European Innovation Council

EIC Innovation Procurement toolkit

European Innovation Council – Strategic use of procurement to open up business opportunities for EIC innovators.

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Executive Summary

Chapter 3 – Module B Non-Research & Development (R&D) Procurement

Non-R&D procurement or Public Procurement of Innovative Solutions (PPI) is a procurement approach by which public buyers act as launching customers for innovative solutions that are not yet commercially available on a large scale (TRL=9), providing a stable demand to incentivise suppliers to invest in mass production and improve their product offerings.

PPI offers suppliers an opportunity to introduce their innovative solutions into the public sector, facilitating wider deployment. PPI does not involve Research and Development (R&D) like Pre-Commercial Procurement (PCP) but may require validation and testing to verify that the solutions meet the public sector's specifications in terms of quality, functionality and cost.

This Module explains what non-R&D procurement encompasses and why it is interesting for your business. Participation requirements, tendering process, Intellectual Property Rights, liability and risks from the supply perspective are underlined. Main aspects on contract performance, ESG & ethical criteria, common topics and a checklist are highlighted.

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Module B

Non-R&D Procurement (Draft)

3. Innovation public (non-R&D) procurement

3.1. Introduction

3.1.1. What does non-R&D procurement encompass? Why is it interesting for your business?

As mentioned in other Chapters of this Toolkit, innovation procurement includes: a) the development of innovative solutions through the procurement of research and development services; b) the procurement of innovative solutions that are not yet available or do not exist on the market; and c) the procurement of innovative solutions that do exist, but are not yet widely available on the market.

This Module deals with the cases (b) and (c) above, and more specifically under the so-called Public Procurement of Innovation Solutions (PPI) approach using the available procedures (open, restricted or negotiated) for the award of contracts.

The main legal bases for PPI in the EU are the European Public Procurement Directive 2014/24/EU, the Utilities Directive 2014/25/EU, the Concessions Directive 2014/23/EU and the Defence and Security Directive 2009/81/EC).

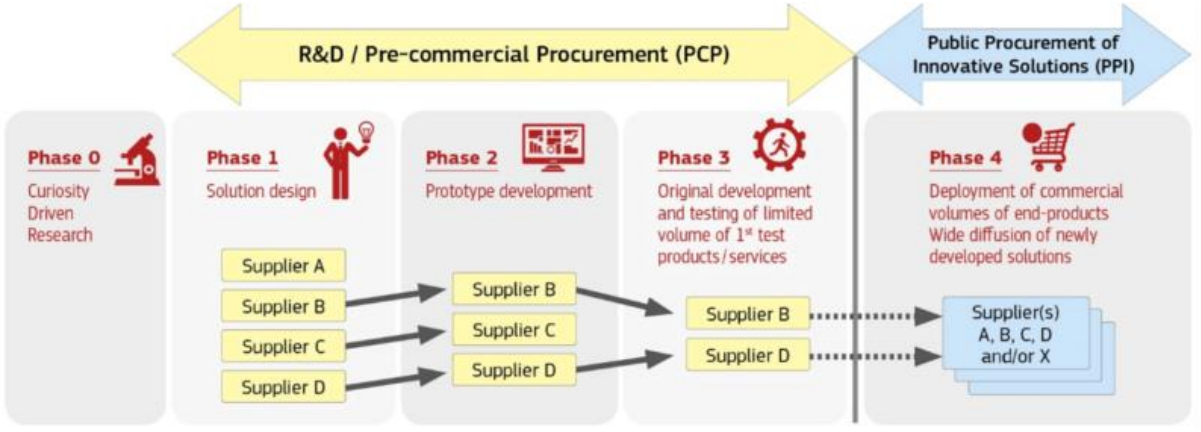

Figure 1. PCP and PPI

Public Procurement of Innovative Solutions (PPI) is a procurement approach by which public buyers buy innovative solutions to cover their needs. Public sector organisations act as launching customers for innovative solutions that are not yet commercially available on a large scale (TRL=9), providing a stable demand to incentivise suppliers to invest in mass production and improve their product offerings.

The innovative solutions could be existing products or services being applied in a novel way or entirely new offerings that are just about to be scaled for broader use. PPI generally offers suppliers an opportunity to introduce their innovative solutions into the public sector, facilitating wider deployment. PPI does not involve Research and Development (R&D) like Pre-Commercial Procurement (PCP) but may require validation and testing to verify that the solutions meet the public sector's specifications in terms of quality, functionality, and cost.

Some aspects worth mentioning in the context of PPI are:

1. Preliminary Market Consultation (Article 40 Directive 2014/24/EU)

Public buyers engage with the market to assess its capabilities, identify innovative solutions, and ensure the feasibility of their procurement goals. The dialogue with the market reduces uncertainty and allows for better-informed technical specifications. Suppliers play a crucial role in this stage, informing public buyers about the state-of-the-art technologies and solutions during preliminary market consultations. This interaction helps shape tender requirements, ensuring these are realistic and inclusive of innovative approaches.

2. Technical Specifications (Article 42 Directive 2014/24/EU)

Public buyers may draft specifications conducive to encourage innovation. Suppliers must comply with the requirements which could be more descriptive or defined in functional terms to allow for flexibility in meeting performance outcomes.'

- **Descriptive Specifications:** define exact characteristics, suitable for mature markets, but less conducive to innovation.

- **Functional Requirements**: define not what the solutions are but what the solutions should do, pointing out to outcomes or performance goals, granting suppliers flexibility to propose innovative methods or technologies to meet the objectives.

3. Variants (Article 45 Directive 2014/24/EU)

The EU public procurement directives allow for the request of "variants" (alternative solutions) provided that they are linked to the subject-matter of the contract and indicated in the prior information notice or contract notice calling for competition. When public buyers authorise or require variants, they must state the minimum requirements to be met by variants.

Suppliers can propose novel approaches, alongside traditional offerings, that deviate from standard specifications while still meeting minimum requirements. This mechanism enables suppliers to highlight the added value of their innovation, particularly in terms of cost-efficiency, sustainability, or quality.

4. Award Criteria (Article 67 & 68 Directive 2014/24/EU)

From the point of view of the contracting authority, the "Most Economically Advantageous Tender" (MEAT) shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance and life-cycle costs to select offers that deliver long-term value.

- **Price:** Solely evaluated on price for specific cases may be insufficient for driving innovation.

- **Cost:** Incorporates life-cycle costing (LCC) to account for acquisition, operation, maintenance, and disposal expenses.

- **Best Price-Quality Ratio (BPQR):** Considers environmental, social, and innovative aspects, rewarding superior performance.

Therefore, suppliers with innovative solutions that deliver life-cycle cost savings or address specific public needs, such as environmental or social objectives, are in general more likely to succeed.

5. Intellectual Property Rights (IPR) Management & Strategy

Effective IPR strategies in PPI can significantly impact innovation. The EU public procurement directives and State aid rules leave open the choice to require in the tender documents a transfer of intellectual property

rights from the participating economic operator to the public buyer.

On one hand, public buyers must decide whether to retain, share, or leave ownership of IPR with suppliers. On the other hand, suppliers retain the ability to commercialise their innovations under specific conditions. Overall, public buyers can allow suppliers to keep their IPR for exploitation, provided the public sector's access and usage rights are protected in a reasonable manner. This arrangement incentivises suppliers by enabling them to reuse and improve their solutions for other markets.
IPR distribution possibilities.

