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# Innovation Procurement Models Guide



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The Innovation Procurement Toolkit (IPT) was created by the Healthcare Supply Chain Network (HSCN) and is now provided by OCI.

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# INNOVATION PROCUREMENT MODELS GUIDE

## 1. INTRODUCTION

The BPS Primer on Innovation Procurement (Interim) describes six innovation procurement models and provides advice on when and how to use each of these models. The six innovation procurement models described in the Primer are:

**Model #1: R&D Procurement** is a process of purchasing research and development (R&D) of products, up to the prototyping or first test production/deployment phases. It does not include the purchase of the resulting end-solutions beyond prototyping.

**Model #2: Innovation Partnership** is a process of entering into a partnership with selected supplier(s) to research/develop, and then purchase, an innovative solution to meet an identified need.

**Model #3: Design Contest** is a process in which participants submit a design proposal and/or product prototypes to compete for an award. It usually results in a contract with the winner of the design contest for prototyping of the winning design and/or the purchase of that product or service.

**Model #4: Competitive Dialogue** is a process that allows the BPS organization to thoroughly discuss each aspect of the procurement with suppliers prior to both specifying the requirements and an invitation to submit full and final proposals to meet the identified need(s).

**Model #5: Competitive Procedure with Negotiation** is a process that may be used to meet complex needs in cases in which innovative solutions already exist in the market and there is some flexibility in requirements that allow for negotiations between the buyer and seller to meet the identified need(s).

**Model #6: Innovation-Friendly Competitive Process** refers broadly to outcome-based models/processes that are carried out in such a way that allows innovative solutions to be considered or are not excluded or treated unfairly by overly rigid product specifications. Accepting alternative proposals is one way of making a competitive process innovation friendly.

This guide is intended to supplement the Primer, and discusses additional considerations, risks, and risk mitigation measures in selecting and executing an innovation procurement.

This guide continues the guidance contained in the [Early Market Engagement Strategies Guide](#), by providing guidance about the competitive procurement process that occurs after the market has been sufficiently engaged.

In addition to the Primer, this guide is to be read in conjunction with the following guides (which speak to critical elements of the competitive process):

[Outcome-Based Specifications Guide](#)

[Value-Based Evaluation Criteria Guide](#)

[Total Cost of Ownership Guide](#)

Context-dependent guidance is also included in the RFSQ Template, the RFS Template, the R&D Services Agreement Template and the Innovation Agreement Template.

## 2. TOOLKIT TEMPLATES

This guide uses the term “**RFP/RFS**” to refer to a competitive process using either a request for proposals or request for solutions.

- The HSCN Innovation Procurement Toolkit includes a Request for Solutions (RFS) Template – *not to be confused with a “Request for Services”*. The RFS Template can support any of the innovation procurement models. The template incorporates colour-coded guidance for each of the procurement models discussed in the Primer (shaded in the colour corresponding to the Navigation Guide, with gray guidance applicable to any model).
- Although each of the procurement models can be described as having clear parameters, in practice, an innovation procurement could adopt elements from several of the models. For example, an innovation partnership could involve elements of competitive dialogue, negotiation or even a design contest. For this reason, the RFS Template consolidates these elements, to give users greater flexibility to build a process that suits their circumstances.

This guide also uses the term “**RFSQ/RFPQ**” to refer to a competitive process using either a request for supplier qualification or request for supplier pre-qualification.

- The HSCN Innovation Procurement Toolkit includes a Request for Pre-Qualification (RFPQ) Template. The RFPQ Template can be used to qualify proponents to participate in any of the innovation procurement models – and in particular, can be used to facilitate the “Competitive Dialogue” model.

## 3. KEY CONSIDERATIONS

### 3.1 CONDUCTING SUFFICIENT BACKGROUND RESEARCH

A purchaser cannot simply begin an innovation procurement process without first gathering and considering background and other information. This is important because:

- Innovation procurement inherently involves initiating a procurement process for a problem – but where the solution may be difficult to describe, where there may be a variety of approaches across possible solutions, and/or where subsequent stages of development, design, testing, and proof of concept build are to be determined.
- Initiating an innovation procurement process without sufficient background research presents the risk that the procurement process may not fit what is being procured.
- The innovation procurement may be pre-mature – occurring before the purchaser has sufficiently solidified its needs and requirements; or before it has had some dialogue with the market around possible solutions.

As such, a general understanding of the context, issues, needs and basic parameters is needed in order to have a coherent competitive process. Purchasers should consider a wide range of methods of gathering information and early market engagement.

See the [Early Market Engagement Strategies Guide](#)

*Remember:* Procurement law does not prohibit conversations with potential proponents as part of background research. These efforts allow for important early-stage input into the solution and the procurement itself, and may help to formulate the specifications and evaluation criteria for eventual proposals.

When engaging in background research, the purchaser must ensure that:

- the purchaser does not provide any potential proponents with a “head start” on any subsequent procurement – the purchaser should be judicious in the information that it shares; and
- the purchaser does not bias its specifications or evaluation criteria in favour of a potential proponent.

### 3.2 DEFINING THE NEED

In any procurement for solutions, it is important to define the problem statement and expected deliverables in sufficient detail to elicit proposals from potential proponents. The RFP/RFS needs to include this information so that potential proponents can respond with appropriate and accurate proposals. In an innovation procurement process, it may be difficult for the purchaser to frame its requirements to a level of detail that allows for some measure of certainty on all sides. This presents some risk to both the purchaser and the proponents. The purchaser may provide insufficient detail to allow for appropriate proposals, or may generate proposals that are difficult to evaluate.

To mitigate some of these risks, the RFP/RFS should:

- describe the problem statement – see the Early Market Engagement Strategies Guide for how to frame the problem statement;
- be clear on any constraints – this ensures that proposals will not propose unworkable solutions;
- include outcome-based specifications – see the Outcome-Based Specifications Guide;
- use value-based evaluation criteria – see the Value-Based Evaluation Criteria Guide;
- disclose timing requirements;
- disclose the stages of solution development and delivery (if applicable);
- describe or list the required deliverables; and
- describe the approach to intellectual property rights.

