PCP REQUEST FOR TENDERS

This document is designed to help beneficiaries of H2020 pre-commercial procurement (PCP) grants to draw up the request for tenders to be published in the EU Official Journal (via the TED (tenders electronic daily) website).
It shows the information and provisions that need to be included in order to ensure compliance with the obligations under the H2020 grant agreement.

- **Instructions and footnotes in blue should be deleted**
- **For options *[*in square brackets*]*, choose the option that applies (options not chosen and the brackets should be deleted)**
- **For fields in [grey in square brackets], enter the appropriate data (and take out the grey colour and the brackets)**

PCP REQUEST FOR TENDERS [Project acronym] — [full name of project]

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Annex 1	Model framework agreement
Annex 2	Model specific contracts for phases 1, 2 and 3
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Annex 4	Templates for exclusion and compliance criteria (if needed, *e.g. declaration of honour for exclusion criteria, absence of conflict of interest and absence of incompatible other public financing*)
Annex 5	Tender form (optional; only needed if the request for tenders does not specify the information requested from tenderers for each of the award criteria)
Annex 6	Template for reports or deliverables (optional; only needed if the request for tenders does not specify the minimum information contractors are required to submit in the reports or deliverables)

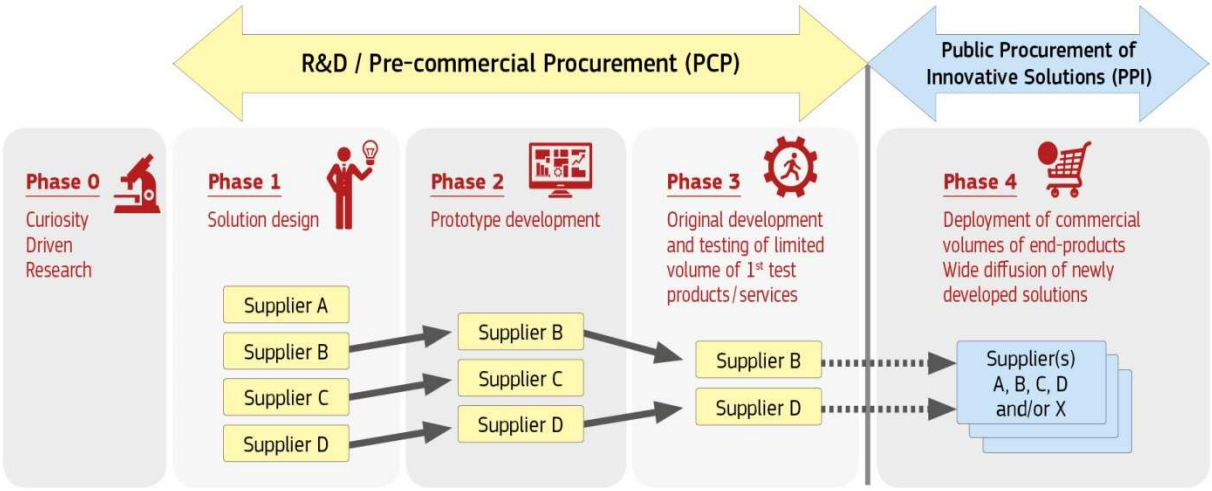
1. General context

1.1 Pre-commercial procurement (PCP)

Explain the general context:

This procurement is a **pre-commercial procurement (PCP)**.

PCP means that public procurers challenge innovative players on the market, via an open, transparent and competitive process, to develop new solutions for a technologically demanding mid- to long-term challenge that is in the public interest and requires new R&D services.



PCP is characterised by the following four **features**:

× Competitive development in phases to identify the solutions offering the best value for money

PCP targets situations that require radical innovation or R&D and for which there are typically no solutions on or close to the market yet. Different competing providers may have different ideas for solutions to the problem. As R&D is yet to take place, there is not yet any proof as to which of these potential alternative solutions would best meet customers' needs.

PCP therefore awards R&D contracts to a number of competing contractors at the same time, in order to compare different approaches to solving the problem. It thus offers innovators an opportunity to show how well their solution compares with others. It also allows a first customer test reference to be obtained from countries of the procurers that will test the solutions.

The R&D is split into three phases (solution design, prototyping, original development and testing of a limited set of 'first' products or services). Evaluations after each phase progressively identify the solutions that offer the best value for money and meet the customers' needs. This phased approach allows successful contractors to improve their offers for the next phase based on lessons learnt and feedback from procurers in the previous phase. Using a phased approach with gradually growing contract sizes per phase also makes it easier for smaller companies to participate in the PCP and enables SMEs to grow their business step-by-step with each phase.