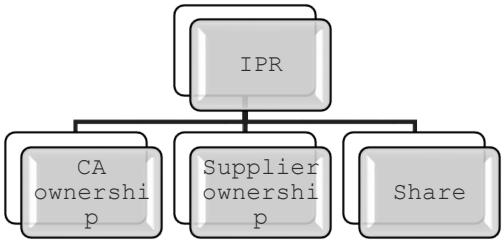

Figure 2. IPR distribution possibilities

6. Contractual Terms and Performance

Some provisions that public buyers may use to ensure the delivery and continuous improvement of innovative solutions are:

Performance Indicators: Measurable quality and efficiency benchmarks.

- **Exit Clauses:** Provisions for terminating contracts if solutions underperform or become obsolete.
- **Value-Engineering (VE):** Encourages suppliers to enhance the solution's quality and cost-effectiveness during implementation, potentially earning performance bonuses, sharing savings and incentivising suppliers to further optimize their solutions during contract execution.

Suppliers must meet these criteria while remaining agile to accommodate potential modifications (Article 72 Directive 2014/24/EU) that may arise from the evolving needs of the public buyer.

7. Fair Competition and State Aid

A Public Procurement of Innovative solutions must adhere to the principles of fairness, transparency, and non-discrimination, ensuring a level playing field by maintaining competitive procurement processes. Suppliers must receive payments aligned with market conditions to avoid unlawful State aid. Compliance with state aid rules is essential not only for legal compliance but also because it assures suppliers that their participation will not be impeded by market distortions or unfair practices.

Key focus aspects for Suppliers

From the point of view of suppliers, some key aspects to take into account are:

1. Understanding Procurement Needs

Public sector procurement processes outline clear functional requirements and performance expectations for innovative solutions. It is essential for suppliers to thoroughly analyse these requirements, ensuring they comprehend the end-users' needs and can demonstrate how their product or service fulfils these expectations.'

2. Demonstrating Market Readiness
Suppliers must provide evidence that their solutions are either ready for commercial deployment or require minimal adjustments to align with public sector specifications. This evidence may include product certifications, results from prior testing, or data from early-stage field trials.

3. Preparing for Conformance Testing and Certification
Suppliers should anticipate engaging in testing procedures to verify compliance with quality and performance standards. This process may involve third-party evaluations or certifications, necessitating adequate preparation and resources.

4. Meeting Volume and Price Expectations
Public procurement often demands scalability and cost-effectiveness. Suppliers should ensure their solutions can be delivered at the required scale and remain competitively priced for large-scale implementation.

5. Ensuring Compliance with Procurement Regulations
Public Innovation Procurement must comply with the principles of transparency, equal treatment, and non-discrimination. Suppliers must ensure adherence to these legal frameworks to maintain eligibility throughout the process.

6. Preparing for Competitive Tendering
Once the public sector finalises its requirements, suppliers will participate in a formal tendering process. This stage requires comprehensive submissions, including technical specifications, project timelines, and cost structures, which must be prepared with precision and professionalism.

7. Managing Intellectual Property Rights (IPR)
Suppliers must have a clear strategy for managing intellectual property, including ownership, licensing, and usage rights. Public sector contracts may require negotiations regarding the use or sharing of IPR, particularly if the solution is to be deployed more widely or if third parties are going to be involved.

8. Providing Post-Contract Support
Following contract award, suppliers are expected to monitor solution performance, offer ongoing support, and address any emerging issues. Effective post-contract engagement is vital to ensure the solution continues to meet the public sector's long-term objectives. In summary, the main elements of the PPI approach are:

a) a critical mass of purchasing power on the demand side;

b) an early announcement of the innovation needs (with the required functionality/performance, and possibly also price requirements) of a buyer;

c) the potential conformance testing and verification of the innovative solutions; and

d) the actual public procurement of the innovative solutions, one of the procedures listed in the Directive 2014/24/EU, as delineated and defined in the relevant provisions.

More details about all these elements can be found in the following sub-sections of this Module.

Why is PPI interesting for your business?

PPI presents a unique opportunity for suppliers, especially those developing innovative products and services, to bring those innovations to the market. PPI helps suppliers overcome market barriers and achieve large-scale commercial success, provided they properly leverage the purchasing power of the public sector.

In the sub-section 3.1.3., concerning Marketing and Business opportunities, a more detailed analysis of the benefits that innovation public (non-R&D) procurement can have for an economic operator will be offered. Nonetheless, a small introduction to this topic, and a brief summary of the main points of interest, is necessary at this point, and is offered below.

Overall, economic operators that engage in these procurement processes can benefit in numerous ways, without the resource demands and risks associated with R&D. When awarded a public sector contract, companies receive a form of market validation, signaling reliability and commercial readiness, which aids in attracting investors and new clients. Public procurement also bolsters competitiveness, allowing companies to demonstrate responsiveness to complex public needs while fostering knowledge transfer through collaboration with public sector experts.

Additionally, these engagements can establish long-term partnerships, creating repeat business opportunities and further collaboration potential. This process offers companies direct access to large, stable markets, including new sectors and international regions, helping them scale and expand. Furthermore, participation aligns companies with sustainability and social responsibility goals, positioning them as leaders in addressing environmental and societal needs. By focusing on existing solutions, companies enjoy faster time-to-market and lower development risks, allowing for quicker revenue generation and reduced uncertainty.

Conclusively, non-R&D public procurement presents a strategic pathway for companies to innovate, grow, and make meaningful contributions to public needs.

3.1.2. How can suppliers contribute to the preparation of the procurement?

Suppliers can provide feedback to public procurers before a tendering process has started, in the preparatory stage of the procurement, when a state-of-the-art (SOTA) analysis is performed to identify the maturity of available solutions, and during market consultations. Activities such as (e)pitches, webinars, fairs, exhibitions, and/or questionnaires, are often suitable ways to interact with suppliers.

The **SOTA analysis** refers to the latest level of development, knowledge, and innovation attained in a specific field at a particular time. SOTA encompasses the most advanced technologies, methodologies, and scientific insights available for a given domain, solution, device or procedure.

Analysing the SOTA can be complex but immensely valuable. For example, in Medical Device Clinical Evaluation, a SOTA involves a structured literature search to understand current medical practices, treatment alternatives, and competitors. Such information is pivotal for defining risk management, device claims, acceptance criteria, and clinical evaluation strategies. A SOTA analysis guides manufacturers in setting acceptable performance standards, selecting appropriate clinical endpoints, and devising data collection plans for both pre-market and post-market phases.

In the example of medical device, manufacturers are required to conduct comprehensive clinical evaluations to demonstrate the safety and performance of their products. The assessment must consider the current SOTA, including relevant scientific literature, clinical data, and technological advancements. By incorporating SOTA into the clinical evaluation process, manufacturers can ensure that their devices meet the highest standards of quality and efficacy. Several databases (like PubMed, Medlin, Embase, IEEE explore, etc.) are commonly used for conducting SOTA assessments in the field of medical devices. These databases provide access to a wide range of research papers, publications, patents, clinical trials, regulatory documents, and other relevant sources of information. By incorporating the latest advancements and scientific insights into

the evaluation process, manufacturers can demonstrate the safety, performance, and effectiveness of their devices with greater precision.

During the **Open Market Consultation (OMC),** suppliers can respond to a Request for Information (RfF) questionnaire and participate in activities aimed at providing insights on the technology readiness of existing solutions, specific functionalities, and intellectual property rights (IPRs). Suppliers can also make comments about the foreseen planning, timelines, budget, and other specific conditions of the future procurement procedure. (See also Chapter 2 Module A, section 2.1.2).

In the EU context, a **Prior Information Notice** announcing a market consultation is published to inform the market about the consultation and create awareness of the industry. It includes – among other aspects – information about the public buyers, the future procurement and the place where suppliers can find any relevant documents.