In addition, consider the following:

- avoid jargon in the description of the need and any constraints on the solution, and define terms that may be ambiguous; and
- consider whether to disclose the maximum budget for the project – this allows proponents to scale their proposals to that budget, rather than waste everyone’s time proposing a more extensive and expensive solution.

### 3.3 OPENNESS TO SOLUTIONS

To ensure fairness, the purchaser should remain open to different ideas and solutions throughout the process and not develop a bias towards one proponent's methodologies or approaches. This requires the purchaser to use specifications and evaluation criteria that can accommodate a variety of approaches to meet the purchaser's need and solve the problem underlying the innovation procurement.

For more information about ensuring that an innovation procurement process is open to solutions, see the Outcome-Based Specifications Guide and Value-Based Evaluation Criteria Guide.

### 3.4 TREATMENT OF INTELLECTUAL PROPERTY

It is important to distinguish between (i) existing intellectual property, (ii) customizations to existing intellectual property, and (iii) entirely new intellectual property.

- Any innovation procurement process will likely involve proponents proposing solutions that involve some amount of existing intellectual property. Therefore, purchasers should require proponents to describe what existing intellectual property will be used and how the proponent has the right to use it and permit the purchaser to use it.
- If the innovation procurement process requires the successful proponent(s) to engage in research and development of a solution, this will result in a customized version of existing intellectual property or entirely new intellectual property. Therefore, the purchaser should clearly set out, in both the RFP/RFS and the form of agreement:
  - whether it will own that intellectual property; and
  - how the parties will be able to use that intellectual property during and after the term of the contract (which is particularly important if the purchaser wishes to have other suppliers produce the solution if the contract is terminated).

This is essential to:

- assist the proponents to submit accurately priced proposals; and
- allow for a proper comparison of proposals.

To be clear, research and development could occur in any of the procurement models (not just the "Research and Development" procurement model).

### 3.5 RISK-AND-REWARD SHARING

The contract between the purchaser and the successful supplier will inherently involve an allocation of risk between the parties. Generally, risks should be allocated to the party that can best manage and mitigate that risk.

However, in the context of innovation procurement, moving away from an allocation that puts more risk on the supplier can be an effective incentive to supplier participation in innovation procurement. In some cases, having the purchaser assume greater risk can result in cost savings to the purchaser (e.g.,

lower risk premiums built into supplier pricing). It can also facilitate greater participation by smaller suppliers that would otherwise be unwilling to shoulder high levels of risk exposure.

In addition to risk-sharing, an innovation procurement can contemplate reward-sharing. Reward-sharing can incentivize supplier's to exceed baseline requirements or expectations, bringing greater value to the purchaser and its stakeholders. This is particularly for small and medium size enterprises.

Risk-and-reward sharing could take a variety of forms, including:

- reducing supplier compensation if the solution falls short of certain performance targets;
- increasing supplier compensation if the solution surpasses certain performance targets;
- paying to the supplier a portion of the cost-savings generated by the solution (if the cost-savings exceeded a particular target);
- allocating to the supplier the ownership of any new intellectual property developed by the supplier (as discussed at 3.4 (Treatment of Intellectual Property) – as this gives the supplier the opportunity to commercialize the solution on its own; or
- committing to purchase the solution over a longer term or over a larger pool of purchasers, to assist the supplier to recoup investment in developing the solution.

### 3.6 DECISIONS ABOUT STAGING OF THE PROCESS

A purchaser needs to make upfront decisions on the complexity of the procurement process prior to issuing any competitive documents (whether RFSQ/RFPQ or RFP/RFS). Although the purchaser can adjust the competitive process by issuing addenda setting out discrete changes, it may be challenging (from a fairness perspective) to make significant adjustments to the staging of the process while it is occurring. To be clear, this is not to say that significant adjustments cannot be made; rather, it is meant to emphasize the need for thorough planning.

Decisions about the staging of the process include:

- whether to conduct an initial briefing with prospective proponents;
- whether to conduct commercially confidential meetings with proponents prior to the submission of their proposals;
- whether to permit oral presentations or site visits;
- whether to require the development of prototypes, wireframes or mock-ups as part of the proponent's proposal;
- whether to deploy a multi-stage process, in which proponents submit an initial proposal, which the purchasers evaluate, and then use the learnings to refine their requirements – resulting in an opportunity for some or all proponents to submit revised proposals (see the discussion at 3.9 (Competitive Dialogue Considerations);
- whether to use an RFSQ/RFPQ to qualify suppliers to participate in an RFP/RFS (for an important consideration in making this decision, see the discussion around RFSQ/RFPQ the “gate-keeping” function, at 3.9 (Competitive Dialogue Considerations);

- whether, as part of a multi-stage process, to have concurrent negotiations with proponents concerning the form of agreement and related matters, or to just negotiate the agreement with the preferred proponent; and
- whether or not the solution or deliverables are procured through phased contract or multiple contracts – for example,
- the process could result in a contract in which multiple suppliers are paid to complete a particular set of activities (e.g., research and development), with the purchaser owning the intellectual property rights in what is developed; and
- the purchaser could then evaluate what is developed according to pre-determined criteria, with a view to proceed with research and development and/or purchase of the developed solution.

These decisions are informed by both the nature of the need and the availability of purchaser time and resources.

After making these decisions, ensure that the necessary description of the staging of the process (and related information) is reflected in the procurement documents.

### 3.7 FRAMING PRICING AND PAYMENT

Pricing may be a significant unknown when it comes to innovation procurement. This may lead to over-budget proposals or to vastly divergent approaches to fees and payment across proposals.

There is nothing preventing a purchaser from disclosing information about its budget for a particular procurement in the RFP/RFS. If a purchaser has established a budget, it may be useful to both proponents and the purchaser for proponents to not bid unless they can provide the solution within that budget.

If the procurement process will involve the research and development of a solution, this may also present pricing challenges. The research and development of innovative solutions progresses in stages. In light of this, the purchaser will need to determine a general approach to pricing those future stages (e.g., hourly rates, flat rates, capped amounts, etc.), as well as how fees are to be paid. For example:

- Will the payment of fees for the solutions be tied to particular milestones?
- Will proponents be required to commit to a particular timeline and set of milestones, with a particular percentage of fees payable at the various milestones?
- Will proponents be allowed to propose an approach toward the payment of fees?