Depending on the outcome of the PCP, procurers may or may not decide to follow-up the PCP with a public procurement to deploy the innovative solutions (PPI).

× Public procurement of R&D services

PCP addresses mid- to long-term public procurement needs for which either no commercially stable solutions yet exist on the market, or existing solutions exhibit structural shortcomings that it requires further R&D to resolve. PCP is a way for procurers to trigger the market to develop new solutions that address these shortcomings. PCP focuses on specific identified needs and provides customer feedback to businesses from the early stages of R&D. This improves the likelihood of commercial exploitation of the newly developed solutions.

PCP is explained in the PCP communication COM/2007/799 and the associated staff working document SEC/2007/1668. The R&D services can cover research and development activities ranging from solution exploration and design, to prototyping, right through to the original development of a limited set of 'first' products or services in the form of a test series. Original development of a first product or service may include limited production or supply in order to incorporate the results of field-testing and demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. R&D does not include quantity production or supply to establish the commercial viability or to recover R&D costs.[1] It also excludes commercial development activities such as incremental adaptations or routine or periodic changes to existing products, services, production lines, processes or other operations in progress, even if such changes may constitute improvements.

✕ Open, transparent, non-discriminatory approach — No large-scale deployments

PCP is open to all operators on equal terms, regardless of the size, geographical location or governance structure. There is, however, a place of performance requirement that they must perform a predefined minimum percentage of the contracted R&D services in EU Member States or Horizon 2020 associated countries.

Any subsequent public procurement of innovative solutions (PPI), for the supply of commercial volumes of the solutions, will be carried out under a separate procurement procedure. Providers that did not take part in this PCP (or were not chosen to go through as far as the last phase) will thus still be able to compete on an equal basis in any subsequent procurement looking for contractors to provide a solution on a commercial scale.

✕ Sharing of IPR-related risks and benefits under market conditions

PCP procures R&D services at market price, thus providing contractors with a transparent, competitive and reliable source of financing for the early stages of their research and development. Giving each contractor the ownership of the IPRs attached to the results it generates during the PCP means that they can widely exploit the newly developed solutions commercially. In return, the tendered price must contain a financial compensation for keeping the IPR ownership compared to the case where the IPRs would be transferred to the procurers (the tendered price must be the 'non-exclusive development price'; see section 4.5.4). Moreover, the procurers must receive rights to use the R&D results for internal use and licensing rights subject to certain conditions.

ⓘ For more information, see PCP on the Europa website.

1.2 Exemption from EU procurement directives, the WTO Government Procurement Agreement (GPA) and EU state aid rules

Explain that the PCP procurement is exempted from the EU procurement directives, the WTO Government Procurement Agreement (GPA) and the EU state aid rules:

[1] See also Article XV(1)(e) WTO GPA 1994 and the Article XIII(1)(f) of the revised WTO GPA 2014.

This procurement procedure is exempted from the **EU public procurement directives** because procurers do not retain all the benefits of the R&D (the IPR ownership stays with the contractors).[2]

It is also exempted from the **WTO Government Procurement Agreement (GPA)** because this Agreement does not cover R&D services[3] (the PCP being limited to such services — and any subsequent PPI procurements relating to commercial-scale supply of such solutions not being part of the PCP procurement).

The procurement does not constitute state aid under the **EU state aid rules**[4] because it follows an open, transparent, competitive procedure with risk- and benefit-sharing at market price. (The division of all rights and obligations (including IPRs) and all selection and award criteria for all phases are published at the outset; the PCP is limited to R&D services and clearly separated from any potential follow-up PPI procurements; PCP contractors are not given any preferential treatment in a subsequent procurement for provision of the final products or services on a commercial scale.)

1.3 EU funding

Explain that the PCP procurement is part of an EU project:

This PCP procurement is part of a project that is funded by the European Union's Horizon 2020 Research and Innovation Programme, under grant agreement No [insert number] — [insert project acronym] (see [insert project website]).

[OPTION if the procurement also receives funding from other EU programmes (e.g. has member(s) of the buyers group whose financial contribution to the PCP budget is co-financed by e.g. the European Structural and Investment Funds (ESIF) instead of Horizon 2020): Moreover, it receives funding from the *[OPTION for EU programmes:* European Union's [insert name of EU programme]*][OPTION for national programmes co-funded by the EU (e.g. by Regional Funds, Agricultural Funds):* [insert name of national programme] co-financed by the European Union*]*:

- [insert beneficiary name and grant agreement number and acronym].*]*

The procurement must therefore comply with the rules imposed by the EU Horizon 2020 grant agreement *[OPTION if procurement also receives funding from other EU programmes:* and with the rules imposed by the EU [insert name of other EU programme(s) from which funding is received] programme*][*grant*]*.

