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**Internal document**

## Organising a Preliminary Market Consultation (PMC)

***T3.1 - training material***



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## Revision History

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1.0	14/01/2021	Q-PLAN	Final text



# 1 What is Preliminary Market Consultation (PMC)?

Procurers should consider the Preliminary Market Consultation (PMC) as a **valuable instrument** to inform the market and verify its readiness, stimulate its engagement, potentially facilitate the creation of synergies, and finally confirm the feasibility of their business case.

It is conducted first and foremost to acquire useful information from the supply side and identify innovative solutions, new products or services they may have been unaware of. It is in fact an **in-depth art analysis** that permits to get a **better understanding of on-going developments in terms of solution availability and technological maturity**. A dialogue with the market before the procurement process begins enables the procurers to achieve a clear definition of the requirements, the results and the outcomes expected from the tendering procedure in question, to be used within subsequent relevant documents of the procurement procedure. It will also determine whether additional options should be considered, i.e. procedures like the *Pre-Commercial Procurement* (PCP), the *innovation partnership*, the *competitive dialogue* or the *competitive procedure with negotiation*, all of which allow greater interaction with the market in order to refine requirements<sup>1</sup>. Those do however require additional time and it is therefore important to consider resource implications.

The Preliminary Market Consultation:

- Enables the procurers to verify with the market whether the assumptions of the business case were set realistically (e.g. feasibility of reaching the desired functionality/performance improvements within the planned time and budget, level of complexity of different solution approaches, required implementation effort and testing set-ups, etc.),
- Ensures a better up-front understanding of what the positive/negative impact would be if one of the key assumptions in the business case were to change during the project (best/worst case analysis), and
- Informs businesses in the relevant market sectors about the planned procurement and about what the public authority's requirements are likely to be, thus giving them enough time to prepare and be able to meet the criteria which will be applied in the procurement process.

## 2 What does it cover?

The consultation can encompass a wide range of issues including:

- **Feasibility:** whether what is sought is feasible or has ever been done,
- **Capability:** the ability of the market to achieve what is required,
- **Maturity:** whether there is an established market for the requirement and whether there are enough suppliers in existence for competitive procurement, and
- **Capacity:** whether the market can achieve what is required within a certain timeframe and/or on a large enough scale.

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<sup>1</sup> For more information: "[Analysis of Public Procurement of Innovation in EU](#)", I. Delioglanis, [PRONTO project](#), 2020



## 3 How is it done?

PMC can be conducted in a number of ways, ranging from **market surveys and questionnaires** to **roundtables, open days and industry days**, where interested suppliers are informed in detail of the authority's plans, and can ask questions, as well as propose solutions. It involves **interviewing market stakeholders or contacting knowledgeable people in the relevant field**, for example independent experts, specialised bodies, business organisations or economic operators.

Important note: In many cases, the most innovative tender responses and those that most reflect best value are likely to come from partnerships of suppliers with different specialisations and experience. Holding industry days, publishing directories of businesses that respond to PINs (Prior Information Notices – *refer to section 5 below*) and procurement prospectuses can help companies to identify potential partners and form such partnerships. They also assist innovative SMEs in finding a way of partnering with a larger contractor to commercialise their idea for inclusion in the delivery of a contract.

**Example: Procurement prospectus in Wakefield, UK<sup>2</sup>** - In May 2010 Wakefield Council (UK) started to develop a strategy to procure a highly energy efficient lighting system for a new swimming pool and leisure complex. Recognising that there were significant innovations in the field of lighting, Wakefield made a procurement prospectus available to the market providing details on their proposed project and inviting suggestions from all tiers of the supply chain to come forward with innovative proposals. The most promising responses to the prospectus were followed up with workshops. Furthermore, a directory of businesses that responded was published online to encourage partnering between suppliers in preparation for the call for tender.