*Remember:* You must ensure a fair and consistent pricing evaluation methodology for all proponents. Unless specific parameters around pricing are prescribed (which may impede innovative solutions), a purchaser will need to ensure that its evaluation methodology is flexible enough to accommodate different approaches. To mitigate these concerns, a purchaser may wish to defer setting pricing parameters or evaluating pricing until a later stage of the competitive process.



### 3.8 FRAMING THE FORM OF AGREEMENT

It is important to choose an appropriate form of agreement to document the arrangement. Some innovation procurement processes may lead directly to the purchase of a solution (using a traditional purchase contract); others may involve research and development activities leading up to a possible purchase of a solution (once it is developed, tested, etc.). The following table illustrates the different types of contract templates that are suitable, depending on the purchaser’s intended or expected outcome.

Intended or Expected Outcome	Contract Template
<b>Research and development of solution</b> <i>(no production/deployment of solution)</i>	Research and Development Services Agreement
<b>Research, development, and production/deployment of solution</b>	Innovation Services Agreement
<b>Off-the-shelf solution</b>	CTC Agreement <sup>1</sup>
<b>Do not know</b> <i>(open to off-the-shelf or innovation)</i>	Innovation Services Agreement or CTC Agreement

Unless the contract is for a relatively basic off-the-shelf solution, purchasers should ensure that the contract addresses the following:

- a clear governance structure to monitor progress and escalate and resolve problematic issues quickly;
- milestones and a performance framework, including specific conditions required to achieve each milestone and any consequence for achieving the milestone (e.g., payment) or for not achieving the milestone (e.g., fee reduction);
- a testing framework, including assessment criteria, how a deliverable is measured against such criteria, and who will be test participants (which should include end-users);
- responsibility to engage in appropriate ethical and legal reviews (e.g., in relation to medical devices or studies involving patients); and
- responsibility for risks arising out of the solution, including risk-and-reward sharing – see 3.5 (Risk-and-Reward Sharing).

<sup>1</sup> This refers to HSCN’s Common Tendering and Contracting Templates – either the Goods Purchase Agreement, Services Purchase Agreement or Capital/Equipment Purchase Agreement.

If the contract is for research and development services, with the option for the purchaser to purchase the solution (once it is developed, tested, etc.), this poses additional challenges. It may be difficult to frame the purchase terms at an early stage (e.g., for inclusion in the form of agreement included in the RFP/RFS). Therefore, there is a risk that the contract will not set sufficient parameters around the production/deployment phase, so that when the research and development is complete, the parties dispute the terms of the future purchase. Disputes could arise as to pricing, timing, delivery and/or the provision of ancillary services (among other possible disputes).

To mitigate some of these future purchase risks, the Innovation Procurement Toolkit includes an Innovation Agreement Template. Under this template, the purchaser can engage the supplier in research and development services, and then purchase the resulting solution. The purchase terms for the resulting solution are set out in a schedule that would:

- incorporate standard purchase terms from other HSCN contract templates; and
- include a mechanism to determine the pricing for the purchase of the solution based on various criteria (so that the determination can occur at a future point in time and on a relatively objective basis).

While the purchaser should strive to make the purchase terms as complete and definitive as possible, some items will likely need to be negotiated and settled only once solution development is well underway or complete.

For example, if the solution is to be a medical device, the parties will not know how long it will take to build a unit until the design, development, and prototype testing are complete. So, as part of the purchaser moving from a prototype testing phase to a production/deployment phase, the parties would need to negotiate and agree on a delivery timetable (along with any other purchase terms that are not final).

### 3.9 COMPETITIVE DIALOGUE CONSIDERATIONS

An innovation procurement process may involve competitive dialogue with proponents. Competitive dialogue occurs after an RFSQ/RFPQ or similar process identifies qualified suppliers with which to dialogue – and prior to any RFP/RFS. At a high level, the process unfolds as follows:

1. **Prequalification Stage:** the purchaser qualifies suppliers to participate in dialogue through an RFPQ process.
2. **Dialogue Stage:** the purchaser then engages in dialogue sessions with qualified suppliers.
3. **Competition Preparation Stage:** using what it has learned during the dialogue and otherwise, the purchaser then determines or refines its functional requirements, outcome-based specifications, and other parameters to be included in a competitive procurement process.
4. **Competition Stage:** the purchaser then conducts an RFP/RFS to select a supplier.

Competitive dialogue can be time consuming and resource intensive on both the suppliers and the purchaser. It is important to ensure that the dialogue process will not be too long or cost-prohibitive to small suppliers. Careful planning and management is critical to avoiding delays or extended timelines and fairness risks.

To be effective, a competitive dialogue process:

- must be clearly stated in the competitive procurement documents that initiate the process (RFSQ/RFPQ);
- must provide equal treatment and confidentiality to all proponents; and
- should be documented for auditing and dispute resolution purposes – the documentation should include:
- protocols for competitive dialogue sessions (such as consistent rules around timing / scheduling for proponent participation, number and nature of proponent attendees, and consistent purchaser participants in all sessions – effectively similar to the rules for Commercially Confidential Meetings); and
- rationale supporting changes to or evolution of the problem statement, specifications and requirements, evaluation criteria or other matters as between the RFSQ/RFPQ and the RFP/RFS (i.e., changes that result from the competitive dialogue).

When engaging in the dialogue phase of a competitive dialogue, it is imperative that the purchaser refrain from the following:

- sharing information with one proponent, in response to a question or otherwise, that is not then going to be shared with the other proponents participating in the process – all proponents should have access to the same information; and
- sharing information obtained from one proponent with any other proponent participating in the process.

For other applicable principles, see the discussion about “Commercially Confidential Meetings” (as part of the discussion about “Market Consultations”) in the Early Market Engagement Strategies Guide.

One important consideration is whether the RFSQ/RFPQ process will be used as a gate-keeping mechanism, such that only proponents who are qualified in the RFSQ/RFPQ process will be eligible to participate in any RFP/RFS following the competitive dialogue. There may be a tendency to think that such a gate-keeping function is useful (as it may be in a traditional RFSQ process); however, when it comes to innovation procurement, such an approach may be unfair to prospective proponents and may end up limiting the effectiveness of the procurement.