In the interactions and exchanges with public procurers, suppliers must safeguard their assets and avoid providing confidential information, unless a safe channel for this purpose has been explicitly defined to handle data in a manner in which no specific details are revealed. This is particularly important in the case of trade secrets.

Since the preparatory phase – in which the market consultations are conducted – and the tendering phase are separate, there is a **presumption of absence of conflict of interest** or distortion of competition in relation to the participation of suppliers in the market dialogue.

The OMC must be conducted in **compliance with the principles of transparency, non-discrimination, and equal treatment**. Sensitive information must be handled with utmost care, and the results should be communicated through, for example, the publication of a market consultation report. Furthermore, a future tender will allow the participation of any other interested suppliers to submit a bid on equal conditions, regardless of whether or not they participated in the OMC.

Public procurers will **base their choice of procedure on the maturity of solutions** that can tackle their problems. As such, in non-R&D procurement or public procurement of innovative solutions (PPI), public procurers acting as early adopters need to be sure that the solutions are already available or closer to the market, and that no, or limited, R&D is needed to achieve the required functionalities.

The maturity of solutions will be assessed based on their **Technology Readiness Levels (TRL).** Suppliers can play an important role regarding the information on the TRL of their solutions. Additionally, public procurers may wish to perform conformance testing of solutions. This is done to verify that there are indeed solutions that can meet their needs, before actually procuring the innovative solutions.

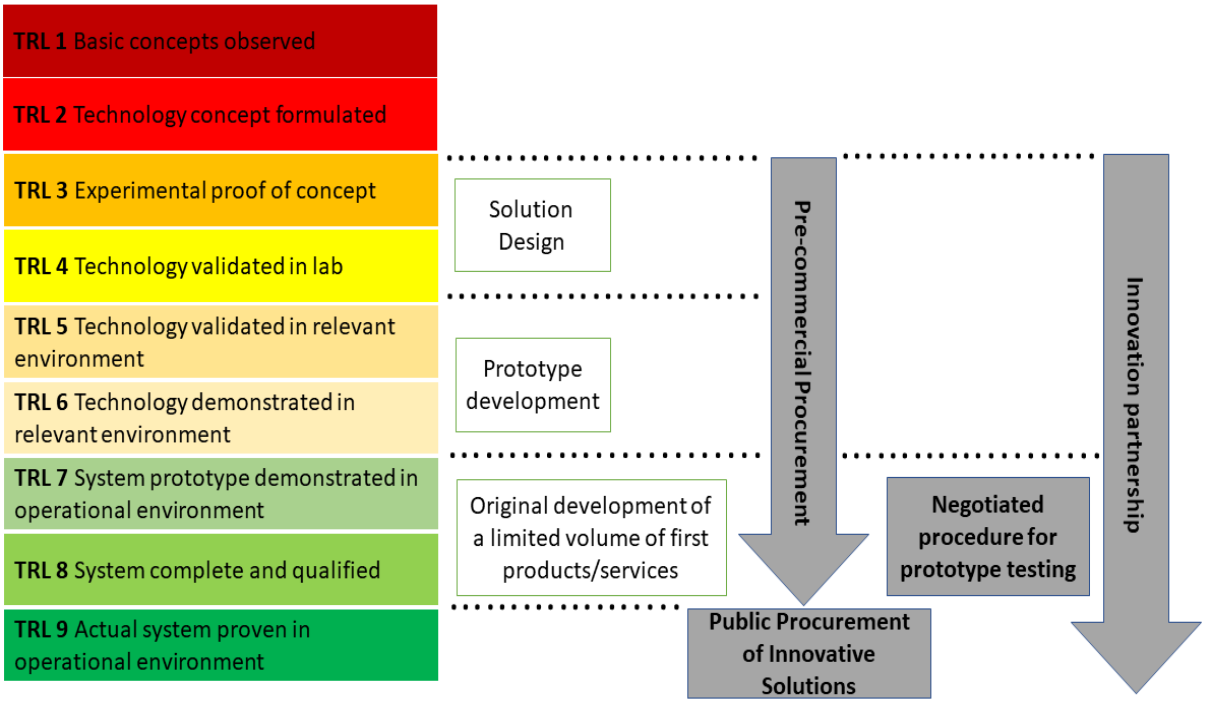

Figure 3. Innovation procurement procedure based on the Technology Readiness Levels (TRL)

3.1.3. Marketing and business opportunities

When companies participate in a public procurement of non-R&D services, they are leveraging existing innovations to meet public sector demands. This type of procurement concentrates on deploying already developed solutions in response to public needs, rather than engaging in the R&D process itself. Companies can gain significant benefits from participating in these procedures. A detailed analysis of those benefits can be found below.

1. Market Validation and Commercialisation

Market validation: Companies get validation of their existing product and services by taking part in the procurement of non-R&D services. Obtaining a contract through this process provides a powerful recommendation from a reputable public body; it is a "seal of approval" for forward-thinking businesses, verifying the market viability and proving that the product satisfies demanding requirements. This validation can be a key factor in attracting additional customers, partners, and investors, as it signals that the product has passed stringent assessments.

Commercialisation path: Contracts with the public sector can serve as a launching pad for more extensive commercialisation by giving companies a stage on which to present their inventions and demonstrate their economic feasibility.

2. Increased Competitiveness

Market leadership: Participation in a public procurement of non-R&D services allows companies to showcase their capacity to provide innovative solutions to address challenging public sector needs. This enhances their position in competitive bids by demonstrating their flexibility and responsiveness to market demands and allow them to gain a competitive advantage.

3. Knowledge transfer and learning

Expert collaboration: Companies frequently collaborate closely with researchers, experts, and other stakeholders in the public sector when they participate in the procurement of non-R&D services. Through this partnership, a company will have access to a wide range of knowledge and experience which will improve its comprehension of the market, the regulatory landscape, and technical challenges.

4. Long-term partnerships

Establishing and fulfilling contracts for non-R&D services: can pave the way for enduring collaborations with public sector organisations. Because public authorities frequently choose to work with reliable suppliers who have a track record of success, these partnerships may lead to repeated business. Long-term alliances may also pave the way for additional chances for cooperation, including joint ventures, co-development projects, and participation in bigger consortia tasked with taking on significant public challenges.

5. Access to new markets

Public sector markets: Participation in the procurement of non-R&D services provides companies with direct access into the public sector market, which is often big, stable, and full of business opportunities. A company's reputation can be improved, and it can gain access to new sectors and markets within the public domain, which will make it simpler to get contracts in other industries. Strategic markets like healthcare, education, transportation, and smart cities are frequently represented by clients in the public sector.
Global expansion: Successful participation in the procurement of non-R&D services can provide companies with credibility which can facilitate their international business expansion where similar procurement processes exist. Many public sector products are scalable and adaptable to different regions, enabling companies to take advantage of their knowledge and expertise, and offer goods and services in previously untapped markets.

6. Development of Sustainable and Socially Responsible Solutions

Focus on sustainability: Participation in the procurement of non-R&D services places a growing emphasis on implementing environmentally friendly, sustainable solutions. Companies that take part in these initiatives can establish themselves as industry leaders in sustainability and satisfy the rising demand for environmentally friendly products and procedures.

Social impact: Companies can support social goals, such as expanding educational opportunities, creating work opportunities for minorities, and improving public health by engaging in the procurement of non-R&D services. This not only improves a company's reputation as a brand, but also fits in with larger societal objectives. This can draw in more socially conscious investors and clients.

7. Faster Time-to-Market

Faster delivery: Companies can gain from faster implementation and sales cycles since non-R&D services procurement focuses on existing solutions rather than R&D. The time between winning the contract and implementing the solution is much faster because there is no need to wait for thorough development or prototyping. That can lead to faster revenue generation and market access.

