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4 WORKING WITH THE MARKET

Ultimately, the success of your project will depend on the ability and effort of the construction professionals you employ to develop and implement the best solutions. Finding ways to effectively inform the market of your intentions and engage with interested companies prior to the formal tendering process can bring major benefits.

4.1 COMMUNICATING AMBITION TO THE MARKET

If an authority wishes to see innovative and sustainable solutions presented by the market this ambition must be clearly communicated to the market. The public sector is often viewed by private contractors as conservative and risk averse in its procurement activities. It is important to ensure you clearly state in tender documents your desire for a sustainable outcome and your openness to innovative technologies and techniques being offered.

Highlighting specific innovative technologies you are aware of (or have identified during market engagement activities) as examples in tender documentation can also have a positive impact. The use of performance/output based specifications is also advisable.

It is also important to provide the market sufficient time to prepare for your tender. Developing appropriate solutions and identifying the partners needed to deliver them takes time – informing the market considerably in advance of your intentions will likely lead to better prepared offers once you go to tender.

Tools such as procurement prospectuses or prior information notices (PINs), which formally announce future tenders should be considered.

RECOMMENDATION 4.A:

Inform the market of your intention to reward sustainability and innovation sufficiently in advance of tendering.

RECOMMENDATION 4.B:

When tendering, clearly state your desire for a sustainable outcome and your openness to innovative solutions.



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PROCUREMENT PROSPECTUS IN WAKEFIELD, UK

In May 2010 Wakefield Council (UK) started to develop a strategy to procure a highly energy efficient lighting system for a new swimming pool and leisure complex.

Recognising that there were significant innovations in the field of lighting, Wakefield made a procurement prospectus available to the market providing details on their proposed project and inviting suggestions from all tiers of the supply chain to come forward with innovative proposals.

The most promising responses to the prospectus were followed up with workshops. Furthermore a directory of businesses that responded was published online to encourage partnering between suppliers in preparation for the call for tender.

4.2 ENGAGING WITH THE MARKET

Many public authorities now undertake more in-depth dialogue with potential suppliers prior to tendering for design or construction work. This early market engagement (EME) can be an invaluable method of capturing intelligence on innovations, new processes, project feasibility and market capacity/capability which can then be factored into options appraisal, specification and procurement of a construction project.

The engagement can cover a wide range of issues including:

- **FEASIBILITY:** whether what is sought is feasible, or has ever been done;
- **CAPABILITY:** the ability of the market to achieve what is required;
- **MATURITY:** whether there is an established market for the requirement and whether there are enough suppliers in existence for competitive procurement;
- **CAPACITY:** whether the market can achieve what is required quickly enough, or on a large enough scale.

Different methods for EME exist ranging from a market survey through to meet the buyer events or industry days, where interested suppliers are informed in detail of the authority's plans, and can raise questions and pose solutions.

In many cases, the most innovative tender responses, and those that most reflect best value, are likely to come from partnerships of suppliers with difference specialisms and experience. Holding industry days, publishing directories of businesses that respond to PINs and procurement prospectuses can help companies to identify potential partners and form such partnerships. They also assist innovative SMEs in finding a way of partnering with a larger contractor to commercialise their idea for inclusion in the delivery of a contract.

Any EME activity needs to be undertaken with due regard to the principles of transparency, non-discrimination and mutual recognition in line with European procurement law. No advantage or disadvantage should be given to any supplier or group of suppliers through EME; it is important that suppliers understand that the competitive phase of procurement will be carried out separately and all suppliers will be treated on equal terms. This can be stated in any invitation to open discussions.¹⁰



RECOMMENDATION 4.C:

Undertake early market engagement (EME) activities for all construction-related procurements above a specified minimum threshold to identify potential new technical solutions, achievable targets and appropriate assessment schemes.



RECOMMENDATION 4.D:

Encourage partnering between suppliers by running industry days and by publishing online directories of businesses that respond to PINs and procurement prospectuses.



TARGETING FOSSIL FUEL FREE SCHOOLS IN OSLO, NORWAY

Oslo City Council decided in January 2008 that fossil fuel use in Oslo's schools should be phased out by the end of 2011, and began to look for innovative alternatives.

The challenge was to assess what the market could deliver as innovative solutions, particularly for heating systems, because experiences with existing products and solutions were poor.

After identifying some initial suggestions internally, companies were then invited to a dialogue conference to consider potential solutions in detail. The information received at this meeting was then applied in preparing the tender documentation. The tender competition also began with a workshop for suppliers, where the tender documents were presented and the different suppliers could discuss joint solutions. The city was very satisfied with the result: the competition came up with many solutions that were not available on the market before the process started.



¹⁰ For further information see the SCI-Network report on Procuring Innovation (includes a section on Early Market Engagement) at www.sci-network.eu, and the SMART SPP publication: *Driving energy efficient innovation through procurement – A practical guide for public authorities* available at www.smart-spp.eu



INCREASING RECYCLED CONTENT IN CONSTRUCTION PROJECTS

Bristol City Council set a clear target to include as much recycled material as possible into the

construction of 4 new schools with a value of around €140 million. Market research into local suppliers and materials, together with a detailed analysis of school design determined that over 15% recycled content could be achieved at no extra cost.

This gave Bristol City Council the confidence to include a minimum requirement for recycled materials in their tender. Combined with other waste reduction initiatives, Bristol City Council calculated the reduced waste disposal costs, avoidance of landfill tax and lower material wastage delivered an overall cost saving estimated at over €800,000.

4.3 PROTECTING INTELLECTUAL PROPERTY RIGHTS

The early market engagement activities outlined in recommendations 4.c and 4.d may involve a supplier or group of suppliers providing details of a new, innovative solution or technology to a public authority ahead of a formal contract process. This benefits suppliers as it allows them to demonstrate their competitive advantage and ensure that what they can offer will be taken into account in the tender process or included in the project specification. However, it also creates significant risk for the supplier in terms of the potential loss of their intellectual property rights (IPR) in regards to their innovative solution and the associated development costs. This risk may result in suppliers withholding innovation during early market engagement processes unless they feel their IPR will be sufficiently protected.



RECOMMENDATION 4.E:

When conducting formal early market engagement processes such as issuing procurement prospectuses or PINs, put in place legal assurances that suppliers' IPR will be protected, or that they will be compensated if it is used in conjunction with another supplier.



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5 CHOOSING YOUR PROCUREMENT MODEL

Construction procurement can be a highly complex procedure, and present some significant challenges for procurers – not least due to the scale of the works being procured, and the variety of professional services typically required for project delivery.

A variety of different procurement models are applied by public authorities for construction works – and typical practice also varies considerably between countries. Of particular significance is the level of separation/integration of design and construction works, how these services are procured, and who is responsible for contract supervision.

One of the major challenges in sustainable construction is ensuring that the final result meets the standards set in the initial design – split responsibilities and a lack of co-operation between the design and construction teams can increase the risk of targets not being achieved.

Effective integration between these teams will help to improve the quality and practicability of the design, allow the effective identification of issues related to supply chain availability and reliability, and generally identifying and managing risk. Applying a procurement model which best integrates the design and construction work is therefore an important factor in determining success.