

## Tender preparations PCP - checklist

- Decide on a procurement procedure. Use an **open and competitive procedure**. Ensure competition among all participants during the different PCP phases.

- Consider whether you want to **procure collaboratively**.

**Collaborative PCP:** you undertake the procurement jointly with other procurers that have identified the same unmet need and want to invest in R&D to address it.

Benefits:

- Increase of buyer power;
- Sharing of costs and risks;
- Bigger mass of demand for innovation.

Decide between a coordinated procurement or a joint procurement:

- **Coordinated procurement:** the procurers carry out together the preparation, but not the execution of the procurement procedure. There is no single joint tender, and each procurer signs its own supplier contracts.
- **Joint procurement:** the procurers launch one joint tender and carry out together both the preparation and the execution of the procurement procedure.

Here, it is important to design a consortium agreement or a memorandum of understanding between all involved procurers. Appoint a lead procurer who is responsible for coordinating the procurement procedure, publishing the call for tenders and awarding the contract.

Make clear agreements on who is responsible for managing/financing different parts of the procedure. If the procurers are located in different Member States (cross-border collaboration), make clear arrangements on which national law is applicable and which courts will be competent in case of legal disputes.

- Consider whether you want to allow **third-country economic operators** to participate in the procurement procedure. Since PCPs fall outside the scope of the Directives, you are free to decide if you want to allow third-country providers or not. Be transparent about this and state it clearly in the tender.

- **Remain SME/startup friendly** throughout the entire PCP procedure, from market consultations to contract execution

Examples and good practices:

- Proportional financial, technical and turnover requirements linked strictly to the PCP scope and phases;
- Accept possibility to submit bids as consortia or reliance on third-party capacities;
- Reasonable reporting and audit burdens;
- SME-friendly liability caps and risk-sharing arrangements;

- Phase-specific contracts with limited financial exposure per phase;
  - Fast and predictable payment schedules;
  - Clear and balanced IPR regime that allows suppliers to retain ownership of their IPRs while granting the public buyer appropriate access rights;
  - Avoid unnecessary standards, certification or references that may exclude young or innovative suppliers.
- Optional: integrate **value-engineering principles** into the PCP to maximise functional performance, lifecycle value and cost-effectiveness
    - Focus evaluation criteria on value for money rather than lowest price;
    - Encourage alternative technical approaches and design choices that meet the unmet need in different ways;
    - Enable dialogue and feedback moments after each phase with the suppliers;
    - Consider using measurable value indicators, such as performance gains, efficiency improvements, ...
    - Provide a contract modification clause aimed at continuous improvement during the execution of the contract.
  - In the call for tenders:
    - Clearly state that the PCP is governed by the **principles of non-discrimination, transparency and open and free competition**;
    - Explain the regime regarding **IPRs** (see example standard clauses regarding IPR)
    - Put the following elements:
      - A clear description of the **unmet need** you want to address through the process of R&D and what you would want to buy eventually, **how you will evaluate the bids** and what **measurable requirements** you will use for this evaluation;
      - **Exclusion, selection and award criteria** and how much weight they are each given, described in a way that allows bidders to estimate how their bids will be scored;
      - The **process** of the PCP: the different phases and their duration, the number of suppliers per phase, the submission of performance reports after each phase, evaluation criteria after each phase, the monitoring and how the overall performance will be evaluated, the price per phase and payment conditions;
      - Potential **confidentiality requirements**.
    - Incorporate **legal disclaimers** on the non-commitment to procure commercial volumes of the end product after the R&D phase.
    - Ensure proper use of **TED, national portals and other announcements**.