Less uncertainty and risk: Companies have less performance and delivery uncertainty when their products are already developed. In order to get quicker returns on investment, the emphasis switches to scaling up, fine-tuning, or responding to particular public demands. This enables companies to expand proven products or technologies that have already been validated in other industries or geographical areas. The public sector frequently acts as a large buyer, which can greatly increase an existing solution's scalability.

8. Lower Development Costs and Risk

No R&D Required: Procurement of non-R&D services enables companies to avoid the high costs and uncertainties involved with product development, in contrast to the procurement of R&D services, which

entails the risk and expense of creating new solutions through R&D. Companies can lower technical and financial risk and get more predictable results by implementing pre-existing solutions.

Focus on Adaptation: Customising and adapting an existing solution to satisfy unique public sector demands typically entails less risk and investment than starting from scratch. This enables companies to focus their resources on adapting and optimising their products for various markets or industries.

3.2. Participation requirements

In non-R&D procurement, participation requirements are critical for ensuring that suppliers possess the economic and financial capabilities to deliver and deploy their solutions effectively. While these requirements may resemble those of R&D procurement in some respects, non-R&D contracts focus more on practical considerations for solution deployment, readiness for scaling, and market capabilities. Below are the key participation criteria.

- **Economic and financial standing:** Suppliers must demonstrate financial health to implement the contract and deal with any potential issues that arise during the performance thereof. For instance, contracting authorities might require evidence of sufficient turnover in the last few years to ensure the supplier's ability to handle the contract's financial requirements.

- **Operational and deployment capacity:** Unlike R&D procurement, which focuses on innovative technical capacity, non-R&D procurement places emphasis on the supplier's ability to deliver and deploy existing solutions. This includes logistical capabilities, supply chain management, and after-sales services, especially when contracts involve large-scale deployment across different countries or regions.

- **Geographic and market presence:** In non-R&D contracts, especially those involving widespread or multinational deployment, suppliers may be required to demonstrate their presence in specific markets and/or geographic areas. This includes existing infrastructure, personnel, or partnerships that support deployment and service delivery in relevant regions.

- **Compliance with product or service standards:** Non-R&D procurement contracts may place a stronger focus on the compliance of existing products or services with regulatory standards. Suppliers may need to show that their products meet safety, environmental, or performance standards set by the procuring entity or international bodies. These standards are often predefined for non-R&D contracts, since the products are market-ready.

- **Technical experience in deploying similar solutions**: While R&D contracts emphasise innovation and technical development, non-R&D procurement seeks suppliers with proven experience in implementing similar solutions. Suppliers may be requested to demonstrate that they have successfully deployed the same or comparable solutions in other projects.

- **Requirement to accept certifications and lists from other countries:** Like R&D procurement, non-R&D procurement often involves cross-border participation. Suppliers must be ready to provide documentation and certification that meets the standards set by other EU countries or certification bodies to facilitate cross-border procurement.

In non-R&D procurement, the key distinction lies in the focus on delivery, market-readiness, and operational capacity rather than the innovative technical capabilities required in R&D contracts.

3.3. The tendering process

The procurement procedure begins with the publication of a formal announcement in the form of a **contract notice** in the European Tenders Electronic Daily or a national procurement platform. The contract notice includes information about the public procurer, the type of contract, and the tender documentation. That information, naturally, changes on a case-by-case basis.

The type of procedure used by public procurers could be **open, restricted or negotiated**, as described in the table below. The restricted and negotiated procedures are two-stage procedures, meaning that there is a selection process before the invitation to submit a bid.

After the publication of the contract notice, there is a period in which suppliers can submit questions about the tender documents and the procurement process; and a defined deadline for the submission of proposals, more commonly referred to as "tenders" or "bids", which are used as synonyms in this toolkit.

The **tendering and evaluation of bids** in a non-R&D public procurement is similar to the procurement of R&D (See also Chapter 2 Module A, section 2.3). Alike R&D procurement, in non-R&D procurement, the criteria will be finetuned to the particular subject-matter of the contract and the related conditions.

During the tendering stage, in other words when the procedure for the award of a contract has been published and before the deadline for the submission of bids, suppliers can ask questions, and make comments, about the content of the tender documents, through the channels indicated therein.

The tender documents will describe the form and requirements for the submission of bids, usually through electronic or digital platforms. For the submission of eligible bids, tenderers must comply with the administrative, technical, and financial requirements set in the tender documents. For example, a tenderer shall demonstrate the capacity to deliver innovative solutions or services in compliance with the particular conditions set by the public procurer.

Following the receipt of bids, the assessment of the **administrative, technical, and financial aspects**, based on the evaluation scheme, is performed by the procurement bodies established in the tender documents. The bids are assessed against previously defined **exclusion, selection, and award criteria**, tailored on a case-by-case basis.

In general, for the exclusion and selection criteria, suppliers are requested to sign a declaration of honor and to provide evidence of their capability in relation to the specific **subject matter of the contract**.

The award criteria are related to the **quality of the proposal** and how it complies with the identified functional needs, the methodology, the planning, and the staff assigned. The financial aspects relate to the proposal's price offered in the bid and the value to be delivered.

The results of the evaluation and the **ranking of bids** are communicated to the tenderers, following which a provisional contract award is issued.

The final **award of the contract** will take place after a standstill period (typically 10 – 15 days, depending on the national provisions), provided there are no challenges to the decision to award the contract. A contract award notice is then published, including the details of the successful contractor.

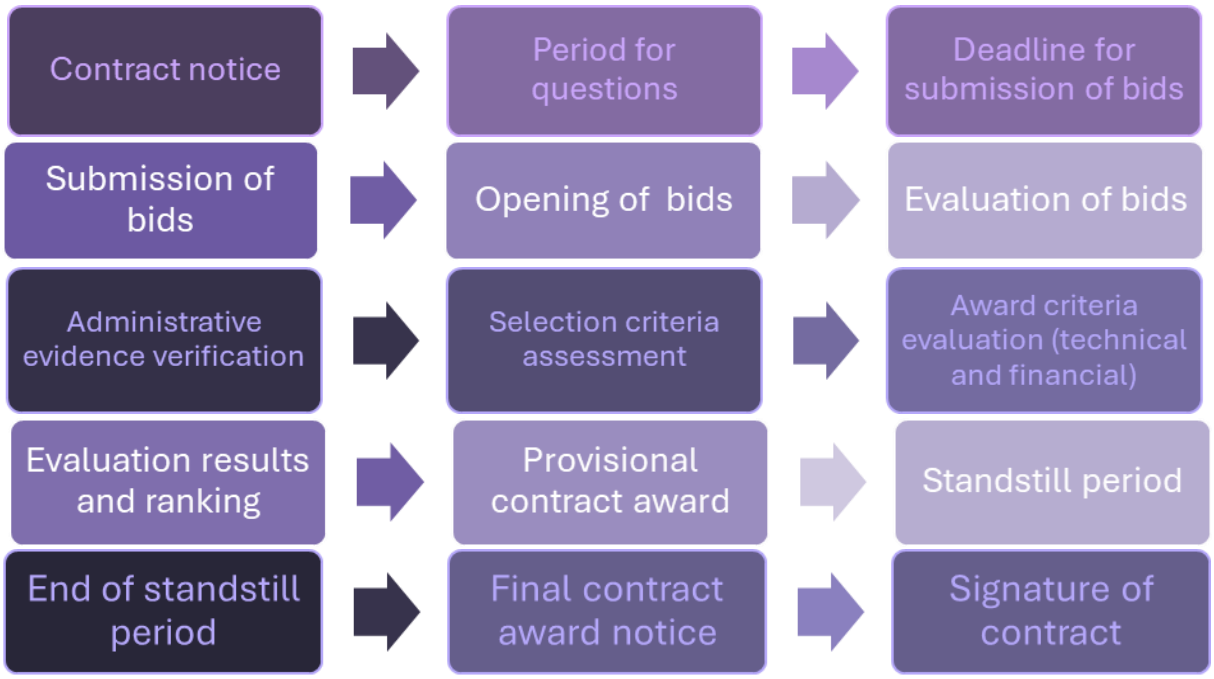

Figure 4. Tendering process in an Open procedure from the contract notice to the final award and contract signature

