient opportunities/risks to be explored with the market.

Project Teams often include specialist advisors across a number of areas during a project's development (e.g. engineering, legal, commercial, etc.). The team of advisors present at the business case phase should be included in the development of the Market Engagement Strategy. In fact, advisors are likely to have been through similar processes before and can potentially bring capacity, market knowledge and relationships into the process to improve the quality of the outcomes delivered.

Taking a long term view with advisors

Whilst advisors can play a critical role throughout the project planning and procurement phases of major infrastructure projects, including during the market engagement process, it is important that Procuring Entities explicitly and proactively consider the incentives at play with their advisors.

Advisors in place during an early stage market engagement process that are not contractually committed to advising the Procuring Entity over the long term may subsequently be asked to advise a Potential Supplier during the procurement phase. Procuring Entities should ensure that sufficient protections are in place to ensure that any intellectual property or sensitive project information produced or accessed by advisors in the development of the project remains the property of the Procuring Entity and does not prejudice the subsequent procurement process. Protections could include, but are not limited to:

- contractual provisions to either retain advisors in subsequent phases or prevent “side switching” without mutual agreement
- requiring advisors to sign confidentiality agreements to prevent the disclosure of project information to anyone outside of the Procuring Entity and its Project Team

- proactively releasing the sensitive information in question to all participants in the procurement process, where possible, to neutralise any information advantage
- including restrictions in procurement documentation (e.g. RFTs, RFPs) on using advisors that have advised the Procuring Entity in the Market Engagement without the Procuring Entity's consent.

The ITU is available to discuss such protections and their practical application with Procuring Entities.

The Procuring Entity should engage with the ITU through the development of the Market Engagement Strategy given its experience in supporting major infrastructure projects and knowledge of the broader infrastructure market. In addition, relevant project partners should be involved, including:

- organisations working in partnership with the Procuring Entity to progress the project
- central government agencies with relevant expertise and/or functional roles (e.g. Treasury, MBIE).

It is recommended that a Procuring Entity seeks input and support from all relevant internal stakeholders when developing a Market Engagement Strategy (e.g. communications and procurement teams) and completes all appropriate internal governance and approval processes.

3.4 Scaling the process

A market engagement process should be scaled to meet the requirements of the individual project. For example, compared to the market engagement process outlined in Figure 1, a streamlined process may have only a single round of One-to-One sessions. Alternatively, an extensive process may require multiple rounds of One-to-One session in the Testing phase alone.

Key factors that should inform the scale of a market engagement process are illustrated in Figure 2.

Figure 2: Scaling the Market Engagement Strategy

Streamlined	Market Engagement Process	Extensive
Small	Scale and cost of the project	Large
Many	Existence of similar precedents in local market	Few
Low	Degree of complexity, novelty and innovation	High
High	Certainty of market interest, capacity and competitiveness	Low
Unlikely	Requirement to form partnerships/consortia	Certain

It is recommended that Procuring Entities carefully consider the factors outlined above when developing a Market Engagement Strategy, as well as consideration of current market conditions, to gain maximum value from the engagement process. Costs to participants should also be a key factor considered during development of the strategy.

3.5 Continuous improvement

It is recommended that Procuring Entities treat market engagement as an ongoing dialogue with the industry that is continuously being improved and refined on successive projects. A Market Engagement Strategy should be informed by previous experience and lessons learned from other major projects completed by both the Procuring Entity and the broader market.

Continuous improvement involves the Procuring Entity working alongside relevant parties (e.g. other Procuring Entities, the ITU, Treasury, MBIE, etc.) to understand lessons from previous projects, reviewing documentation such as Market Engagement Reports and post implementation reviews (where available), and exploring questions such as:

- What was the feedback received, formal or informal, on the effectiveness of the Procuring Entity’s previous market engagement processes (including timing and types of engagement, adherence to timeframes, quality and frequency of information provided, adequate communication of risks and uncertainties, etc.)?
- Was there feedback received from bidders (successful or unsuccessful) that highlighted potential areas for improvement in the Procuring Entity’s market engagement and procurement process? For instance, were there commercial or technical requirements resolved too late in the process and/or without appropriate market input?