This is because it is possible that the RFSQ/RFPQ does not accurately describe the opportunity or competitive process to the marketplace. For example, a prospective proponent may decline to participate in the RFSQ/RFPQ because of how the opportunity is described – only to want to participate once the RFP/RFS is issued, which reveals that the opportunity has “evolved” following the competitive dialogue phase. In such a case, it would be unfair to that prospective proponent to refuse to entertain its proposal, since the opportunity is now quite different; moreover, it would arguably deprive the purchaser of a potentially effective solution.

So, when deciding whether an RFSQ/RFPQ prior to a competitive dialogue should have a gate-keeping function, consider whether the competitive dialogue expected to result in significant changes to the functional requirements, outcome-based specifications, process requirements, evaluation criteria, or the form of agreement?

- If significant changes are expected, then the RFSQ/RFPQ should not have a gate-keeping function for any subsequent RFP/RFS.
- If no significant changes are expected, then the RFSQ/RFPQ could have a gate-keeping function for any subsequent RFP/RFS.

*Caution:* A purchaser is likely only able to reach a decision as to whether such significant changes are expected if the purchaser used early market engagement strategies and conducted effective due diligence / research prior to the RFSQ/RFPQ. If in doubt, adopt a conservative approach: the RFSQ/RFPQ should state that participation in the RFSQ/RFPQ is only a pre-requisite to participating in the competitive dialogue, and not any RFP/RFS that may occur following that competitive dialogue.

Remember: Some users may be concerned about the potential for wasted time and effort if prequalified proponents are required to re-submit qualification information during an RFP/RFS process. Such concerns can be easily addressed if the RFP/RFS clearly states that it will rely on the prior prequalification. See the sample text in the RFS Template under the “Concurrent Negotiation” guidance at section 1.3.

### 3.10 COMMERCIALLY CONFIDENTIAL MEETING CONSIDERATIONS

Commercially Confidential Meetings may be of significant benefit in a complex procurement process where:

- there are no solutions in the market, or solutions would require customization;
- the solution requirements are not well-defined; and/or
- the solution requirements are flexible.

These variables mean that Commercially Confidential Meetings tend to align with the “R&D” procurement model, the “Innovation Partnership” model, the “Design Contest” model (although they can be used with any model).

Even so, Commercially Confidential Meetings should not be incorporated into the RFP/RFS lightly, as they do give rise to risks (e.g., inadvertently disclosing one proponent’s confidential information to another; failing to provide the same information to all proponents in a fair manner).

For principles applicable to Commercially Confidential Meetings, see the discussion about “Commercially Confidential Meetings” (as part of the discussion about “Market Consultations”) in the Early Market Engagement Strategies Guide. For an example of how the meetings could unfold, see the RFS Template.

### 3.11 NEGOTIATION CONSIDERATIONS (CONCURRENT OR OTHERWISE)

An innovation procurement process may involve the negotiation of the form of agreement as part of the competitive process, or with the preferred proponent(s) following the evaluation of proposals.

As an innovation procurement model, the negotiation should involve discussions on increasing the value proposition with innovative ideas and enhancements, and modifying commercial terms with the intention of establishing a mutually beneficial contract. The negotiation is primarily about providing optimal value; it is not about price.

Negotiations can be conducted sequentially or concurrently with the shortlisted suppliers.

The RFS Template includes a basic option to negotiate sequentially, starting with the highest-scoring proponent, and if unsuccessful, moving to the next-highest scoring proponent. This option is framed as a final state in the competitive process, and is not intended to result in significant changes relative to the form of agreement.

The RFS Template also includes optional “Concurrent Negotiation” text, which could be used if concurrent negotiations are to be permitted.

Negotiations can be time consuming and resource intensive on both the suppliers and the purchaser. It is important to ensure that the negotiation process will not be too long or cost-prohibitive to small suppliers. Careful planning and management is critical to avoiding delays or extended timelines and fairness risks.

To be effective, a negotiation process:

- must be clearly stated in the RFP/RFS, including the intention (or option) to negotiate, the structure of the negotiation process, the scope of the negotiation (e.g., what is up for negotiation or what is not up for negotiation), and timing for negotiation to be completed;
- must provide equal treatment and confidentiality to all proponents; and
- should not materially change the original requirements for the solution (as this could undermine the competitive process) – although requirements for the solution can be refined or augmented, making significant changes can pose a fairness risk.

When executing the negotiation phase of a competitive process with negotiation, it is imperative that the purchaser refrain from the following:

- sharing information with one proponent, in response to a question or otherwise, that is not then going to be shared with the other proponents participating in the process; and
- sharing information obtained from one proponent with any other proponent participating in the process.

Concurrent negotiations involve the same principles as “Commercially Confidential Meetings”. See the discussion about “Commercially Confidential Meetings” (as part of the discussion about “Market Consultations”) in the Early Market Engagement Strategies Guide. For the mechanics of how the concurrent negotiations could unfold, see the RFS Template.

### 3.12 CONTINUE TO ASSESS THE MARKET

Based on its own due diligence, and any early market engagement, a purchaser may determine that the only way forward is to engage a supplier to research and develop a novel solution. In this case, it is important that the purchaser not forget that the marketplace continues to evolve.

When planning and executing an innovation procurement that involves a research and development phase, the purchaser should continue to check the market (in 6 to 12 month periods) to see if a solution has been commercialized. If so, this may trigger the purchaser to terminate the innovation procurement process or, if a contract has been awarded, to terminate the contract (if such rights are set out in the contract).

- The RFS Template generally permits the cancellation of the competitive process for any reason.
- Consider whether to include termination provisions in the contract if the market has a commercial solution (likely termination for convenience or at “go” / “no-go” milestones would suffice; see the discussion at 3.13 (Exit Strategy)). Obviously, this is not a right to be exercised lightly, and may be unsuitable for contracts in which both the supplier and the purchaser are heavily invested, and there is no good reason to abandon the current arrangement in favour of a solution that has newly arrived in the marketplace.