ⓘ For more information, see 'innovation procurement' and 'links to regional policy' in the Participant Portal Online Manual.

Attention: The EU is not participating as a contracting authority in this procurement.

1.4 Overview: contracting, budget and schedule

1.4.1 Total budget and budget distribution (per phase)

Explain the budgetary set-up, specifying in particular:

- the total budget for the PCP

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2 See Article 16(f) of Directive 2004/18/EC (Article 14 of Directive 2014/24/EU), Article 24(e) of Directive 2004/17/EC (Article 32 of Directive 2014/25/EU) and Article 13(f)(j) of Directive 2009/81/EC.

3 See the EU's Annex IV of Appendix I to the WTO GPA.

4 See Point 33 of the Commission Communication on a framework for state aid for research and development and innovation (C(2014) 3282).

- the maximum budget per phase (and per lot, where applicable)
- the maximum budget per tender per phase (and per lot, where applicable)
- the 'minimum' number of contractors that are expected to be selected per phase (and per lot, where applicable)
- the maximum duration per phase.

Provide for the flexibility to transfer leftover budget from one phase to the next phase in case you receive offers with lower price than expected: For phases 1 and 2, contracts are funded until the remaining budget is insufficient to fund the next best tender. The exact number of contracts finally awarded will thus depend on the prices offered and the number of tenders passing the evaluation. As leftover budget from the previous phase will be transferred to the next phase, the total budget available for phases 2 and 3 may eventually be higher than stated here (but the maximum budget per contractor for phases 2 and 3 will remain the same). The lower the average price of tenders, the more contracts can be awarded. The total value of the contracts awarded can also be lower than initially expected if there are fewer tenders than expected that meet the minimum evaluation criteria.

Note:

State the minimum instead of the maximum expected number of contractors, to allow more contracts than initially expected to be awarded if there are more high quality tenders at cheaper prices than expected.

Ensure that the budget distribution of the PCP:

- starts with minimum of three contractors and ends with a minimum of two contractors in the last phase
- contains a minimum of three phases that between them cover the entire PCP lifecycle: solution exploration; prototyping; initial development and testing of a limited set of first products or services. (If needed, each phase may be split up into more phases, *e.g. in complex PCPs*.)

1.4.2 Contracting approach

Explain the contracting approach:

The PCP is implemented by means of a framework agreement with specific contracts for each of the R&D phases (altogether 'contracts').

Following the tendering stage, a framework agreement and a specific contract for phase 1 are expected to be awarded to a minimum of [indicate number: minimum 3] contractors.

A call-off will be organised for phase 2, with the aim of awarding a minimum of [indicate number] phase 2 contracts. Only offers from contractors that successfully completed phase 1 will be eligible for phase 2. The procurers will validate the phase 2 prototypes [identify the site: in the procurer's labs or the contractors' lab].

A second call-off will be organised for phase 3, with the aim of awarding a minimum of [indicate number: minimum 2] phase 3 contracts. Only offers from contractors that successfully completed phase 2 will be eligible for phase 3. Phase 3 field-testing is expected to take place [insert where *(e.g. at all the sites where procurers of the buyers group are based)*].

The framework agreement sets all the framework conditions for the entire duration of the PCP (covering all the phases). There will be no renegotiation. The framework agreement remains binding for the duration of all phases for which contractors remain in the PCP. Tenderers that are awarded a framework agreement will also be awarded a specific contract for phase 1 (evaluation of tenders for the framework agreement and phase 1 are combined). Tenderers are therefore asked not only to submit their detailed offer for phase 1 in their tender, but also to state their goals, and to outline their plans (including price conditions) for phases 2 and 3, thus giving specific details of the steps that would lead to commercial exploitation of the R&D results.

Provide a brief overview of the overall timing of the PCP (including the expected start and finish dates) and of the individual phases.

Indicate clearly (in this section and in the time schedule table below) if:

- the offers for the next phase will be requested together with the end-of phase deliverables for the previous phase (In this case all contractors of the previous phase will be invited to make offers for the next phase, successful completion of the previous phase is evaluated before evaluating the offers for the next phase, to determine which offers are eligible to proceed to the evaluation of offers for the next phase)

or if

- the offers for the next phase will be requested only *after* the end-of phase deliverables of the previous phase and after the contractors have been informed of successful completion of the previous phase (In this case only the contractors that successfully completed the previous phase will be invited to make offers for the next phase.)