- Were there aspects of project delivery that could have been improved if the market engagement was more effective? For instance, were there risks that eventuated that could have been more effectively managed through collaboration between the Procuring Entity and Potential Suppliers?

The Procuring Entity should also support continuous improvement by actively tracking and reporting lessons learned throughout and following the market engagement process (refer Section 7.4).

3.6 Probity and confidentiality

Probity should not be seen as a barrier to effectively engaging with the market and having ‘free-and-frank’ conversations with Potential Suppliers. However, it is important that Procuring Entities consider probity throughout the development and execution of a Market Engagement Strategy to ensure that:

- no Potential Supplier has, or is perceived to have, exchanged information with the Procuring Entity that offers them an unfair advantage in any subsequent procurement process
- all Potential Suppliers are treated with fairness and equality to preserve a level playing field for subsequent procurement, and
- the Project Team of the Procuring Entity, including advisors, do not have an undue influence on the outcome by having a vested interest in a particular outcome.

It is the Procuring Entity’s responsibility to ensure that all Potential Suppliers involved are treated with fairness and equality throughout the market engagement process. All processes should be formally documented, including details of the Potential Suppliers approached and the topics of discussion with Participants, to leave a transparent record of the Procuring Entity’s activity. In practice, this means any

information provided by the Procuring Entity to a Participant as part of market engagement discussions should be provided to all other Potential Suppliers prior to a formal procurement process. Probity should support the provision of equivalent information to all competing suppliers, not the withholding of information from all Potential Suppliers.

Procuring Entities must communicate to Potential Suppliers that the market engagement process is completely independent of the formal procurement process. Potential Suppliers are not required to have attended market engagement sessions in order to participate in a future procurement process. In addition, it should be made clear to Potential Suppliers that participation in the market engagement process will not benefit, constrain, or otherwise influence the evaluation of a particular response in any future procurement process.

While not a requirement for market engagement processes, it is recommended a formal probity plan is developed, particularly as the project nears the procurement phase. This may include the involvement of a probity advisor and/or probity auditor during the development and finalisation of the Market Engagement Strategy.

If Procuring Entities choose to provide information to Participants about the project that they do not wish to be made public, it is appropriate to request that Participants sign confidentiality agreements before attending market engagement sessions and/or receiving the relevant materials.

It is also possible that a Participant will wish to share commercially sensitive material with a Procuring Entity at the market engagement stage, e.g. to test whether an innovative element of their proposal is likely to be acceptable. It is important that such information is treated appropriately and kept confidential to that Participant. Particular consideration must also be given to ensure that such information does not influence the project requirements.

3.7 Documenting the strategy

Procuring Entities should document the Market Engagement Strategy, including probity considerations, as a standalone report or process memorandum. It should be reviewed and agreed by relevant internal parties, advisors, project partners and ultimately signed off by project governance.

The Market Engagement Strategy should be reviewed regularly during the market engagement process to ensure it remains fit-for-purpose. This includes reflecting on progress made in other aspects of project planning to ensure the proposed market engagement timeframes and methods remain the most appropriate given the project status.

4 Informal market engagement

Early, informal discussions with Potential Suppliers are a valuable part of market engagement. Informal engagement is an important way of enhancing the market's knowledge of New Zealand's pipeline of infrastructure projects, and can be mutually beneficial – the Procuring Entity can use market insights to shape the delivery approaches being considered for the project, while Potential Suppliers can make more informed strategic decisions on long-term resource allocation and partnering opportunities.

Two myths often deter Procuring Entities from undertaking informal market engagement:

- **Myth 1: Potential Suppliers need certainty and details about a project.** Suppliers are sophisticated organisations who will take their own view on project risks based on the information available and weigh up whether there is merit in allocating resources to the project. Provided Procuring Entities are transparent and honest about aspects of uncertainty, Potential Suppliers will derive value from engaging in conversations from the very early stages as these enable them to make more informed long term decisions.
- **Myth 2: Talking to Potential Suppliers outside formal processes will breach probity.** This should not be the case if, as indicated in Section 3.6; suppliers are treated fairly and are not given an advantage in any subsequent procurement process because of their participation in informal discussions. A Procuring Entity is free to engage with the market on projects, outside of formal procurement processes, to help shape ideas on commercial and technical solutions.