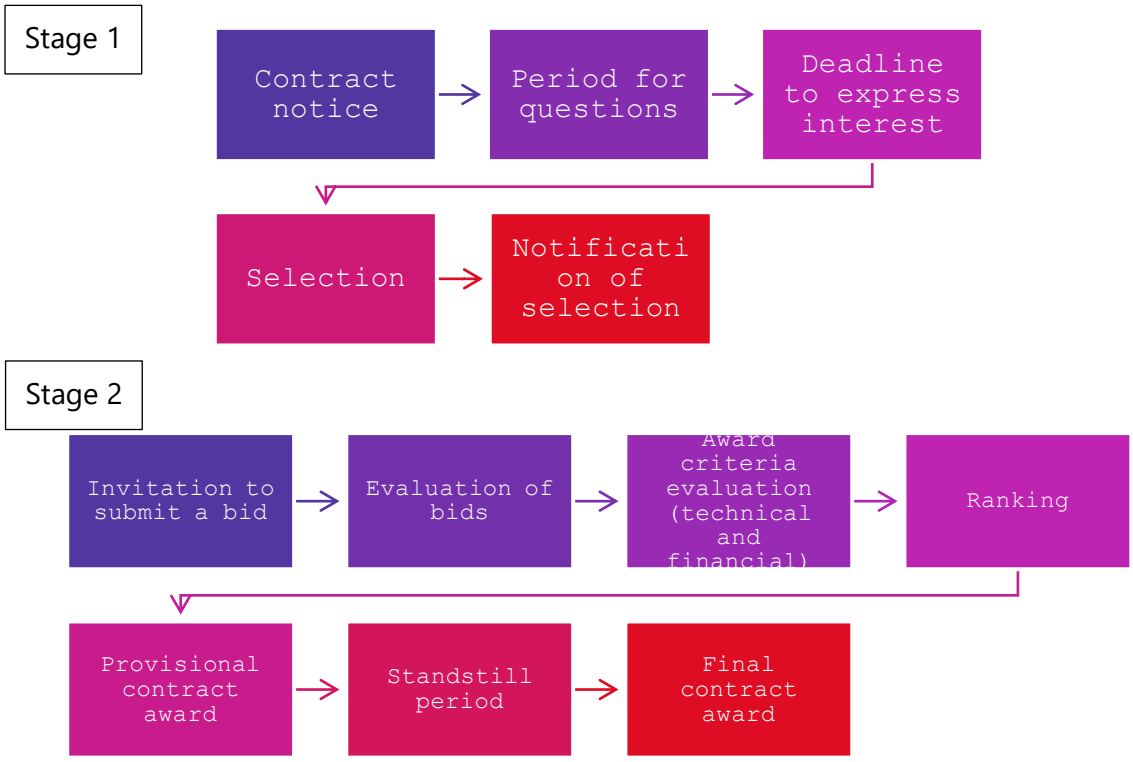

Figure 5. Tendering process in two stage procedures from the contract notice to the final award and contract signature

Types of procedures

The table below shows an overview of the main characteristics of the different procedures that public buyers can use to conduct a PPI, according to the public procurement directives.

Directive 2014/24/EU ***General overview of the procedures*** ***Article 26***		
Preferred procedures	**Open procedure - Article 27**	Any interested economic operator may submit a tender in response to a call for competition (no "preselection" as in restricted procedure)
	Restricted procedure - Article 28	**Two stage procedure:** 1. Any economic operator may submit a request to participate in response to a call for competition. 2. Only those economic operators invited to do so by the Contracting Authority following its assessment of the information provided may submit a tender.
"Exceptional" procedures	**Competitive procedure with negotiation (negotiated procedure) – Article 29**	**Two stage procedure:** 1. Any economic operator may submit a request to participate in response to a call for competition. 2. Only those economic operators invited to do so by the Contracting Authority following its assessment of the information provided may submit a tender. The Contracting Authority will identify the subject-matter of the procurement by providing a description of the needs and the characteristics required and indicate which elements are the minimum requirements. Unless indicated in tendering document, the Contracting Authority will **negotiate** the initial and all subsequent tenders. • The minimum requirements and award criteria are not subject to negotiations. In the negotiations, equal treatment of all tenderers has to be guaranteed. Negotiations can take place in successive stages in order to reduce the number of tenders.
	Competitive dialogue - Article 30	**Two stage procedure:** 1. Any economic operator may submit a request to participate in response to a call for competition. 2. Only those economic operators invited to do so by the Contracting Authority following its assessment

		of the information provided may participate in the dialogue. **Best price-quality ratio as only award criteria.** The Contracting Authority will define its needs and requirements, as well as the award criteria and an indicative timeframe. The Contracting Authority will open a dialogue to identify and define the means to satisfy the defined needs. • **It is possible to discuss all aspects of the procurement with the chosen participants.** During the dialogue, equal treatment of all tenderers has to be guaranteed. The dialogue can take place in successive stages in order to reduce the number of tenders.
	Innovation Partnership – Article 31	**Two stage procedure:** 1. Any economic operator may submit a request to participate in response to a call for competition. 2. Only those economic operators invited by the Contracting Authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. The goal is to develop an innovative product, service or works and purchase the results. The Contracting Authority will identify the need for an innovative product, service or works **that cannot be met by purchasing products, services or works already available on the market**. • Indicate which elements are minimum requirements. • Include Intellectual Property Rights provisions. Innovation partnership can be with one or with several partners and be structured in successive phases following the sequence of steps in the research and innovation process. The Contracting Authority will **negotiate** the initial and all subsequent tenders. • The minimum requirements and award criteria are not subject to negotiations.

		In the negotiations, equal treatment of all tenderers has to be guaranteed. Negotiations can take place in successive stages in order to reduce the number of tenders.
	Negotiated procedure without prior publication – Article 32	There is an exhaustive list of cases that must be duly justified by the Contracting Authority which wants to follow the procedure.

Table 1. Types of procurement procedires

In particular, the negotiated procedures allow the interaction between the public buyers and suppliers to finetune the tenders and have discussions with the aim to satisfy the public needs, in compliance with minimum criteria.

Competitive procedure with negotiation and competitive dialogue: The correct use of both procedures offer significant and clear benefits, in particular, enabling risk and assumptions to be thoroughly tested, solutions to evolve and the foundations established for ensuring a successful contractual outcome and ongoing relationship for all parties and stakeholders.

- ***Negotiation:*** is the discussion between public buyers and suppliers with a view to improving the content of tenders e.g. performance issues.
- ***Dialogue:*** refers to the discussion between public buyers and suppliers to discuss any aspect of the procurement, e.g. the service requirements or proposed solution.

The **competitive procedure with negotiation** allows the contracting authority flexibility to negotiate with suppliers on initial tenders submitted.

The **competitive dialogue** is used in cases where contracting authorities are unable to define the means of satisfying their needs or assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular with sophisticated innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing.

