Procurement and Legal Aspects

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What is a PCP?

- A phased, competitive approach to purchasing R&D services for the development of innovative solutions not yet available on the market
- Risk- and benefit-sharing contracts based on a functional specification
- Aim to solve socio-economic challenges and improve the performance or functionality of public services
Legal Framework

- Exemption from EU Procurement Directives for R&D services – no commercial development activities
- Specific legal framework for Horizon 2020 PCP actions
- Procurement at market rates with risk- and benefit-sharing to preclude state aid
- General principles: equal treatment, no conflict of interest, transparency, openness, competition and best value for money
PCP Concept

**Preparation**
- Identify needs, use cases, and state of the art
- Assess standardization possibility
- Initial risk assessment

**Market Consultation**
- Inform the market and attract interest in the PCP
- Identify innovation potential, feasibility and risks
- Validate understanding of state of the art

**Pre-Commercial Procurement**
- Competitively procure R&D services in three phases based on a functional specification
- Open Invitation to Tender followed by call offs for subsequent phases
- Bids assessed on a best value for money basis
Open Market Consultation

- A process to bridge the gap between demand and supply sides and scope the future PCP
- Check our understanding of the state of the art
- Map the risk and innovation potential
- Inform, connect and generate interest from potential providers
Tendering Process

Contract Notice publication

Deadline for submission of tenders to CERN

Early October 2019

Tender Evaluation: 3 weeks

Tenderers notified of results

Standstill Period: 10 days

Early December 2019

January 2020

Bidders information event

Deadline for submission of questions

Tendering Period: 2 months

Contract signature; contract award notice

Early October 2019

Standstill Period: 10 days
Draft versions of some of the tender documents will be made available during the OMC process, including:

- Functional specification
- Request for Tender
- Framework agreement and work order template

You will be able to make comments on the technical documents.

Q&A from the OMC will also be publicly available.
Eligible Tenderers

🎉 Single Contractors

🎉 Consortia, consisting of:
  🎉 A Lead Contractor
  🎉 Other Consortium Members signing a Power of Attorney in favour of the Lead Contractor

🎉 In both cases, subcontracting is permitted
Tender Evaluation

Administrative Evaluation
• General compliance and completeness of bid
• Authorised signatures on all documents
• Check Exclusion and Selection criteria are met

Technical Evaluation
• Evaluation of the technical offers against Award Criteria
• Check Compliance Criteria are met

Financial Evaluation
• Evaluation of the financial offer
• Check pricing and total budget envelope
• Check share and location of R&D services
What you will prepare

- **Administrative documents:**
  - General submission form
  - Questionnaire to demonstrate eligibility of the tenderer

- **Technical offer:**
  - Questionnaires to demonstrate compliance and value of the offer against criteria indicated in the tender

- **Financial offer:**
  - A virtual price
  - An actual price, taking into account the risk- and benefit-sharing contract approach
  - Price breakdown including binding unit prices/hourly rates
  - Price estimates for phases 2 and 3

08/04/2019
Contract Implementation

PHASE 1: 4+ providers

PHASE 2: 3+ providers

PHASE 3: 2+ providers

Evaluation of call off for phase 2

Evaluation of call off for phase 3

Assessment of deliverables from phase 1

Assessment of deliverables from phase 2

Assessment of deliverables from phase 3

2nd EC review (Feb 2021)

Project Ends (Dec 2021)

Design Phase 4 Months

Prototype Phase 8 Months

Pilot Phase 9 Months

January 2020
Design Phases Kick-off

April 2020

June 2020
Prototype Phase Kick-off

January 2021

March 2021
Pilot Phase Kick-off

November 2021

Reporting on all subcontracts
Key requirements for the PCP

- R&D services must constitute the majority of the PCP contract

- The majority of the R&D activities, including the principle researchers working for the PCP contract, shall be located in EU Member States or H2020 Associated Countries

- Tenderers shall demonstrate an ability to commercialise the results of the PCP (e.g. research institutes acting alone are not eligible)