Where the ITU is supporting a major infrastructure project, it is recommended that the Procuring Entity discusses the key messages and approach to informal market engagement with the ITU. As the ITU is involved in a broad number of projects across multiple Procuring Entities, its involvement will support consistent messaging to the market.

Informal discussions may include:

- **Engagement with the ITU** – For the ITU to consider talking to interested suppliers about the broader New Zealand pipeline of future projects (informed by potential Procuring Entities).
- **Executive level conversations** – It is appropriate for executives of a potential Procuring Entity to talk with the market about the organisation's project pipeline for the purposes of gauging industry feedback or points-of-interest. The conversations should explicitly acknowledge points of uncertainty and risks identified by the Procuring Entity, and should not misrepresent levels of risk.
- **Project Team engagement** – Members of the Project Team (including a Project Sponsor or Project Director) can discuss a project's status and potential opportunities/risks with Potential Suppliers. These conversations can involve trouble-shooting potential technical or commercial considerations.
- **Conference presentations** – An appropriate representative of the project can use existing platforms (e.g. industry conferences or seminars) to update the market on a project's status and issues being considered. This can be used to stimulate valuable discussions between Potential Suppliers at the event, and to solicit feedback for the Procuring Entity.

Where opportunities are available, it is valuable to align informal discussions with other Procuring Entities to present a united picture of the infrastructure pipeline within the same organisation, sector and/or geographical region. Generally, a pipeline of projects is more important to the decision making of Potential Suppliers than a single project. It is recommended that Procuring Entities consult with the ITU to identify such opportunities and communicate regularly with the other relevant Procuring Entities to derive mutual market exposure benefits.

It is important that Procuring Entities document all informal discussions as they occur, including any information shared with Potential Suppliers. This information, where it remains relevant to the project, should be made available to all Potential Suppliers during any formal procurement process.

CASE STUDY:

Informal market engagement used to inform the path forward

A recent New Zealand example saw a Procuring Entity reconsider its approach to the packaging and procurement of a major project, and as part of this process, the Procuring Entity met informally with a number of industry participants to seek their feedback on the project's proposed increase in scope and change in procurement model.

This engagement helped the Procuring Entity understand the market's appetite for the revised project, and provided a number of valuable challenges and critiques from Potential Suppliers that ultimately led to greater alignment between the Procuring Entity and the market on the optimal delivery strategy.

5 Prior to structured market engagement

This section sets out actions that the Procuring Entity should undertake prior to entering a structured market engagement process, including identification of Potential Suppliers and development of relevant materials. Potential Suppliers that participate in the structured market engagement process are referred to as Participants.

5.1 Identify potential suppliers

The success of a Procuring Entity's market engagement process will depend on the expertise and knowledge of the parties involved. Typically, a Procuring Entity will receive the highest quality feedback by engaging with a broad cross-section of the market that includes Potential Suppliers who are close to the local market and those that have participated in similar projects (nationally or internationally).

There are two key approaches to identifying potential parties – open invitation or direct approach.

5.1.1 Open invitation

Under this approach, a Procuring Entity issues a public invitation to participate in the market engagement, e.g. via a notice on the New Zealand Government Electronic Tendering Service (GETS), by advertising in mainstream media, etc.

An open invitation provides a fair and transparent process for Procuring Entities to approach the market. It means that interested Potential Suppliers have the opportunity to self-select to become a Participant in the market engagement process, reducing the risk of omitting a key interested supplier. Procuring Entities should note that an open invitation often carries increased administrative and documentation requirements due to the large quantity of Participants that can be identified by this approach.

Where a Procuring Entity expects significant international interest in a project, it is recommended that the open invitation is extended to international Potential Suppliers through a variety of channels including:

- advertising in major industry publications
- targeted advertising on LinkedIn and other digital platforms
- direct approach of key players using market research and personal networks (see below).