For services or supplies that require **adaptation or design efforts**, the use of a competitive procedure with negotiation or competitive dialogue is likely to be of value. Such adaptation or design efforts are particularly necessary in the case of complex purchases such as sophisticated products, knowledge-based services – for example, some consultancy services, architectural services or engineering services – or major information and communications technology (ICT) projects. In those cases, negotiations with suppliers may be necessary to guarantee that the product or service to be delivered covers the needs of the contracting authority.

In respect to **off-the-shelf services or supplies** that can be provided by many different operators on the market, the competitive procedure with negotiation and competitive dialogue should not be used.
Some key aspects of the negotiated procedures are:

- **Safeguards in procedures with negotiation:** to ensure a sound competition and the protection of business information from suppliers, adequate safeguards in these procedures aim to ensure

observance of the principles of equal treatment and transparency. In particular, contracting authorities should indicate beforehand the minimum requirements which characterise the nature of the procurement, and which should not be changed in the negotiations. Award criteria and their weighting should remain stable throughout the entire procedure and should not be subject to negotiations, in order to guarantee equal treatment of all economic operators.

- **Negotiations purpose**: improving the tender so as to allow contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. Negotiations may concern all characteristics of the purchased works, supplies and services including, for instance, quality, quantities, commercial clauses as well as social, environmental, and innovative aspects, in so far as they do not constitute minimum requirements.

- **Minimum requirements:** are those conditions and characteristics (particularly physical, functional, and legal) set by the contracting authority that any tender should meet or possess in order to allow the contracting authority to award the contract in accordance with the chosen award criteria. In order to ensure transparency and traceability of the process, all stages should be duly documented. Furthermore, all tenders throughout the procedure should be submitted in writing by suppliers.

Key notions on contractual and purchasing arrangements

Some useful notions regarding the contractual and purchasing arrangements for the provisions of goods, works and services in a systematic way are related to the use of Framework agreements, centralised purchasing, compliance requirements and qualitative criteria.

Framework agreements: are understood as 'umbrella' agreements for the provision of goods, works or services. Framework agreements may be conducted by one or more contracting authorities, with one or more economic operator. A Framework agreement establishes terms and conditions under which subsequent contracts (call-offs) can be awarded within the duration of the framework agreement. They are efficient because they save time for both the purchaser and supplier, as well as resources and costs associated with negotiating terms and conditions every time an individual call-off is made.

Framework agreements are limited to those contracting authorities which are identified in them and cannot be extended to others. For that purpose, the contracting authorities that are parties to a specific framework agreement from the outset should be clearly indicated, either by name or by other means, such as a reference to a given category of contracting authorities within a clearly delimited geographical area, so that the contracting authorities concerned can be easily and unequivocally identified.

Likewise, a framework agreement does not allow the entry of new economic operators once it has been concluded. This implies, for instance, that where a central purchasing body uses a register of contracting authorities or categories (e.g. local authorities in a given geographical area entitled to have recourse to framework agreements), it should be possible to verify not only the identity of the contracting authority concerned but also the date from which it acquires the right to have recourse to the framework agreement concluded by the central purchasing body. That date determines which specific framework agreements a given contracting authority is allowed to use.

In framework agreements concluded with more than one economic operator, contracting authorities may obtain specific works, supplies or services covered by the framework agreement from one of the suppliers, in accordance with objective criteria and the terms set out therein, or by awarding a specific contract for the works, supplies or services concerned following a mini-competition among the economic operators parties

to the framework agreement.

To ensure transparency and equal treatment, contracting authorities should indicate in the procurement documents for the framework agreement the objective criteria that will govern the choice between those two methods (request to one supplier or mini-competition). Such criteria could - for instance - relate to the quantity, value or characteristics of the works, supplies or services concerned, including the need for a higher degree of service or an increased security level, or to developments in price levels compared to a predetermined price index.

While contracts based on a framework agreement are to be awarded before the end of the term of the framework agreement itself, the duration of the individual contracts based on a framework agreement does not need to coincide with the duration of that framework agreement, but might, as appropriate, be shorter or longer. In particular, it is allowed to set the length of individual contracts based on a framework agreement taking into account factors such as the time needed for their performance, the maintenance of equipment with an expected useful life of more than four years or the need of extensive training of staff to perform the contract.

Centralised Purchasing: Central Purchasing Bodies (CPB) are responsible for making acquisitions, managing dynamic purchasing systems or awarding public contracts/ framework agreements for other contracting authorities, with or without remuneration.
The contracting authorities for whom a framework agreement is concluded should be able to use it for individual or repetitive purchases. In view of the large volumes purchased, such techniques may help increase competition.

Compliance requirements: to ensure compliance with the principle of equal treatment in the award of contracts, contracting authorities are obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision. Contracting authorities are obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. In duly justified cases where the weighting cannot be established in advance because of the complexity of the contract, contracting authorities can indicate the criteria in decreasing order of importance.

Best-quality ratio: when assessing the best price-quality ratio, contracting authorities should determine the economic and qualitative criteria linked to the subject-matter of the contract that they will use for that purpose. These criteria should thus allow for a comparative assessment of the level of performance offered by each tender in the light of the subject-matter of the contract, as defined in the technical specifications.
Contracting authorities choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs. The chosen award criteria should not confer unrestricted freedom of choice to the contracting authority and they should ensure the possibility of effective and fair competition and be accompanied by arrangements that allow the information provided by the tenderers to be effectively verified.

Most economically advantageous tender: to identify the most economically advantageous tender, the contract award decision should include qualitative criteria and cost criteria. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting authority, be either the price or a cost-effective approach such as life-cycle costing.

Value for money: can be assessed on the basis of other factors than solely the price or remuneration.

Depending on the service or product concerned, such factors could, for instance, include conditions of delivery and payment, aspects of after-sale service (*e.g.* the extent of advisory and replacement services) or environmental or social aspects.

Quality of the staff: wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting authorities are allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to perform the contract in question, as this can affect the quality of contract performance and, as a result, the economic value of the tender. This might be the case if the staff assigned to contract performance should effectively fulfil the specified quality standards and can only be replaced with the consent of the contracting authority after verifying that the replacement staff ensures an equivalent level of quality.

3.4. IPRs, liability, and risks from a supply perspective

The approach to **IPRs in non-R&D procurement** differs from R&D procurement, where newly developed ("foreground") IPRs and joint ownership are central concerns. In non-R&D contracts, the primary focus is on pre-existing ("background") IPRs and on securing the necessary licenses for using pre-existing IPRs held by suppliers. The goal is to ensure that the procuring authority has the necessary rights to use, deploy, and potentially modify or scale existing solutions while safeguarding against risks of IPR infringement, non-performance, or operational issues.

Unlike in R&D contracts, where ownership and use of newly developed IPRs are heavily negotiated, non-R&D procurement focuses on ensuring that the procurer obtains a license to use the supplier's existing intellectual property. The **specifics of licensing** (*e.g.*, exclusivity, duration, geographic scope, and field of use) must be clearly defined to meet the procurer's operational needs, as described below:

- **Exclusive vs. non-exclusive licenses**: Non-R&D contracts may offer either exclusive or non-exclusive rights, depending on the nature of the procurement and the supplier's business model. For example, a public authority might negotiate an exclusive license for a specific region to ensure they are the only entity using that solution in their jurisdiction.
- **Adaptation and customisation rights**: In some cases, the procurer may need permissions to modify or adapt the solution for specific use cases, such as integration with existing public-sector IT systems or infrastructure. This is typically less relevant in R&D procurement, where the focus is on creating new technology.

