

## Market consultation

A market consultation is a way of consulting market parties about a proposed tender. You can use the knowledge you have built up during a market consultation to optimally formulate your request.

### 1. When should you use a market consultation?

Desktop research cannot answer all questions about the knowledge and opportunities offered by the market - for one thing, not all information is in the public domain. It's therefore wise to put additional questions to market parties. What, for example, would be a good way of formulating the request? Is the request ambitious enough and at the same time feasible for the market? What should be included in, or left out of, the Schedule of Requirements? A market consultation can answer these questions. You could also further research how you could work with the market and what the benefits of purchasing an innovative solution may be.

Governments are sometimes afraid that contact with the market may turn out to be unlawful. Such fears are unnecessary: as long as you observe the principles of openness, fairness and transparency, a market consultation is a lawful interaction with the market. A market consultation is without commitment from either side.

During a market consultation aimed at the purchase of an innovation it is obvious that you should focus attention on:

- Creative ideas from the market.
- Conditions for solving the problem.
- Opportunities for market parties to work with each other and with the government.
- The risk appetite of your own organisation.

### 2. Step-by-step plan

You can follow the step-by-step plan below in order to conduct a market consultation. A more detailed description can be found by consulting PIANOo's [Handreiking Marktconsultatie](#).

We are assuming in this instrument that you are clear about the goals you want to achieve. If not, you could first carry out a need analysis.

#### Step 1: decide what form the market consultation will take

There are various forms to choose from:

- Open or closed: open to everyone, or restricted to a select number of market parties.
- Written or oral: by means of a questionnaire or an actual meeting.
- Interactive or not: is the dynamic during the meeting only 'send', or also 'receive'?

The following table summarises the advantages and disadvantages of various forms.

Form	Advantages	Disadvantages
Closed market consultation: selection of parties to engage in consultation	Efficient to conduct Focused on recruiting the necessary expertise Greater depth of consultation	Lacks information and reflection of a number of parties

		Has appearance of preferential treatment No analysis of opportunities for collaboration
Written consultation	Individual responses to questions by parties Suitable for simple questions All (selected) parties have an equal chance and the opportunity to answer questions	Little scope for profiling Little scope for pursuing questions and explaining answers
Oral consultation (one-on-one)	Greater depth and scope for pursuing questions and explaining answers Better suited to more complex issues Greater scope for profiling and image-building	Substantive discussions demand many of the competencies of the contracting authority
Interactive consultation	The parties consider each other's answers Interaction between the parties Greater scope for profiling and image-building	Some parties will not get a sufficient chance A few parties can take control of the consultation The first answer can set the tone of the consultation The parties may be inclined to answer less openly due to the presence of competitors

See the Handreiking Marktconsultatie for a detailed description of the various forms.

### Step 2: prepare the market consultation

- Decide what information you want to obtain, and from which parties. For this purpose, you could rely on a market analysis.
- Consider possible payment to the participating market parties, according to the degree of input you expect from them.
- Decide how you can obtain the information as simply as possible, without thereby making any promise about the award of the contract.
- Set out your questions in a market consultation document. For an example of this, see the [RWS-CHARM project](#).
- Draft your questions clearly and precisely, so that market parties are able to provide quick and short answers. This keeps the investment you require from market parties to a minimum.
- Indicate clearly that the consultation is without commitment (participating in the market analysis creates no obligations) and that no rights can be derived therefrom (participation does not lead to any advantage or disadvantage in the tendering process).

- Make it clear what you will do with the information you receive from the market parties and what you will include in the report of the market consultation.
- Indicate how you will handle the confidential information of the market parties and the way in which market parties can inform you that any information is of a confidential nature. Have regard here to the [Dutch Freedom of Information Act](#).  
#Select the parties that you wish to approach separately and/or via a prior public announcement in the form of published notice.

### Step 3: hold a meeting

Here are some tips regarding aspects of transparency and communication.