5.1.2 Direct approach

Under this approach, a Procuring Entity makes direct contact with local and international suppliers – with known delivery expertise and capability in delivering the relevant services – to invite them to participate in the market engagement process.

A direct approach may be appropriate for smaller projects where there is a high degree of certainty as to the set of Potential Suppliers. Procuring Entities can identify relevant suppliers by:

- reviewing details of suppliers involved in projects of a similar nature previously (national and internationally)
- discussing Potential Suppliers with other Procuring Entities or their advisers
- approaching industry bodies.

A direct approach can result in a smaller number of Participants, reducing process administration and enabling more targeted conversations with those suppliers that are considered most likely to deliver relevant market insights.

When a direct approach method is adopted by a Procuring Entity, probity must be carefully managed to ensure Participants are not given an unfair advantage in any subsequent procurement process (refer Section 3.6).

5.2 Engagement materials

It is recommended that Procuring Entities develop a set of engagement materials that are tailored to the objectives and form of each stage of the market engagement process. This section considers four key types of engagement materials, which are listed in Table 1 alongside the forms of engagement (Section 6) to which they are most relevant.

Table 1: Summary of engagement materials

	Forms of engagement			
	One-to-Many	Written	One-to-One	
Engagement Materials	Process Summary	✓	✓	✓
	Presentation	✓		
	Project Information Memorandum		✓	✓
	Questionnaire		✓	✓

Engagement materials should be high quality, informative and well presented to maximise the value of the market engagement process for both Procuring Entities and Participants.

5.2.1 Process summary

To maintain the market’s confidence in the project, the market engagement process and in the Procuring Entity’s credibility, it is recommended that the Procuring Entity develops and communicates a market engagement Process Summary that concisely summarises:

- the Procuring Entity’s objectives for the market engagement process
- expected phases and steps of the market engagement process
- key dates and timeframes, including where these are not yet defined
- how the feedback will be used.

The Process Summary will complement other engagement materials, providing valuable clarity to Participants as to the status of the process and what can be expected moving forward.

Any subsequent changes to the market engagement process should be communicated to Participants, with as much notice as practical, via an update to the market engagement Process Summary.

5.2.2 Presentation

Presentation materials should focus on providing information that will maximise the market’s interest in the project and enable Participants to make an informed decision on whether or not to participate in a

subsequent procurement process. At a minimum, a presentation should cover:

- project objectives and vision
- overview of the project (e.g. indicative scope of works, packaging, timelines)
- details and timing of the subsequent market engagement process (where relevant)
- expected procurement timelines (if some certainty exists).

5.2.3 Project information memorandum

It is recommended that Procuring Entities develop a Project Information Memorandum (IM) whenever feedback on detailed aspects of the project is being sought from Participants. A Project IM provides Potential Suppliers with a common set of relevant project information with which they can engage and to which that can respond during the market engagement process, improving the quality and relevance of feedback.

In addition to the components covered in a presentation, examples of areas that a Procuring Entity may address in a detailed Project IM include, but are not limited to:

- project objectives
- proposed scope of the project
- areas of risk or uncertainty in the project scope
- known construction considerations (land availability, interfaces, supporting infrastructure etc.)
- procurement models being considered
- packaging options being considered (including early works)
- proposed risk allocation
- indicative timelines (including uncertainties and dependencies as relevant)
- specific topics to be discussed in the market engagement process.

The desire to present the project as an attractive market opportunity should not come at the expense of representing the project honestly – the Project IM is intended to enable informed decision-making from Potential Suppliers and maximise the quality of

feedback from Participants. Where any aspects of a project or its risk profile are uncertain, this should be acknowledged by the Procuring Entity in its Project IM. It is useful for Potential Suppliers to understand the open risks and issues associated with a project, and the intended parties and processes that will be involved in resolving those risks and issues. A well-defined project risk profile allows Potential Suppliers to properly assess project and timeframe risks, and enables more informed discussions with the Procuring Entity during the market engagement process (including potentially uncovering meaningful solutions to any unresolved issues).