## 4 What is the process?

The **preliminary market consultation** can be divided into the following **stages**:

- Define the PIN, market consultation agenda and materials,
- Publish the PIN and promote the event or activity,
- Conduct the consultation, possibly assuring a web streaming or recording,
- Formulate a report of the consultation,
- Publish the report of the consultation, and
- Process gathered intelligence into the procurement decisions.

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<sup>2</sup> ["Procuring innovative and sustainable construction - A guide for European public authorities", SCI-Network](#)



## 5 Prior Information Notice (PIN)

A PIN is a notice published in the Official Journal of the European Union (OJEU), announcing early on a contracting authority's purchasing intentions. It may be used to reduce the time periods associated with tendering, give the market advance notice of requirements, initiate a PMC or as a call for competition. **It does not oblige the contracting authority to proceed with a procurement process but informs the market that they should expect a procurement to be commenced in the coming period.**

The publication of a **PIN is not mandatory** and consultations can also be launched without one. However, it gives the contracting authorities the opportunity to inform the market of all its upcoming contracts, for example in the next six months or in the next year.

More recently, contracting authorities have been using the PIN **on a contract-specific basis**. The PIN must be published between 35 days and 12 months before the publication of the specific contract via the contract notice.

Especially in the case PCPs/PPIs supported by Horizon 2020 grants:

- the PIN for the Preliminary Market Consultation, early announcements of the target date for launching the PPI, and the PPI contract notice must be promoted and advertised widely using the Horizon 2020 Internet sites in particular and National Contact Points. **The Commission must be informed at least 5 days prior to the expected date of publication of the PIN for the Preliminary Market Consultation and 30 days prior to the expected date of publication of the PPI contract notice** and its content. The PPI calls for tenders must remain open for the submission of tenders for at least 60 days.<sup>3</sup>
- The PIN has to be filled out online on the [TED – Tenders Electronic Daily website](#). Use the English version of the SIMAP standard form that is most appropriate for your type of organisation:
  - for procurers in the public sector: 'Prior Information Notice'
  - for procurers in the utilities sector: 'Periodic Indicative Notice — utilities'
  - for procurers in the defence and security sector: 'Prior Information Notice for contracts in the field of defence and security'
- In addition to English, one may publish the PIN (or a summary) in any other language(s).
- Attention should be called to the fact that a copy of the PIN must be submitted as a deliverable to the EU at the latest 5 days before publication (*i.e. 5 days before the date of dispatch of the PIN notice* — see [Article 19 H2020 PCP-PPI MGA](#)).

<sup>3</sup> [https://ec.europa.eu/research/participants/data/ref/h2020/other/wp/2018-2020/annexes/h2020-wp1820-annex-e-inproc\\_en.pdf](https://ec.europa.eu/research/participants/data/ref/h2020/other/wp/2018-2020/annexes/h2020-wp1820-annex-e-inproc_en.pdf)



## 6 PMC document

What one should keep in mind when preparing a PMC is the need to provide a clear description of the context where innovation will be implemented and a clear statement of the problem or need, such as conceived by the demand side. At the same time, it is important to have a clear and objective understanding (based on data/measurements if possible) of the actual performance and the "business as usual" situation. The dialogue with the market should be well-planned so as to allow the evaluation of the innovation gap to be remediated and the technological state-of-the-art, meaning whether a specific product/technology/service is readily available on the market or still needs to be developed, or even whether a product requires customisation.

The **Preliminary Market Consultation document** should clearly state the desire for a sustainable outcome and the public procurer's openness to innovative solutions. It should describe the goals of the market consultation, the form and planning of the consultation, the characteristics of the organisations expected to participate, etc. An indicative **structure** of a preliminary market consultation document is outlined below:

- Reasons for holding a market consultation and project background
- Goals of the market consultation
- Targeted participants
- Approach
- Planning
- Expected input (including specific questions)
- Procedural steps following the market consultation
- Communication around the market consultation
- Legal framework for the market consultation.