Since non-R&D procurement generally involves the purchase of market-ready solutions, ownership of new IPRs rarely arises, simplifying contract discussions around IPR ownership. As a result, the emphasis lies in clarifying the terms of use of the supplier's pre-existing IPRs and any third-party IPRs embedded in the solution. In R&D contracts, a significant amount of attention is placed on who owns and can exploit the foreground IPRs created during the project. Non-R&D procurement largely sidesteps these concerns, focusing instead on managing rights to already established IPRs.

Protecting trade secrets and confidential information is critical in non-R&D procurement due to the commercial nature of the solutions involved. Suppliers may need to safeguard proprietary processes, designs, or software, particularly if they involve sensitive technical data or competitive advantages. Non-disclosure agreements (NDAs) are therefore commonly used to ensure confidentiality is maintained throughout the contract's lifecycle. While trade secrets and confidentiality are also important in R&D procurement, especially when dealing with early-stage technologies, the focus here is more on safeguarding the research process

itself and protecting emerging innovations.

In non-R&D procurement, one of the key risks is the infringement of third-party IPRs, which is often less of a concern in R&D procurement because the technology is developed within the framework of the contract. The procurer must ensure that the supplier's solution does not infringe on third-party patents, copyrights, or trademarks. Suppliers are often required to indemnify the contracting authority against any legal claims related to IPR infringement. In R&D procurement, concerns typically centre on managing IPRs generated from the collaboration itself, whereas non-R&D procurement prioritises pre-existing third-party IPR due diligence.

Liability and risk in non-R&D procurement revolve around the deployment, operation, and performance of pre-existing solutions. Unlike in R&D procurement, where uncertainty about research outcomes is a significant risk, non-R&D procurement deals with products that are already on the market or near-market.
In non-R&D procurement, suppliers are primarily held liable for the performance of their solutions. Contracts focus on ensuring that the product or service meets the agreed specifications, is delivered on time, and functions as intended in the procurer's operational environment. This often involves:

- **Warranties** for the solution's functionality over a specific period.
- **Service-Level Agreements (SLAs)** to define response times, uptime guarantees, and support services.

Performance obligations are generally more predictable in non-R&D procurement since the solution is already developed, as opposed to R&D procurement, where shared risk provisions account for research uncertainties.

The **risks in non-R&D procurement** are less about technological uncertainty and more about logistical and operational challenges. These include:

- **Delivery delays**: Problems related to the timely delivery of the solution.
- **Operational integration**: Risks associated with integrating the procured solution into the existing infrastructure or systems.
- **After-sales support**: Ensuring that adequate support and maintenance services are available post-deployment.

Suppliers are expected to have mitigation strategies in place, such as offering comprehensive warranties, providing ongoing support through SLAs, and agreeing to penalties for non-performance.

R&D procurement involves higher inherent risks related to the success of research and innovation activities. Non-R&D procurement, by contrast, focuses on managing more practical and predictable risks, such as logistical or service failures.

Since non-R&D procurement involves pre-existing solutions, the risk of third-party IPR infringement is more prominent. Suppliers must guarantee that their products do not infringe on any third-party IPRs, such as patents, trademarks, or copyright. Procurers often include indemnification clauses in the contract, making the supplier responsible for any legal disputes arising from such infringements. Indemnification against third-party IPR infringement is less of a focus in R&D procurement, where the primary concern is with managing the ownership and use of IPRs generated during the project.

Suppliers should implement several strategies to minimise the **risks associated with IPR and performance failures**, such as:

- **IPR due diligence**: Conducting thorough checks to ensure that all necessary third-party licenses are in place.
- **Insurance for IPR risks**: Obtaining insurance policies that cover potential IPR disputes and third-party claims.

Since non-R&D procurement generally does not involve creating new technologies, the primary interest lies in securing sufficient rights to the supplier's existing technology without altering ownership structures. R&D contracts, by contrast, have a stronger emphasis on new IPRs, with detailed clauses on ownership, exploitation, and sharing.

3.5. Contract performance

What are contract performance clauses?

Performance clauses oblige suppliers to comply with certain conditions not when submitting the proposal but **only if they are selected as contractors**. Suppliers need to understand how to deal with performance clauses included in the contract.

Contracting authorities can, with the purpose to **improve the integration of innovation**, social, and environmental considerations in the procurement procedures, use contract performance conditions relating to the works, supplies or services to be provided under the public contract. These conditions can be applied in any respect and at any stage of the life cycles, from extraction of raw materials for the product to the stage of disposal of the product.

The conditions may include factors involved in the specific process of production, provision or trading and conditions of those works, supplies or services or a specific process during a later stage of their **life cycle**, even where such factors do not form part of their material substance. Therefore, suppliers should identify such conditions and assess their capabilities to fulfil them during the execution of the contract. Failure to comply with the performance clauses may result in penalties and/or the termination of the contract.

For example, criteria and conditions referring to such a production or provision process could be that the manufacturing of the purchased products does not involve toxic chemicals, or that the purchased services are provided using energy-efficient machines. In accordance with the case-law of the Court of Justice of the European Union, this also includes award criteria or contract performance conditions relating to the **supply of fair-trade products** in the course of the performance of the contract to be awarded.

Criteria and conditions relating to trading can - for instance - refer to the fact that the product concerned is of fair-trade origin, including the requirement to pay a minimum price and/or price premium to producers. Contract performance conditions pertaining to **environmental considerations** might include, for example, the delivery, packaging, and disposal of products, and in the case of works and services contracts, waste minimisation or resource efficiency.

Contract performance conditions might also be intended to favor the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market, and the reconciliation of work and private life, the protection of the environment or animal welfare, to comply in substance with fundamental **International Labour Organisation (ILO) Conventions**, and to recruit more disadvantaged persons than are required under national legislation.

Contractors may also need to comply with conditions for the performance of contracts that require

continuous improvements along the term of the contract (e.g. introducing innovative technologies or approaches that add value to the client). For instance, contractors may be required through Value Engineering clauses to present Value Engineering Change Proposals (VECP) periodically to add value (*e.g.* by means of co-creation and innovations that enhance the functionalities and reduce the total cost of ownership) in the performance of the contract.

3.6. Checklist

This checklist provides guidelines for suppliers applying for a PPI, ensuring readiness for the development of commercial volumes of innovative products or services.

1. Pre-application preparations

1. **Review of the PPI tender documents**:
    a. Thoroughly read the PPI contract notice, technical and functional requirements, and evaluation criteria.
    b. Ensure a proper understanding of the scope, volume, and technical specifications for the commercial phase.
    c. Check if there are any specific conditions related to intellectual property rights (IPRs), licensing, or post-procurement commercialisation.

2. **Assess the readiness of the solution for commercial production**:
    a. Conduct an internal audit to verify that your product or service is ready for full-scale production.
    b. Ensure all necessary R&D activities have been completed and validated in previous phases.
    c. Confirm that you have the capacity (technological, operational, financial) to meet the scale and quality requirements of the PPI phase.

3. **Evaluate the commercial feasibility:**
    a. Perform a market analysis to ensure there is sufficient demand for the product beyond the PPI.
    b. Assess the pricing structure, cost-efficiency, and potential return on investment (ROI) for commercial production.
    c. Ensure that production scalability aligns with market needs and procurement volumes.

4. **Develop a commercialisation strategy**:
    a. Create a robust go-to-market strategy that outlines how to scale up production, the marketing strategy, and the plans for the distribution of the product.
    b. Establish partnerships with distributors, suppliers, or logistics providers as needed.
    c. Plan for potential regulatory or certification requirements, especially if expanding to new markets or sectors.

2. Preparing the PPI application

5. **Prepare a detailed commercial production plan:**
    a. Outline the production process, including timelines, milestones, resource requirements, and scalability plans.
    b. Provide details on the production facilities, workforce, and suppliers.
    c. Address any production risks and propose mitigation strategies (*e.g.*, alternate suppliers, production contingency plans, etc.).