5.2.4 Questionnaire

Questionnaires provide a tool for the Procuring Entity to gather information from a large number of Potential Suppliers to directly inform decision-making. They should be designed to capture responses to a Procuring Entity's direct questions and suggest discussion topics relevant to the project.

Questionnaires work well when issued alongside a full Project IM, which should provide the necessary context for the Participant to provide meaningful insights.

A questionnaire may ask Participants for their views on topics such as:

- project objectives and desired outcomes
- project delivery requirements including:
 - project size
 - perceived complexity
 - key project interfaces (e.g. networks)
 - supply chain considerations
 - whole of life considerations

- key commercial terms / risk allocations
- procurement process including views on:
 - the willingness to participate in a procurement processes
 - potential procurement timeframes
 - the potential allocation of risk with the Procuring Entity
 - the opportunities to form consortia, including any unique consideration that may be given to this project
- insights from experience navigating:
 - legislative requirements such as Resource Management Act
 - relationships with mana whenua
 - Treaty of Waitangi interests
- innovation
- payment mechanisms
- process and timetable
- current market conditions and influences.

While it may be tempting to provide a long list of questions to every Participant, it is recommended that Procuring Entities prioritise the most important questions to maximise the quality of responses to the questionnaire. Procuring Entities should consider using separate questionnaires for various supplier groups (e.g. construction contractors, maintenance providers, financiers etc.), with question topics that are tailored to that group's expected role in the project. Open-ended questions should be used whenever possible in order to encourage elaboration of responses.

CASE STUDY:

Capitalising on the opportunity to tailor the questionnaire

A recent New Zealand example saw a Procuring Entity issue a Questionnaire that canvassed a wide range of Potential Suppliers across a number of disciplines relevant to the project (e.g. construction, finance, operations). The breadth of respondents meant that the Procuring Entity received detailed feedback on all aspects of the project and its delivery, and allowed the Procuring Entity to consider feedback from multiple viewpoints that would not have been available from a more generalised, high-level set of questions.

Questionnaires can be undertaken in multiple formats, including written response forms (where providing response templates is valuable) or using online survey platforms.

6 Forms of structured market engagement

This section describes the forms of structured market engagement available to Procuring Entities, as shown in Table 2. The purpose of each type of engagement will vary with the nature and stage of the project being considered, as discussed below.

Table 2: Forms of engagement

Type of engagement	Examples	Purpose
One-to-Many	Market Briefing, Town Hall, Industry Workshops	Useful for communicating key aspects of the project to a large number of suppliers. Feedback from the market may be limited due to the open forum. Supports market interaction at an early stage of the project.
Written	Questionnaires, Request for Information	Useful for seeking feedback from a broad range of suppliers. Maximum value typically achieved when paired with One-to-One sessions.
One-to-One	Supplier Meetings	The most effective way to get direct feedback from Participants. The process requires higher investment of resources from the Procuring Entity.

6.1 One-to-many

6.1.1 Purpose

One-to-Many sessions present an opportunity to assemble interested suppliers and industry participants and provide them with consistent information about a major infrastructure project – making them an effective way to commence a market engagement process. As a form of engagement, it provides a strong platform for Procuring Entities to inform the market. The quality of market feedback is often limited as suppliers can be reluctant to express opinions in such an open forum, particularly when commercially sensitive, and therefore it is effective to follow the session with Written and/or One-to-One processes.

6.1.2 Inviting participants

To maximise the value of One-to-Many sessions, Procuring Entities should make these events available to a large number of suppliers and industry participants. These sessions may include all Potential Suppliers (e.g. market briefings) or may separate supplier groups (e.g. industry briefings). It is often appropriate to release an open invitation to the market (e.g. via GETS) so that interested Potential Suppliers can self-select based on their interest in the project (refer Section 5.1.1).

It is recommended that Procuring Entities communicate the purpose and agenda of the One-to-Many session to Potential Suppliers in advance. This

will enable Potential Suppliers to make an informed decision on who from their organisation should attend.