It is important that the legal adviser contributes to the drafting of the PMC document and to the conducting of the market consultation itself. The legal expert should thus be aware of the legal rules governing market consultations and how to avoid breaching procurement and competition rules when "consulting the market".

The legal adviser can take the following actions:

- Clarify the aim of the market consultation in the call for participation and explicitly request participants to provide information regarding the stage of development of the needed solutions, and
- Stress the importance of obtaining relevant information from the market, during internal discussion with the technical personnel/expert in charge of conducting the consultation.

The outcomes of the PMC as to the level of innovation deemed necessary to solve the identified need should be notified to the market, as well as the final decision to procure using ordinary procurement, PCP or alternatively PPI.



## 7 Communication Plan

A communication plan should be set-up in order to attract relevant stakeholders to the open market consultation sessions. The following actions could be undertaken to attract relevant stakeholders:

- Announcement of the PMC via a Prior Information Notice (PIN) in TED and in national official journals,
- Mailing to contacts from the databases of the procurer,
- Phone contacts with companies identified during the state-of-the-art studies, and
- Flyers and presentations at various industry events.

## 8 General instructions

**Avoid conflicts of interest.** When preparing calls for tenders, contracting authorities may conduct market consultations but must ensure that involving a previously consulted company does not distort competition within the tender procedure. To ensure fair competition and avoid the exclusion of tenderers and any allegations about distorting the competition, all relevant information that results from involving one candidate or tenderer in the preparation of the procurement procedure should be shared with other candidates and tenderers.

A **successful PMC** requires efficient time planning and effective resource allocation. In a nutshell, it requires:

- The preparation of several documents aimed at informing the market of the public procurer's intentions and needs (e.g. Preliminary Market Consultation document explaining the need and planned procurement setup, Prior Information Notice announcing the PMC, and possibly a questionnaire, etc.).
- Identifying the right market segments and effectively promoting the preliminary market consultation to them (i.e. both suppliers that traditionally answer procurers' needs as well as suppliers from other sectors should be invited to the dialogue to capture innovative ideas coming from other sectors).
- Involving experts who can lead the discussions and subsequently interpret the results of the market consultation. It is recommended that a multi-disciplinary team from the public procurer is involved, including a project manager, a technical expert in charge with the description of the technical specifications to be included in the PMC document, a legal expert responsible for ensuring the conduct of the market consultation in full compliance with TFEU (Treaty on the Functioning of the European Union) and public procurement principles and a data analyst.
- Selecting the dialogue method that best suits the objectives of the public procurer and the best communication platform that is easy to reach for all stakeholders involved. Various dialogue methods exist to conduct a PMC, including a) holding physical plenary meetings such as "*meet the buyer*" events or industry days in combination or not with more focused workshops, and market surveys, and b) online webinars or online buyer/industry market consultation platforms.



- Legal assurances must be put in place that all participants' intellectual property rights (IPRs) and trade secrets will be protected, or that they will be entitled to due compensation in case of breach of confidentiality obligations by the public procurer.
- It is mandatory that potential bidders understand that the competitive phase of the public procurement procedure is conducted separately after the PMC and all potential bidders are treated equally; this statement should be included in any invitations to preliminary discussions.

## 9 Information sources

- ["Specific requirements for innovation procurement \(PCP/PPI\) supported by Horizon 2020 grants"](#)
- ["Standard forms for public procurement - SIMAP"](#), TED
- ["European Assistance For Innovation Procurement"](#)
- ["PPI procurement documents guide"](#), HORIZON 2020, v1, 3/10/2017
- [Procure2Innovate](#) "European network of competence centres for innovation procurement" (H2020-ICT-780192) - [Procurement of Innovation Platform](#)
- ["Procuring innovative and sustainable construction - A guide for European public authorities"](#), SCI-Network
- [eCare PCP project](#), H2020, GA 856960
- [INSPIRE project](#), FP7-611714