1.4.3 Time schedule

Explain the planned time schedule:

Planned time schedule	
Date	**Activity**
	First tender procedure (framework agreement and phase 1 contracts)
[dd.mm.yyyy]	Publication of contract notice in TED
…	Deadline for requesting tender documents
	Deadline for submitting questions about tender documents
	Deadline for lead procurer to publish replies to questions (Q&A document)
	Deadline for submission of tenders for the framework agreement and phase 1
	Opening of tenders
	Tenderers notified of decision on awarding contracts
	Signing of framework agreements and phase 1 specific contracts
	Publication of contract award notice in TED
	Implementation of phase 1
	Start of phase 1
	Names of winning phase 1 contractors and their project abstracts sent to EU and published on [insert acronym] PCP project website
	Visit of phase 1 contractors to the premises(s) of the procurer(s) to learn about the operational boundary conditions governing the design of targeted solutions
	Deadline for phase 1 interim milestone(s)/interim deliverable(s)
	Visit(s) of the phase 1 supervisor/monitoring team to the contractor's premises to check completion of milestone(s)/interim deliverable(s)
	Feedback from phase 1 supervisor/monitoring team on phase 1 interim milestone(s)/interim deliverable(s)
	Interim payments (if applicable)
	Deadline for phase 1 final milestone(s)/final report/deliverable(s)
	Assessment of phase 1 final milestone(s)/final report/deliverable(s)

	Phase 1 contractors notified as to whether they have completed this phase satisfactorily and successfully
	End of phase 1
	Payment of balance for phase 1 to contractors that completed this phase satisfactorily
	Second tender procedure (call-off for phase 2)
	Launch call-off for phase 2 (only offers from contractors that successfully completed phase 1 are eligible)
	Deadline for submitting questions on phase 2 call-off documents
	Deadline for lead procurer to circulate replies to questions to phase 2 bidders
	Deadline for submitting phase 2 offers
	Opening of phase 2 offers
	Contractors notified of decision on awarding phase 2 contracts
	Signing of phase 2 specific contracts
	Implementation phase 2
	Start of phase 2
	Names of winning phase 2 contractors and their project abstracts published on [insert acronym] PCP project website and sent to EU
	Visit of phase 2 contractors to the premises(s) of the procurer(s), where applicable
	Deadline for phase 2 interim milestone(s)/deliverable(s)
	Visit(s) of the phase 2 supervisor/monitoring team to the contractor's premises to check completion of interim milestone(s)/deliverable(s)
	Feedback from phase 2 supervisor/monitoring team on phase 2 interim milestone(s)/deliverable(s)
	Interim payments (if applicable)
	Lab testing of the prototype developed during phase 2
	Feedback from phase 2 supervisor/monitoring team on lab testing of the prototype
	Deadline for submission of phase 2 final milestone(s)/final report /deliverable(s)
	Demonstration of prototype for the EU technical review of phase 2
	Assessment of phase 2 final milestone(s)/final report/deliverable(s)
	Phase 2 contractors notified as to whether they have completed this phase satisfactorily and successfully
	End of phase 2
	Payment of balance for phase 2 to contractors that completed this phase satisfactorily
	Third tender procedure (call-off for phase 3)

	Launch call-off for phase 3 (only offers from contractors that successfully completed phase 2 are eligible)
	Deadline for submitting questions about phase 3 call-off documents
	Deadline for lead procurer to circulate replies to questions to phase 3 bidders
	Deadline for submitting phase 3 offers
	Opening of phase 3 offers
	Contractors notified of decision to award phase 3 contracts
	Signing of phase 3 specific contracts
	Implementation phase 3
	Start of phase 3
	Names of winning phase 3 contractors and their project abstracts published on [insert acronym] PCP project website and sent to EU
	Visit of phase 3 contractors to premises(s) of procurer(s), where applicable
	Deadline for phase 3 interim milestone(s)/deliverable(s)
	Visit(s) of the phase 3 /monitoring team to the contractor's premises to check completion of phase 3 interim milestone(s)/deliverable(s)
	Feedback from phase 3 monitoring supervisor/monitoring team on phase 3 interim milestone(s)/deliverable(s)
	Interim payments (if applicable)
	Field-testing of products/services developed during phase 3
	Feedback from phase 3 supervisor/monitoring team on field-testing of the products/services
	Deadline for submission of phase 3 final milestone(s)/final report/ deliverable(s)
	Final demonstration of products/services developed during phase 3 (including to EU representatives)
	Assessment of phase 3 final milestone(s)/final report/deliverable(s)
	Phase 3 contractors notified as to whether they have completed this phase satisfactorily and successfully
	End of phase 3
	Summary of the lessons learnt and the results achieved by each contractor during the PCP sent to EU for publication purposes.
	Payment of balance for phase 3 to contractors that completed this phase satisfactorily

2. Procurer(s) *[*and other parties involved in the PCP*]*

Explain the procurer set-up:

This procurement relates to a joint PCP that will be carried out by the following **lead procurer**: [name and country of the lead procurer]

The lead procurer is appointed to coordinate and lead the joint PCP, and to sign and award the framework agreement and the specific contracts for all phases of the PCP, in the name and on behalf of the following **buyers group**:

- [name and country of the member 1 of the buyers group]
- [name and country of the member 2 of the buyers group]
- …

The lead procurer is *[*not*]* part of the buyers group.