6.1.3 Procuring entity attendees

Procuring Entities should consider the seniority, reputation and relevance of the personnel they choose to represent the project at a One-to-Many session. A Procuring Entity's attendees at a One-to-Many session should provide Participants with maximum comfort that there is alignment and common agreement on the project progressing, which can be achieved via:

- explicit senior stakeholder support, by way of attendance or other visible signs of commitment from high-level executives and governance within the Procuring Entity (ideally, responsible Minister(s)/Mayors and/or members of the Procuring Entity's Executive Leadership Team)
- demonstrating cooperation between the Procuring Entity and any organisations working in partnership, and
- visible involvement of central government agencies with relevant expertise (e.g. Treasury, MBIE)

While senior stakeholder attendance and involvement is encouraged, it is recommended that the Procuring Entity is also represented by individuals who are deeply familiar with the project (such as a Project Director) to maximise the credibility of the Procuring Entity's responses to any detailed questions.

Where one has been appointed to the project, a Probity Advisor should also attend the One-to-Many sessions to gain confidence in the process.

6.1.4 Hosting the session

Procuring Entities should endeavour to make One-to-Many sessions as informative and open as possible. Primarily, these sessions are about informing Participants of the project's current status, its timeframes, and any areas of risk or uncertainty. The reason for engaging with the market should be made clear – what are Participants being asked to contribute and what are the next steps?

Participants can be reluctant to ask questions in an open forum on the basis that they are unwilling to share insights which may have provided them a competitive advantage. The role of the Procuring Entity is to encourage conversations and contributions, and make Participants comfortable that no supplier will be advantaged (or disadvantaged) as a result of the process. This can include adopting a workshop-style approach to running the session, where supplier groups are requested to discuss and respond to key ideas and challenges. Anonymous written questions can also be gathered and responded to in the session or afterwards.

Before a One-to-Many session, a Procuring Entity should prepare for foreseeable questions. The Procuring Entity should not expect (or be expected) to answer any questions that relate to elements of the project or procurement process that are still being developed, and consistent, open messaging should be adopted to reflect fairly the current status of the project.

A One-to-many session can also present an opportunity for interested Potential Suppliers to interact in a non-structured way. It is recommended that Procuring Entities create opportunities for Participants to network with each other, particularly where there are multiple supplier groups and/or where consortia formation is required to deliver the project. Allowing Participants to gauge the market of interested suppliers may assist in the formation of early relationships that will improve participation in a future procurement process.

6.1.5 Follow up comments

Procuring Entities should provide Participants with the opportunity to share further or more detailed feedback with the Procuring Entity following the One-to-Many

session. This may not be required when the One-to-Many session is followed by a Written or One-to-One market engagement process.

It is important that Procuring Entities maintain a record of all information, written or verbal, provided to Participants. This information, where it remains relevant to the project, should be made available to all Potential Suppliers during any formal procurement process.

6.2 Written

6.2.1 Purpose

Written market engagement processes represent a scalable and familiar approach to gathering feedback from Potential Suppliers. Procuring Entities should use written engagement to complement One-to-Many and/or One-to-One market engagement approaches, with the major focus being to solicit feedback from Participants on critical issues to inform the development of a project's scope and its procurement strategy.

6.2.2 Inviting participants

Depending on the stage of the market engagement process, Procuring Entities can use written market engagement to target either all market participants (e.g. a Request for Information issued prior to an industry briefing) or individual suppliers (e.g. a questionnaire issued prior to One-to-One meetings). As outlined in Section 5.2.4, when issuing written material to individual suppliers, Procuring Entities should target this material to the unique supplier group to ensure relevance and efficiency.

If Written engagement will be followed by One-to-One engagement sessions, Procuring Entities should use this communication as an opportunity to schedule One-to-One meetings with Participants.

6.2.3 Running the process

After issuing relevant materials for the written engagement process, Procuring Entities should give Participants sufficient time (generally, one week or more) to digest and consider this information before responses are requested.

Responses should be tracked and documented by a central point of contact within the Procuring Entity. An overview of the responses (i.e. number and supplier groups) should be included in the Market Engagement

Report, alongside the consideration of key themes identified through the Written engagement process.