- No negotiation is possible
PCP Available Budget

<table>
<thead>
<tr>
<th></th>
<th>Expected maximum total budget (EUR)</th>
<th>Expected minimum no of selected contractors</th>
<th>Expected maximum budget per selected contractor (EUR)</th>
<th>Expected maximum duration for the phase (months)</th>
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</thead>
<tbody>
<tr>
<td>Phase 1</td>
<td>425 000</td>
<td>4</td>
<td>85 000</td>
<td>4</td>
</tr>
<tr>
<td>Phase 2</td>
<td>1 275 000</td>
<td>3</td>
<td>425 000</td>
<td>8</td>
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<tr>
<td>Phase 3</td>
<td>1 700 000</td>
<td>2</td>
<td>850 000</td>
<td>9</td>
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<tr>
<td>Total</td>
<td>3 400 000</td>
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</table>

 mềm Unallocated funds may be transferred to subsequent phases
Framework Agreement

Phase 1 (Design) Work Order

Phase 2 (Prototype) Work Order

Phase 3 (Pilot) Work Order

Call Off

Call Off

Call Off
Contracting Parties

- CERN, for the benefit of the ARCHIVER Buyers Group (CERN, DESY, EMBL, IFAE/PIC)

- The service provider (or consortium of service providers)
Scope

- The Framework Agreement covers all 3 PCP phases and entrusts the contractor with the performance of the R&D services, including delivery of the data preservation solution.

- The Work Order for Phase 1 will be awarded together with the Framework Agreement subject to a tendering procedure.

- Work Orders for Phases 2 and 3 will be awarded subject to a tendering procedure ("Call Off").
Performance

- The contractor shall deliver and comply with key deliverables and milestones e.g. reports on the phase

- The contractor shall be assessed on its performance of R&D services

- Compliance with specified standards
Intellectual Property Ownership

Framework Agreement

Buyers Group

Contractor (you)

Background IP | Sideground IP
---|---

Results

Signature of the Framework Agreement
End of the Framework Agreement

Time
# Intellectual Property Ownership (Traditional R&D Contract)

<table>
<thead>
<tr>
<th>Buyers Group</th>
<th>Background IP</th>
<th>Sideground IP</th>
</tr>
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<tr>
<td>Contractor (you)</td>
<td>Background IP</td>
<td>Sideground IP</td>
</tr>
<tr>
<td><strong>Framework Agreement</strong></td>
<td><strong>Results</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Signature of the Framework Agreement</strong></td>
<td></td>
<td><strong>End of the Framework Agreement</strong></td>
</tr>
</tbody>
</table>

- **IP owned by the Buyers Group**
- **IP owned by the contractor**

**Time**
Intellectual Property Ownership (PCP Contract)

- **Buyers Group**
  - Background IP
  - Sideground IP
  - Results
- **Framework Agreement**
  - Background IP
  - Sideground IP
- **Contractor (you)**
- **Signature of the Framework Agreement**
- **End of the Framework Agreement**

**IP owned by the Buyers Group**

**IP owned by the contractor**

**Time**
IP Access Rights and Commercial Exploitation

 Contractors must grant to the members of the Buyers Group:

- Access to the Results on a royalty-free basis for use by each member of the Buyers Group
- The non-exclusive right to license to third parties the exploitation of the Results under fair and reasonable conditions (without the right to sublicense)

Contracts must ensure that Results are commercially exploited; failure to comply will result in a transfer of ownership of the IPRs from the contractor to the members of the Buyers Group.
**Liability, Governing Law, Dispute Resolution**

**Liability:**
- Contractor must indemnify CERN and other members of the Buyers Group against loss and damage arising under the Framework Agreement.
- Limit of liability except for personal injury or death, gross negligence or willful misconduct.

**Governing law and dispute resolution:**
- Governing law: Framework Agreement and Swiss substantive law (in case individual provisions of the Framework Agreement are unclear or unambiguous).
- Dispute resolution: arbitration.