6. **Address technical and quality standards:**
    a. Demonstrate that the product meets the required technical specifications and quality standards as outlined in the PPI tender documents.
    b. Include testing protocols, quality control measures, and certifications that validate the product's readiness for the commercial market.
    c. Highlight any continuous improvement processes or updates made since the R&D phases to enhance the product's reliability.

7. **Clarify Intellectual Property (IPRs) considerations:**
    a. Clearly outline the IP strategy, including ownership of patents, trademarks, and any licensing agreements.
    b. Ensure compliance with the IP clauses stipulated in the PPI tender documents, particularly around how IP from the previous R&D phases is handled.
    c. If applicable, address the management of IP licensing for further commercialisation beyond the initial PPI procurement.

8. **Prepare a detailed financial plan:**
    a. Provide a clear financial breakdown, including cost estimates for production, logistics, marketing, and distribution.
    b. Highlight any external funding sources (*e.g.*, venture capital, grants) if applicable.
    c. Include a pricing strategy that aligns with market conditions and ensures both profitability and competitiveness.

9. **Demonstrate capability to scale:**
    a. Showcase the capacity to scale production from prototype or limited volume (as seen in the earlier PCP phases) to full-scale commercial production.
    b. Demonstrate flexibility to handle fluctuations in volume, accommodating variations within the agreed procurement requirements without setting strict minimum or maximum thresholds.

10. **Ensure legal and regulatory compliance:**
    a. Review and ensure compliance with all legal, regulatory, and safety requirements applicable to the product or service.
    b. If applicable, acquire necessary certifications, approvals, or licenses for commercial deployment.
    c. Ensure compliance with EU and national laws regarding, *inter alia*, public procurement, environmental standards, and worker safety.

3. Implementation and execution strategy

11. **Develop a robust contract management plan:**
    a. Create a clear plan to manage the PPI contract, including key deliverables, timelines, and performance indicators.
    b. Establish processes for managing communications, reporting, and relationship with the contracting authority.
    c. Prepare for regular monitoring and evaluation from the contracting authority and build feedback mechanisms into the production plan.

12. **Prepare for post-procurement commercialisation:**
    a. Outline a long-term commercialisation plan that extends beyond the PPI contract.
    b. Consider potential buyers, licensing deals, or partners for further commercialisation of the solution after the PPI is completed.
    c. Evaluate internationalisation opportunities if the solution has potential in markets beyond Europe.

5. Production, delivery and risk management

13. Set up supply chain and logistics:

a. Ensure the supply chain is prepared to handle the required volumes for full-scale production.
b. Develop agreements with suppliers for timely and cost-effective delivery of raw materials and components.
c. Establish logistics plans for distribution, warehousing, and delivery to the contracting authority and other potential customers.

14. Implement risk management and contingency plans:

a. Identify potential risks in the production and delivery processes, such as supply chain disruptions, production delays, or quality control issues.
b. Develop contingency plans for addressing these risks, including alternate suppliers, backup production lines, or stockpiling critical components.

c. Set up a monitoring system to track production performance and quickly respond to any emerging risks.

6. Monitoring, evaluation, and continuous improvement

15. Set up monitoring and reporting mechanisms:

a. Implement a project management system to monitor production progress, compliance, and performance against contract requirements.
b. Ensure that all reporting requirements to the contracting authority are met, including regular updates, progress reports, and final delivery documentation.
c. Use feedback from the contracting authority and end-users to make adjustments to the production and delivery process as needed.

16. Gather and incorporate lessons learned:

a. At the end of the PPI process, conduct a thorough evaluation to gather lessons learned from the project.
b. Document any successes, challenges, and areas for improvement for future projects or tenders.

c. Use this information to refine the commercial production processes and enhance future PPI applications.

6. Final Considerations

17. Engage with stakeholders and build relationships:

a. Maintain strong communication with the contracting authority, end-users, and key partners throughout the PPI process.
b. Build long-term relationships with customers, suppliers, and regulatory bodies that can support future innovation and commercialisation efforts.

18. Plan for after-sales service and support:

a. Consider the provision of after-sales support, maintenance services, or updates to ensure customer satisfaction and the continued success of the solution.

b. Include customer support mechanisms, such as a help desk, maintenance schedules, or spare parts supply.

19. Consider sustainability and ethical practices:

a. Incorporate sustainable production practices where possible, such as energy-efficient manufacturing, reducing waste, and using environmentally friendly materials.
b. Ensure ethical practices in the supply chain, production process, and employee management to align with corporate social responsibility (CSR) goals.

Disclaimers

The Toolkit is subject to the following exclusions, assumptions and qualifications:

• The Toolkit has been produced as part of the contract signed by the Consortium Deloitte, Corvers and Intellera (the "Contractor") with the European Innovation Council and SMEs Executive Agency ("EIC/EISMEA"), acting under the powers delegated by the European Commission, having as subject matter the "Strategic use of procurement to open up business opportunities to EIC innovators", also called the Strategic Innovation Procurement Programme (SPIN4EIC) with the number EISMEA/2022/OP/0022 (EISMEA/2023/OP/0003). The information and views set out in this Toolkit are those of the author(s) and do not necessarily reflect the official opinion of EIC/EISMEA. The EIC/EISMEA does not guarantee the accuracy of the data included in this study. Neither EIC/EISMEA nor any person acting on the EIC/EISMEA's behalf may be held responsible for the use which may be made of the information contained therein.

• The Toolkit is drafted mainly based on European legislation, EU policy enactments, relevant case law emanating from the European Court of Justice, documents used in other EU projects and other articles and materials addressing the issues pertaining to the implementation of innovation procurement methodologies. Other sources worldwide have been used to provide information with a wider geographical coverage for innovators aiming to participate in tenders in other jurisdictions. In drafting the Toolkit, the author(s) has relied on the accuracy and completeness of the referring documents/information thereunder. All sources of information are duly referenced in the Toolkit.

• The Toolkit provides theoretical background (based on, e.g., legal provisions under relevant pieces of legislation, legal analysis and interpretation thereof), as well as practical guidance based on case examples, which innovators (companies, particularly SMEs and startups) could revert to when participating in innovation procurement tenders or when implementing an innovation procurement project. It also includes examples of formulation of text which could be used for tender preparation. However, the information provided should be deemed as mere recommendation, subject to further amendment and tailoring on a case-by-case basis, taking into account:

a. the specific needs of public procurers and what suppliers can offer;

b. the need to ensure compliance with the legal provisions governing the procurement procedure and the activity of public procurers concerned, in force in the Member State in which the procurement is being prepared, conducted and implemented;

c. the need to ensure compliance with internal policies and/or regulations that bound the public procurer(s) to prepare and conduct the innovation procurement project(s).

The Toolkit also includes examples from templates of procurement documents used by public procurers implementing innovation procurements. The examples from templates included in the Toolkit are drafted based mostly on tender documents used in various EU-funded PCP and/or PPI projects. The examples from templates are mainly based on the provisions of the European legislation governing public procurement. Nevertheless, references from other jurisdictions and particularly related to the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO) have been used.

• The Toolkit and examples from templates may be used by innovators/suppliers as general guidance for the drafting of their own tender proposals, and further tailored to their specific case and applicable legislation. As there are always certain legal concepts which exist in one jurisdiction and not in another, proper legal assistance should be sought to adjust them according to specific case-by-case requirements.

• The content of the reports, policy documents, communications, guidelines, opinions, or memoranda from any other person or entity referred to in the Toolkit, is and remains the exclusive responsibility of that person or entity.