6.3 One-to-one

6.3.1 Purpose

One-to-One market engagement sessions provide Procuring Entities with an opportunity to have direct and robust discussions with Participants. This form of engagement is the most direct and effective method for a Procuring Entity to provide Participants with the necessary context and information about a project, and to gather detailed market feedback that can ultimately improve the efficiency and quality of the procurement process.

One-to-One sessions are useful across multiple stages of a project's development, including when testing a variety of commercial principles, project scope and procurement options in the early stages of a project, and when validating a project's detailed commercial and technical arrangements within a defined procurement model at the end of a market engagement process. Depending on the size and complexity of the project, it may be appropriate for a Procuring Entity to have multiple rounds of One-to-One sessions.

6.3.2 Inviting participants

Participants in One-to-One sessions may be identified from an earlier phase in the process (One-to-Many or Written) or may be contacted directly.

If there are a high number of Potential Suppliers in an international location (particularly in Australia), it is recommended the Procuring Entity conducts One-to-One sessions overseas.

It is also recommended that Procuring Entities encourage Participants to provide written feedback (e.g. through a Questionnaire) prior to the One-to-One session in order to allow targeted discussions during it.

Procuring Entities should ensure that One-to-One sessions are of an appropriate duration to cover the topics being considered. This may mean different lengths of time for different stages of the process and different supplier groups – for example, a one-hour meeting might be appropriate for engaging with potential project financiers during the early phases of the market engagement process, while discussing detailed contractual arrangements with construction contractors may require longer sessions.

6.3.3 Procuring entity attendees

If the project is being supported by the ITU, a member of that team should be included in the market engagement session as they will bring valuable relationships and experience into the process. The representative should be well-positioned to talk knowledgeably about the broader pipeline of infrastructure projects in New Zealand.

To demonstrate a high degree of organisational commitment it is recommended that the Procuring Entity is represented by:

- a relevant member of project governance (e.g. CEO, Board Member, Project Sponsor)
- an attendee with detailed knowledge of the project scope (e.g. the Project Director)
- attendees appropriate to the stage of the project and nature of topics being addressed, potentially including, but not limited to:
 - Project Commercial Lead
 - Project Technical Lead
 - Procurement Team Representative
 - Central Government Agency Representatives (e.g. MBIE, Treasury)
 - Probity Advisor (may attend a sample of One-to-One meetings sessions to gain confidence in the process).

Procuring Entities should endeavour to maintain team continuity across the One-to-One meetings in order to ensure consistency of questioning and to identify more easily trends in Participants' responses.

6.3.4 Hosting the meeting

It is recommended that the Procuring Entity circulates an agenda of relevant topics for discussion in advance of the One-to-One meeting. The Procuring Entity should guide Participants through the discussion of the relevant topics during these meetings, and is encouraged to ask probing questions throughout the sessions to uncover the basis of claims or assertions made by Participants. The Procuring Entity should be particularly alert to Participants entering into "sales mode", where they tell the Procuring Entity what it wants to hear rather than providing an honest opinion.

Procuring Entities should use the One-to-One meetings as a means of clarifying any written responses provided by Participants and asking any

relevant follow-up questions. Representatives of the Procuring Entity should ensure they have read any written responses in detail and identified priority topics for discussion prior to the One-to-One meeting.

While a structured approach to meetings is valuable to ensuring all necessary topics are covered, it is important to keep the tone relatively informal to encourage Participants to feel comfortable sharing appropriate information with the Procuring Entity.

Details of all One-to-One meetings should be captured in thorough minutes to inform the Market Engagement Report. This information can also be used as the basis for continuing conversations with Participants in any subsequent rounds of engagement and to avoid any duplication.

6.3.5 Follow up comments

When Participants wish to share further or more detailed feedback with the Procuring Entity following their meeting (including as a result of having insufficient time in their meeting to address all relevant issues), they should be given the opportunity to do so in writing within one week.