### 3.13 EXIT STRATEGY

Given the uncertainty inherent in innovation procurement, purchasers should ensure that the contract provides them with appropriate opportunities to exit the arrangement. Specifically:

- Important milestones should trigger a “go” / “no-go” decision by the purchaser, enabling the purchaser to terminate the contract. For example, if a solution design (acceptable to the purchaser) is not finalized by the supplier by a certain date, the purchaser reserves the right to terminate the contract; or, if there are serious problems with the project participants, the purchaser can terminate the contract.
- Where appropriate, solution and supplier performance standards may also be used to trigger the termination of the contract. For example, if the solution is not able to achieve a certain performance standard (e.g., X transactions per Y time period) within a certain time period or a certain number of testing iterations. In some cases, this exit strategy can be embedded in the acceptance testing regime.

Consider the extent to which the supplier ought to have a similar right to exit any resulting contract – particularly if the contract includes a research and development stage. Suppliers should not be required to invest or participate in future phases if they are unwilling to do so – as this would seriously undermine the effectiveness of the initiative, and likely result in higher cost / lower quality results.

#### 4. AFTER CHOOSING THE INNOVATION PROCUREMENT MODEL

Once you have a sense of the model(s) that would be most effective, you should then consult:

- the RFS Template (and the RFPQ Template, if applicable);
- the Outcome-Based Specifications Guide;
- the Value-Based Evaluation Criteria Guide; and
- the Total Cost of Ownership Guide.

Each of these templates and guides speak to critical elements of the competitive process which need to be documented in the RFP/RFS (and RFSQ/RFPQ, as applicable).

When designing the competitive process, be attuned to the needs of the next phase of the procurement: contract management. Once the competitive process is complete, and a supplier has been selected, the purchaser must then turn to contract management, which presents its own challenges. Among other elements, contracting for innovation requires the purchaser to:

- provide sufficient support and direction to the supplier in the research and development of the solution – effective innovation requires collaboration between the purchaser and supplier;
- ensure that the purchaser has the necessary tools and capabilities to assess whether the supplier is meeting its obligations – including any performance outcomes, and value and quality commitments; and
- deploy those tools and capabilities, and follow-up on under-performance.

Managing the innovation procurement process, and the resulting contract, will be challenging (in a constructive sense). Purchasers should ensure that experienced personnel play a leadership role in these activities, as this will help to mitigate risk.

#### 5. IMPORTANT NOTES

This guide is intended as a resource tool to assist HSPs in developing competitive procurement processes for innovative solutions. It is intended as a general reference, with commentary on issues and options with various innovation procurement models and features. This guide is supplemented by specific guidance embedded in the RFS Template. This guide (and the accompanying templates) do not replace your organization's own procurement policies and processes. The IPT has been designed to be compliant with the BPS Procurement Directive. Organizations should seek legal advice on the application or modification of any template to meet their individual circumstances.

Please read the terms upon which this guide is provided at [www.oc-innovation.ca](http://www.oc-innovation.ca). This guide is intended to be a dynamic document and will be updated over time.

Sources used for developing the documents in the OCE Innovation Procurement Toolkit can be found in the [Compendium of Resources](#) posted on the OCE website. These include examples of how organizations in various jurisdictions have executed early market engagement strategies and innovation procurement initiatives, with their lessons learned and supporting documents.

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# Early Market Engagement Strategies Guide



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## EARLY MARKET ENGAGEMENT STRATEGIES GUIDE

### 1. INTRODUCTION

Organizations typically utilize innovation procurement when there is no existing solution in the market, if significant modifications are required to existing solutions, or when implementing an untested solution. Developing a problem or opportunity statement that clearly articulates the desired outcomes can be challenging, and new approaches to needs assessment and market analysis are required to help formulate those outcomes and associated requirements. Traditional market analysis, where the supplier base, markets and products or services are well known and understood, doesn't typically work when the solution is unknown. Collaboration with suppliers may be necessary to inform and define the outcome-based specifications that will ultimately result in the optimal solution.

The *BPS Primer on Innovation Procurement (Interim)* details seven early market engagement ("EME") strategies and provides advice on when and how to use each of these strategies. This guide provides general guidance on how to derive maximum benefit from the strategies:

Strategy	Definition	Intended Outcomes
Market Sounding	A defined consultation process to assess the reaction of the market to a need	<ul style="list-style-type: none"> <li>Define achievable requirements</li> <li>Increase supplier readiness to respond to procuring needs</li> </ul>
Market Creation	A process intended to generate interest in the supplier community to compete for future procurement opportunities	<ul style="list-style-type: none"> <li>Identify new supplier offerings</li> <li>Increase market competition</li> </ul>
Reverse Trade Show	Events driven by Broader Public Sector (BPS) organizations to encourage new and existing suppliers to consider doing business with the BPS	<ul style="list-style-type: none"> <li>Stimulate new interest to consider doing business with the BPS</li> </ul>
Request for Expressions of Interest (RFEI)	A process which allows BPS organizations to gather information about supplier capabilities, qualifications, and interest in a specific procurement opportunity	<ul style="list-style-type: none"> <li>Understand market capacity and interest</li> </ul>
Forward Procurement Plan ("FPP")	The process of giving suppliers advance notice about the BPS organization's upcoming procurement opportunities	<ul style="list-style-type: none"> <li>Increase supplier readiness to respond to BPS needs</li> </ul>
Trade Shows	Events that allow suppliers in a specific industry to showcase and demonstrate their latest products,	<ul style="list-style-type: none"> <li>Understand the innovative market offerings</li> </ul>

	market trends, and opportunities that might be relevant to BPS organization’s needs	
Unsolicited Proposals	Proposals submitted by suppliers to address a BPS organization’s current or future needs that may or may not have been identified by the organization	<ul style="list-style-type: none"> <li>• Reframe need for future procurement opportunities</li> </ul>

The Health Service Provider<sup>1</sup> (“HSP”) procurement lead plays a key role in these initiatives and must be at the table from the beginning, as the process subject matter expert. The HSP procurement lead should manage the needs assessment and guide the development of the initial problem statement (see Section 1.2), followed by execution of an EME strategy, to improve the fit between the HSP’s stated need and desired outcomes, and the market’s ability to satisfy those requirements. Implementing EME strategies can also create market awareness and foster the development of consortia well positioned to address the various elements of an innovation procurement.

