A Pre-Commercial Procurement (PCP) Notice and Award Notice

A pre-commercial procurement allows you to:

- contract for research and development (R&D) services in a competitive way
- engage with innovative suppliers
- identify the best offer(s) the market can deliver to meet your organisation's needs

PCP contracts are exempt from the Scottish public procurement regulations as defined in **The Public Contracts (Scotland) Regulations 2015**.

When to Use a PCP Notice?

PCP is an R&D services exemption. The exemption only applies to the award of public service contracts for R&D if:

- specific CPV codes are used in Public Contracts Scotland and
- one of two conditions can be met

Quickfire Guide

Quickfire Guide

PCP Notice Exemption Requirements

The CPV codes are:

73000000-2 to 73120000-9

73300000-5

74320000-2

73430000-5

and one of these conditions must apply:

(a) any benefits received from the R&D are not just for the benefit of your own (buying) organisation. Any R&D benefits are shared with the market. An example of this could be publishing the outcomes from the R&D undertaken i.e. openly sharing any findings/results with the market.

or

(b) the R&D service provided is NOT totally paid for by your (buying) organisation. Examples of this could include sharing the cost of the R&D with the supplier and/or others such as other public sector organisations or charities.

What does the exemption mean?

PCP is exempted from the World Trade Organisation (WTO) Government Procurement Agreement (GPA). There is therefore no requirement to follow **Procurement Regulations.**

Although PCP Notices are exempt from the **Public Contracts (Scotland) Regulations 2015** you are strongly recommended to:

- follow the principles of procurement
- encourage competition
- treat suppliers equally and without discrimination and
- act in a transparent and proportionate manner

Commercial volumes of products and/or services should not be purchased via a PCP Notice. If you progress to procuring commercial volumes you will need to undertake a separate procurement exercise.

Where there is likely to be a future procurement, you should carefully consider how to use the rights obtained through the PCP/R&D service. For example, you may consider making the rights obtained available to other suppliers to create a level playing field for the future procurement.

Pre Commercial Procurement Award Notice

To ensure transparency and clarity it is good practice to describe how the PCP competition will be awarded within the contract notice or documentation.

When awarding your PCP you should advertise this by using the new PCP Award Notice in PCS. Doing so will allow the tracking of “innovation” contracts within your organisation which can then be included in your annual procurement report.

Benefit Sharing Approach

With PCP any benefits must be shared with bidders under market conditions in line with the Subsidy Control Act 2022 (please see more information on this below).

This means that under this benefit sharing approach:

- You may leave any new intellectual property rights resulting from the PCP’s R&D activities with the participating bidders but
- You (the public sector buyer) retain the right to:
    - use the R&D results and/or
    - require the bidders to licence the R&D results to third parties under fair and reasonable market terms/rates

Subsidy Control

Any purchase of goods or services (including research and development) through an open competitive process shouldn’t confer a subsidy as the purchase of the goods and services has been advertised/put on the open market for all bidders.

However for procurements which use a direct award process, buyers must ensure compliance with the Subsidy Control Act 2022.

Benefits of PCP

Open or close

- Can stimulate innovation in the market and support the development of innovative companies, by providing a lead customer, funding and credibility for fund raising
- Can provide organisations with a faster route to commercialisation as they are working in partnership with the public sector

- Organisations can potentially commercialise the solutions to other public buyers or in other markets
- Buyers can have the right to use and licence the solution in a follow-up public procurement
- Buyers may save costly registration and/or maintenance that result from the ownership of intellectual property rights
- Can bring buyers and organisations closer together to quickly establish R&D projects
- Can obtain input/specifications for future procurements while allowing for the termination of the R&D project at any point of time (if the results do not meet expected targets)
- R&D contracts are likely to be of limited duration and may include the development of prototypes/limited volumes in the form of a test series
- This procedure may be attractive to organisations to help develop a solution that the current market has not addressed

Limitations of PCP

Open or close

- PCPs cannot be used for the purchase of commercial volumes of products or services
- R&D contracts are only used in those areas where existing market solutions do not meet a public buyer's needs. Otherwise existing procurement processes should be used

PCP - Selection Process

As the PCP process uses public funds, buyers are encouraged to check that bidders have the capacity and capability to deliver prior to awarding a PCP contract. The Single Procurement Document (SPD) may be used for this purpose, as it allows bidders to self-declare that they meet any minimum requirements relating to suitability, financial standing, and technical and professional ability, without the need to provide evidence ‘up-front’. Only ‘winning’ bidders are required to submit evidence, which should be done prior to contract award. It is best practice to use Part II (information concerning the bidder and Part III (exclusion criteria) for all PCP

Notices.

Part II and Part III of the SPD

Open or close

Part II. Information concerning the bidder

A: Information about the bidder.

B: Information about representatives of the bidder

C: Information about reliance on the capacities of other entities

D: Information concerning subcontractors on whose capacity the bidder does not rely

Part III. Exclusion criteria

A: Grounds relating to criminal convictions.

B: Grounds relating to the payment of taxes or social security contributions.

C: Blacklisting.

D: Grounds relating to insolvency, conflicts of interests or professional misconduct.

The SPD module within PCS or PCS-Tender can be used to create and issue SPD requests.

However, it should also be recognised that the SPD was designed to be used in a wide variety of public procurement procedures and that bidders for PCP contracts may be small and at a very early stage in their development. As a result you must take extra care to ensure that any minimum requirements for participation are not disproportionately high, and that only criteria relevant to the contract are included.

With many lower value PCP contracts, it is often the case that payment is not made until specific milestones are reached therefore the risk to the public sector buyer may be low. Setting too high a barrier for participation risks excluding the very

bidders that innovation is seeking to encourage.

Information on the Innovation Questions in PCS Contract Notices can be found on the next page.