It is important that Procuring Entities maintain a record of all information, written or verbal, provided to Participants. This information, where it remains relevant to the project, should be made available to all Potential Suppliers during any formal procurement process.

CASE STUDY:

Multiple detailed one-to-one discussions provide the Procuring Entity understanding and confidence

A recent New Zealand example saw a Procuring Entity conduct multiples rounds of market engagement meetings with Potential Suppliers, where each successive set of meetings allowed the Procuring Entity to test specific aspects of the project's scope, risk profile, programme and procurement model with the market.

By engaging with Potential Suppliers on multiple occasions and factoring their feedback into the project's structure, the Procuring Entity was able to develop detailed business case and EOI/RFP documentation that reflected current market opinions and addressed areas of perceived risk.

7 Market engagement outcomes

7.1 Interpretation

It is recommended that Procuring Entities remain aware of the implicit biases, preconceptions and degree of self-interest that are embedded in feedback from Participants.

Procuring Entities should remain cognisant of these biases when interpreting responses and feedback, and apply a degree of subjectivity (i.e. separating the “market’s” views from those of individual Participants) when identifying the most meaningful and relevant outcomes from the process.

Using appropriately experienced individuals to conduct this process is critical to providing the Procuring Entity and other stakeholders with greater confidence in the outcomes. These people may be sourced from the Procuring Entity, its advisors or the ITU for projects it is supporting.

7.2 Reporting outcomes internally

All responses and information received from participants in the market engagement process should be treated as Commercial in Confidence. Under no circumstances should information provided by one Participant be divulged to any other Participant.

For the purposes of communicating outcomes internally, Procuring Entities should complete a Market Engagement Report that outlines:

- the market engagement process that was followed
- consistent themes relating to the project’s opportunities and risks
- detailed findings on the specific topics discussed with Participants
- next steps.

Any comments reported in internal documentation with respect to the market engagement process should be on an aggregated and unattributed basis.

If a market engagement process is undertaken as part of a business case development process, the Market Engagement Report should be appended to the business case document and summarised in the body. The business case should articulate how the findings of the market engagement influenced the procurement model and other commercial arrangements proposed.

For strategic and high profile projects, it is recommended that Procuring Entities submit the Market Engagement Report as a standalone document to governance and senior stakeholders.

7.3 Feedback to market

It is best practice to provide Participants with the Market Engagement Report, or an abridged version/summary of that report. Feedback should be presented at an aggregated level and not attributed to individual Participants. If the Procuring Entity does not intend to provide aggregated information to Participants after the market engagement process, this should be made clear at the commencement of the process.

Following the formal market engagement process, it is important to keep Potential Suppliers informed of any material changes in the information supplied as part of the market engagement process, particularly on aspects that may materially influence the decision of Potential Suppliers to participate in a formal engagement process (including indicative timeframes of the procurement process).

The most important output for Potential Suppliers will be observing that the Procuring Entity has heard and responded to the feedback from Participants. This includes having a procurement model, process and project documentation that respond to the consistent themes of market engagement feedback. Not only will this improve the market interest in the procurement process for the specific project, it will also encourage higher levels of engagement in future market engagement processes.

7.4 Lessons learned

To support continuous improvement, Procuring Entities should invest time and resources to identify areas of improvement during and following the market engagement process. Key points of feedback and lessons that arise during the market engagement process should be recorded in the Market Engagement Report.

Any shortcomings of the Market Engagement Strategy identified following the procurement process and/or project delivery (e.g. areas that in hindsight would have been valuable to explore more comprehensively during market engagement) should be detailed in any project post implementation review. This will improve the quality of the Procuring Entity's market engagement strategies for future projects.

CASE STUDY:

Acknowledging the valuable contributions of market participants

A recent New Zealand example saw a Procuring Entity undertake a complete market engagement process before commencing a formal procurement process. However, Participants in the market engagement process observed that the feedback that they had provided was not appropriately acknowledged, nor reflected in the procurement approach adopted by the Procuring Entity. It is important to reflect to Participants, either directly or indirectly, that their feedback is highly valued and themes have been given due consideration (even if not all market recommendations are adopted).