As with any other public procurement, innovation procurement must be conducted in a fair, open and transparent manner and must be in compliance with the BPS Procurement Directive, applicable laws and trade agreements, and with organizational policies and procedures. These requirements apply equally to EME strategies. There are risks associated with using new and innovative processes, and to ensure they are fair and transparent, it may be necessary to solicit legal advice, especially when planning open or commercially confidential dialogue sessions.

When developing an EME strategy and looking ahead to the potential innovation procurement to follow, consideration must be given to how disruptive the process is for both the HSP and the supplier community. To a large extent, both sides are unfamiliar with these new approaches, and the change must be introduced in an appropriate manner. Consideration should be given to the additional time that will be required to ensure the process is thorough and effective, engaging stakeholders early in the process to provide education and secure buy-in. The process will be more impactful if key stakeholders (roles will vary depending on the nature of the procurement) form the project team at the beginning and play a role in executing the strategies. This will create organizational alignment, which is critical to success, and sends a powerful signal to the supplier community.

Although it can increase the complexity, it is always worthwhile to engage with other HSPs and/or Shared Services Organizations (“SSO”) to determine whether they are exploring similar opportunities. Taking a collaborative/collective approach can be advantageous because it provides suppliers with a better understanding of potential scope and scale. Likewise, there can be value in consulting with trade associations in certain solution spaces, and including them in planning of EME strategies, to get reaction and advice and/or to attend sessions as objective observers for the suppliers. At minimum, as part of the preliminary market analysis, HSPs should engage with and visit other HSPs (or non-healthcare organizations) that are pursuing similar solutions, to learn from their experience. Involving the entire project team in this process is a good team building exercise and will help to build excitement about the project.

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<sup>1</sup> HSPs include primary care, home and community care, community health centres, hospitals, long-term care, mental health and addiction services, among others. For purposes of this guide, HSP also includes affiliated SSOs. SSOs can play a key role in engaging internal stakeholders, helping them focus on outcomes and driving the discussion identify opportunities for these initiatives.

### 1.1. STAKEHOLDER ENGAGEMENT

It is critical to engage key stakeholders and subject matter experts (SME) when developing the content, objectives, timelines and other consideration for the early market engagement, to ensure the requirements and/or objectives are properly defined and that all stakeholders impacted by this initiative are engaged in the process (and identified as such to the market). Core stakeholders should form the project team, and be a consistent part of the process, from development of the problem statement and early market engagement documents through consultations to final review of the information collected. This group will likely also form the evaluation team for subsequent competitive processes.

### 1.2. DEVELOPMENT OF THE PROBLEM STATEMENT

An initial understanding of needs or requirements is a precursor to developing any EME strategy. While specific requirements may be fine-tuned through the EME strategy phase, it is important to have a clear problem statement before initiating any strategy. The problem statement should describe the problem, not the preferred or anticipated solution. Start by briefly setting the context, and ensure the facts presented in the problem statement are relevant and compelling. Include metrics if they are available. Gather key facts and then draft a one paragraph statement, per the following example:

Element	Question	Key Facts
What	What is the problem?	Seniors living independently, with mild cognitive impairment, forget to take their medication and have adverse events including falls, leading to visits to the Emergency Department (ED) and potential hospitalization
Who	Who does this problem impact? Clinicians/technicians/patients?	Seniors (patients), family/caregivers, ED staff, other patients waiting in ED
When	When is this problem occurring? In the present? Future? Both?	The problem is current and will continue if a solution is not found to increase compliance with taking their medication as prescribed
Where	Where is the problem occurring?	Typically, these independent seniors are aging in place at home
Why	What is the impact/consequence of not solving this problem?	The consequences of not addressing this often-preventable problem include the impact on quality of life for the seniors and the burden of care on the healthcare organizations

## Sample Problem Statement

Seniors living independently, with mild cognitive impairment, often forget to take their medication and have adverse events including falls, leading to visits to the Emergency Department (ED) and potential hospitalization (*include statistics, e.g. number of ED visits per year*). This impacts the seniors themselves, as well as family/caregivers, ED staff and other patients waiting in ED (among others). The problem is current and will continue if a solution is not found to increase compliance with taking medications as prescribed among these independent seniors who are aging in place at home. The consequences of not addressing this often-preventable problem include the impact on quality of life for the seniors and the burden of care on the healthcare organizations (*include statistics, e.g. % compliance for taking medication as prescribed for a specific patient population*).

## 2. ACTIVITIES

The HSP can engage in numerous activities, utilizing supporting tools and templates as they navigate the various EME strategies. This table provides an overview of which activities are most often deployed with each EME strategy, and the subsequent text provides guidance on how to apply them.

Strategy	Market Engagement Prospectus	Questionnaire	Market Consultation	Written Submissions	Online Platform	Notice to Suppliers	Notice of Procurement
Market Sounding	X	X	X	X	X	X	
Market Creation	X	X	X	X	X	X	
Reverse Tradeshow			X				
Request for Expression of Interest		X	X	X	X		
Forward Procurement Plan							X
Tradeshow			X				
Unsolicited Proposal				X	X		

## 3. MARKET ENGAGEMENT PROSPECTUS

### Market Sounding Prospectus-14

As part of Market Sounding or Market Creation, the HSP may issue a prospectus (*see template*) to generate interest, initiate a dialogue with relevant stakeholders, solicit information and/or lay out the process/steps that will be followed. The prospectus should be issued early in the process to develop a better understanding of the current marketplace and solicit input from suppliers and other interested stakeholders in defining requirements.

Before issuing the prospectus, a notice to suppliers should be issued to signal the opportunity (*see template*). Like the prospectus, the notice should lay out the future steps for the particular opportunity.

Do not underestimate the time required to properly complete this phase. It will take time to ensure key stakeholders are identified and engaged and to generate the prospectus. An appropriate amount of time (dependent on the complexity) must be allowed for supplier responses. In light of this, consider limiting the number of pages allowed in the responses. The length will be dictated by the complexity of the process, and the nature of the information being requested. The final step will be to summarize findings and prepare a report.