- Emphasise in advance the rules governing transparency, objectivity and equal treatment.
- Ensure the process is clear and that the atmosphere during oral consultations and interactive sessions is informal.
- Use open questions to challenge participants to respond, since you want to make use of the knowledge and expertise in front of you. Offer the parties the opportunity to ask questions themselves in response to the market consultation document. The better they understand your questions, the better they can answer them.
- Both the participating market parties and people within your own organisation can give a presentation.
- Have someone take a written record of the market consultation.
- Keep a good record of the market consultation: put all important points, solutions and – most importantly – the information that you supply to the market parties – on paper. Write a report of each one-on-one discussion and make these reports available to the participating parties.

### Step 4: complete the market consultation

At the end of the market consultation it is important to properly disclose all relevant information and to draw your own conclusions from this information.

- Decide which information you will use for the Schedule of Requirements, the allocation of risk between the contracting authority and economic operator, the payment procedures and the ultimate request.
- a. Draw up the report of the market consultation, in which you describe in broad terms the information you have obtained. Do not refer to specific market parties or to commercially sensitive information.
- Disclose the report of the market consultation to the participating parties and other interested parties.

### Step 5: use the results of the market consultation in formulating the request

- Decide on the definitive procurement strategy. What consequences does the market consultation have for the form of tendering process and the formulation of the request?
- Ensure that the information you have received does not lead to the request being focused upon a specific market party.
- Attach the report of the market consultation to the description of the request, so that all interested parties have the same information at their disposal.

- If the request contains important information that had been supplied earlier to selected market parties via the consultation document, you should then extend any deadlines for registration and request to participate. By doing so, you compensate for any possible benefit of receiving information sooner.

Tip: after awarding a contract, hold a meeting with the parties that participated in the tendering process. Explain the reasons behind the substantive choices that you made during the tendering process, so that such parties can understand the decisions taken.

### 3. Legal framework

A market consultation is a justifiable and lawful tool to help you draft an optimal request. It is justifiable and lawful because European legislation (Directive 2004/18/EC, incorporated into Dutch law by means of the Rules for Tendering Government Contracts Decree ('the BAO') makes no specific demands of the market consultation. In fact, a market consultation can take any form. You can therefore decide for yourself how – before issuing the tender – you give substance to interaction with market parties. This is not to say that there are no rules at all concerning market consultation. A market consultation must always be open, fair and transparent. No market party may have an advantage over its competitors by participating in the market consultation.

A contracting authority that ensures that all parties are supplied with the same information, that it has given the parties sufficient time to submit a tender, that it shows no preference and that it makes effective agreements in advance regarding the confidentiality of competition-sensitive information may, in principle, exchange all desired information during a market consultation without thereby incurring any legal risks.

A market consultation puts neither the government nor any participating party under any contractual obligations.

There are opportunities to talk with the market *during* the tendering process. An example of this is the competitive dialogue.

### 4. Further information

[Handreiking Marktconsultatie - PIANOo – September 2011](#)

[Marktconsultatie RWS](#)

### 5. Possible goals of a market consultation

(from the leaflet: PIANOo Handreiking Marktconsultatie).

You can check...

- whether the contract is feasible and the proposed preconditions are realistic.
- whether private parties are interested in, and are capable of, performing or implementing the contract.
- what the roadmap is, and what the future developments in the market are – in terms of active products and active parties.

- whether the specified need will lead to the optimum solution for your own organisation.
- whether there needs to be a functional or technical specification and what standards may be relevant.
- whether there is sufficient capacity in the market.
- whether the market has a solution for a functionally worded request.
- whether there are innovative solutions for a problem.
- what opportunities the market parties see for meeting minimum standards, even on a smaller budget.
- whether a project is substantively and financially feasible.
- whether market parties are interested in the contract.
- whether solutions may lie in alternative areas.
- to what degree economic operators/suppliers are qualified.
- whether the market can meet the required standards.
- what the best procurement strategy is.

#### 6. Source

This information was taken from the “Innovation Procurement for Contracting Authorities” document that was prepared by [PIANOo](#) in 2017.