Sometimes a prospectus will be issued as part of a Market Creation strategy. Most innovation procurements are exercises in market creation by their very nature, because they are looking for unknown solutions to problems. However, when there is little or no interest in a problem put out into the market, some marketing savvy may be required. The prospectus becomes an important tool in generating the interest that will lead to competitive responses and may require an approach that is more of a “sales pitch”.

Follow these links to examples of Market Sounding Prospectuses issued by the University of Sheffield in the UK ([Sheffield Low Carbon Vending](#)).

## **4. QUESTIONNAIRE**

### Early Market Engagement Questionnaire-09

A questionnaire can be used to solicit information as part of Market Sounding, Market Creation or an RFEI. Using a template provides a guide to respondents, letting them know the information that is important to the process, and providing consistently formatted responses for ease of review. These questionnaires collect information to inform a market consultation or future procurements and should not be formally evaluated when received (e.g., not used for pre-qualification of suppliers).

As each of these strategies has a different focus, it will be necessary to tailor the questionnaire accordingly. In a Market Sounding exercise, where the HSP is looking to gauge the reaction of the market to a stated problem, the emphasis will be on asking the market to assess whether the information as presented in the prospectus is feasible and achievable. It will also seek preliminary input on opportunities for improvement.

When questionnaires are issued as part of either Market Creation or an RFEI, the objective will be somewhat similar. In both strategies, the HSP is looking to assess interest in a stated need. In a Market Creation exercise, the solution should provide sufficient information to stimulate market interest in competing to provide that solution. The questionnaire may therefore include questions about the solution and benefits to be achieved, as well as guiding the suppliers to think more about potential return on investment. The questionnaire associated with an RFEI may also try to gauge potential pricing,

which may inform the HSP's decision making about whether to proceed with the initiative (e.g., the HSP may opt out if the price tag appears too high or may redefine their need to be more affordable).

## 5. MARKET CONSULTATIONS

HSPs may hold market consultation sessions as part of the strategy for Market Sounding, Market Creation or an RFEI, to generate excitement in the market, provide information about the project, educate suppliers on the process and, most importantly, engage in dialogue with suppliers and other external stakeholders. The European Commission suggests starting a “dialogue with the market” from the very beginning of the project.

There are many approaches to market consultations. They may be open sessions with many suppliers in one room, or one on one commercially confidential meetings (“CCM”). Market consultations may be held in one location, or as “roadshows”, where representatives travel around the province or country to reach as broad an audience as possible. An HSP can incorporate market consultations into Trade Shows and Reverse Trade Shows, setting up events like “speed dating” to quickly gain high level information from and about potential suppliers. There is no prescribed format for these sessions. Typically, they will include a combination of presentations and dialogue, whether as a group or one on one.

The project team and subject matter experts will play significant roles in developing the content for the session and should be a consistent presence when there are multiple meetings. It is essential to have the right person manage the development and delivery of these sessions, and this won't necessarily be a subject matter expert. This individual will be managing the process, not the subject matter, and needs to keep the information flowing from supplier to HSP, not the other way around. This could be someone from procurement, or potentially an external facilitator engaged for the purpose. Key criteria in determining how to choose this individual include credibility with the audience, knowledge of the sector and the ability to control a large group of people engaged in an unfamiliar activity.

Whether open or one on one, it is important to document the meeting proceedings. In addition to taking notes for the internal record, establish and communicate prior to consultations that information of a general nature (e.g., Q&A exchanges) will be posted on the online platform for the benefit of all respondents. Prior to the start of one on one, or Commercially Confidential Meetings, ask respondents to clearly identify proprietary and confidential information. It may be necessary to develop new documentation protocols for these consultations, and it is critical to maintain consistency in the way information is documented in all sessions.

### 5.1. OPEN ROOM DISCUSSIONS

Open room discussions will involve information sharing on the part of the HSP, set context, describe the process, introduce concepts such as risk sharing and answer questions. However, the true value of the session will be from dialogue with the supplier community. Open ended questions will encourage suppliers to share experiences, identify key themes and barriers and describe what is happening in the market, all of which will assist the HSP in developing more informed procurement documents. These sessions are also an opportunity for organizations to network, and potentially discover consortium partners.

Explain how meetings will be conducted well in advance (including an agenda). Be specific about topics that will be discussed, and clearly communicate what is not to be discussed. Ensure everyone

understands the rules around confidentiality. Consider asking suppliers to sign a waiver that information shared during open sessions can be used in the procurement documentation.

## 5.2. COMMERCIALY CONFIDENTIAL MEETINGS

One on one meetings may be held to further explore market capabilities in a private forum. Also known as Commercially Confidential Meetings (CCM), these meetings can help to inform the development of the procurement requirements. If HSPs hold CCMs, they must develop a protocol and agenda to ensure all sessions with potential respondents cover the same topics, and that all suppliers are treated equally. They must not provide information to one supplier that could disadvantage other potential respondent, nor should pricing be discussed to avoid future potential bias. Have a script and adhere to it. If holding one on one meetings prior to the commencement of the procurement, it is best to meet with all interested parties, rather than a select few, to avoid any real or perceived conflict or bias. CCMs may also take place within the procurement process. For an example of how the meetings could unfold in the procurement process, see the RFS Template.

## 5.3. MAINTAINING TRANSPARENCY

For all market consultations, whether open or one on one, the principles of openness, fairness and transparency should be foundational to the sessions.

It is recommended that a fairness monitor attend all open and one on one dialogue sessions (and be identified as such), to ensure the process is viewed as fair, open and transparent. The concept of holding dialogue sessions is unfamiliar territory for many purchasers and suppliers, and the HSP does not want its process derailed because someone thinks they have been treated unfairly. The fairness monitor could be the internal procurement representative or a hired independent, although that comes at a cost. Using a fairness monitor can be an important step in mitigating risk for the procurement.

A further critical step to ensure the process is fair, open and transparent is to post summaries of the discussions and all Q&A on a public site (*see online platforms below*), to create a public record and for the benefit of those unable to attend. Posted information should not include confidential information shared by a respondent or attribute any discussions or questions to a specific respondent.



## Tips for Conducting Successful Consultations

1. For events such as market sounding, host them at an early stage in the project process before formulating the procurement plans in detail, but ensure you have enough information to engage the market
2. Prepare thoroughly and invest time in preparing the background documentation; be clear about the issues to be discussed
3. Develop a clear and fair process to invite stakeholders to any exercise; invite as many potential suppliers as possible initially, to encourage competition in the market, but use the process to identify those who can meet the requirements
4. When inviting suppliers to dialogue sessions, ensure your communication is as widespread as possible; do not rely on traditional tendering websites to push notifications; look for other communications media such as through supplier associations and the local Regional Innovation Centre
5. Be consistent about what you say to respondents, and ensure meetings are documented
6. Avoid procurement language such as “proponent” to avoid giving the impression that the market consultation is a procurement initiative; focus on information gathering
7. Communicate the status of the HSP procurement opportunity (e.g., the project has been given financial approval or it is only at the early stages of formation).
8. Encourage creativity: do not restrict scope or try to define the solution
9. Be clear that there is “no selling from the podium” by the supplier participants at dialogue sessions
10. Be open, fair and transparent in all aspects of the process
11. Document, document, document

## 6. WRITTEN SUBMISSIONS

A written submission may take the form of a response to any of the EME strategies, in which case it will follow the format requested in the EME strategy documents.

Written submissions may also be received as unsolicited proposals, in which case they will be submitted in a format determined by the supplier, unless the HSP has a policy/procedure requiring unsolicited proposals to be submitted in a certain format.

### 6.1. UNSOLICITED PROPOSALS

HSPs should establish policies and procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals. The procedures should be transparent and should not be used to circumvent competition. The procedures should also include controls on the reproduction and disposition of proposal material, particularly information identified by the supplier that should be treated as confidential.

HSPs should use the process only to assess products/technologies/services that are not part of any upcoming competitive process (to avoid creating or appearing to create a conflict of interest). It is good practice to use committees to evaluate unsolicited proposals to determine their merit.

Unsolicited proposals should be treated like a written response to any of the other EME strategies. The information in the proposals provides insight into the market and/or new and emerging technologies. This information can be used to inform the requirements for future procurements. HSPs must be careful to develop requirements that do not bias the procurement in favour of the supplier who submitted the unsolicited proposal or divulge the supplier's commercially sensitive information.

If the HSP decides to procure based on the unsolicited proposal, it must comply with competitive procurement requirements unless an exemption to competitive procurement is available. If the HSP intends to proceed on a non-competitive basis, and to award a contract to the supplier that submitted the unsolicited proposal, it may wish to first test the market to ensure there are no competitive offerings, through a process such as an advance contract award notice (or "ACAN").

## 7. ONLINE PLATFORMS

When engaging in any EME strategy, it may be helpful to create a dedicated online platform to enable collection of materials related to market research and needs assessment. Suppliers can upload questionnaire responses and information on their innovative products and services for review by HSP stakeholders. Suppliers should only be able to upload to the site, while designated internal stakeholders should have access to all information, and the ability to share internal documents and comments.

The HSP can also use this site to publish summaries of dialogue or consultation sessions and Q&A that may result from commercially confidential meetings, to ensure all suppliers have equal access to information. Should the HSP decide to publish a report with findings from an EME strategy (excluding commercially sensitive data), it could be published on this site.

As noted above under Market Consultations, posted information should not include confidential information shared by a respondent or attribute any discussions or questions to a specific respondent. It is good practice to advise stakeholders how information on this site will be used and/or shared, both in advance of posting (e.g. through the market sounding prospectus), and by posting the same communication on the site.

The site should not be used to receive formal submissions when and if the initiative moves to the procurement stage. It may, however, have a special application to enable the receipt of unsolicited proposals.

## 8. NOTICE OF PROCUREMENT

### Notice of Intended Procurement-15

There are two ways to look at the Forward Procurement Plan ("FPP"). In the innovation context, it is a mechanism that allows an organization to give advance notice to the market of its intention to engage in future procurement activities. This engages the market, generates interest and potentially allows suppliers to form consortia in advance of the formal procurement. Generally, this type of FPP provides a 4 to 8 week advance notice of upcoming activity.

The more traditional FPP provides the supplier community with information about the status of awards and upcoming procurement initiatives over a 3 to 5 year period. Although an HSP may not be able to predict specific innovation procurement initiatives 5 years out, FPPs should be updated on a regular basis (e.g. quarterly), and potential innovation procurement initiatives should be added at that time.

For example, an HSP may have an existing contract that requires preplanning 18 to 24 months in advance and innovation procurement is an option, or it may have a new opportunity signalled via a notice of procurement.

## 9. AFTER EARLY MARKET ENGAGEMENT: USING THE INTELLIGENCE WISELY

Why do we undertake early market engagement? To gather intelligence that will inform our procurement process and ensure the optimal solution is identified to solve the stated problem and achieve the desired outcomes. Sometimes the HSP is able to determine from the outset how to navigate from early market engagement through an innovation procurement. At other times, the EME strategy informs the way forward, and may lead to a traditional procurement or no procurement at all, depending on what is learned from the exercise.

There must, therefore, be a process in place to review the inputs from the market and summarize the findings that will inform any subsequent competitive initiative. This process should be identified at the outset, to ensure information is properly collected and documented throughout. It is optimal to assign one individual to collate the information and draft a report, soliciting input from internal SMEs and other relevant stakeholders as necessary. This report will enable the identification of the best procurement option and the development of procurement documents with the most up to date and relevant information.

It is also important to see every EME initiative as a learning opportunity from a process perspective, and to apply those learnings to improve the execution of future EME strategies and associated innovation procurements.

## 10. IMPORTANT NOTES

This guide is intended as a resource tool to assist HSPs in developing competitive procurement processes for innovative solutions. It is intended as a general reference, with commentary on issues and options with various innovation procurement models and features. This guide (and the accompanying templates) do not replace your organization's own procurement policies and processes. The IPT has been designed to be compliant with the BPS Procurement Directive. Organizations should seek legal advice on the application or modification of any template to meet their individual circumstances.

Please read the terms upon which this guide is provided at [www.oc-innovation.ca](http://www.oc-innovation.ca). This guide is intended to be a dynamic document and will be updated over time.