The procurers in the buyers group have the following background/profile/responsibilities for:

- [name 1]: [insert responsibilities]
- [name 2]: [insert responsibilities]
- ……

Explain the responsibilities the procurers in the buyers group have in their respective countries with regards to setting the acquisition and/or regulatory strategy for the innovative solutions. *(For example, a regional health procurer should explain here for how many hospitals in his region he is responsible to procure solutions, how many patients are served by these hospitals, how many of these patients are affected by the problem that the PCP aspires to solve etc. A regional ministry of health should explain for how many citizens (e.g. specific types of patients) it is defining regulations that affect the deployment of solutions in the healthcare sector in its region.)*

[For PCPs with third parties providing in-kind contributions to the PCP, add: The following entities are not in the buyers group but participate as **third parties giving in-kind contributions** to the lead procurer and/or buyers group for the purpose of carrying out the PCP:

- [name, country]
- [name, country]
- …

Provide a short description of the responsibilities of the third parties, the type of resources they will put at the disposal of the PCP, and the rights and obligations that the third parties will assume with respect to the PCP, *e.g. the type of information they will have access to, and whether they will participate in certain parts of the PCP implementation such as testing*. Explain that they will not assume rights to results or IPRs.*]*

[For PCPs with preferred partners, add: The following entities are participating as **preferred partners** with an interest in the PCP, but without being part of the buyers group or giving in-kind contributions for carrying out the PCP:

- [name, country]
- [name, country]
- [name, country]

Explain briefly how the preferred partners will be kept informed about the PCP, what type of information concerning the PCP they will have access to and whether they will attend certain parts of the PCP implementation such as product demonstrations and testing. Explain that they will not assume rights to results or IPRs.]

Note:

Lead procurer — Beneficiary of the EU grant that represents the buyers group for the funded procurement (and is also part of the 'buyers group' if it contributes to the PCP procurement budget).

Buyers group — Beneficiaries of the EU grant that form the group of procurers that contribute to the PCP procurement budget.

> For procurers that participate in the EU grant as sole participants (i.e. entities representing several members, *e.g. a central purchasing body, a European research infrastructure consortium*

or a European regional cooperation group), indicate which of the members contribute to the PCP procurement budget.

Third parties that provide in-kind contributions to the PCP — Entities that are neither lead procurer nor members of the buyers group but that participate in the EU grant as third parties giving in-kind contributions to the PCP.

Preferred partners — Entities that are neither lead procurer, nor members of the buyers group, nor third parties providing in-kind contributions to the PCP, but that have a special interest in closely following the PCP. They may be beneficiaries/linked third parties involved in the EU grant *(e.g. those involved in 'related additional networking activities')* or they may be other entities that are not involved in the EU grant *(e.g. other procurers on the market that are potential buyers for the solutions and have expressed an interest in closely following the PCP)*.

3. Description of services to be procured

3.1 Motivation for the PCP

Explain the drivers that motivated the procurer(s) to launch the PCP, in particular:

- how the PCP fits into the strategy and plans of the procurer(s) to improve the quality and efficiency of the services of public interest that the procurer(s) is/are responsible for (*e.g. Procurer A is responsible for the care of x thousands of elderly persons in his region, the elderly population will increase by y % by 2020 whilst elderly care budgets are under pressure. Procurer A is therefore planning to re-organise/modernize its elderly care provisioning system with the new solutions to be developed by the PCP, in order to provide elderly care z % more efficiently and effectively by 2020*)
- whether the motivation(s) for carrying out the PCP are linked to regulatory requirements and/or the need for standardisation or certification.

3.2 Preparation for the PCP

Provide information about any preparatory activities undertaken to fine-tune the scope of the PCP that tenderers should be aware of *(e.g. the outcome of the open market consultation, horizon scanning, prior analysis of the products currently available or under development in ongoing R&D projects and end-user surveys)* before the publication of the contract notice.

Provide details about the open market consultation (*e.g. how it was conducted, where and when it was held, an internet link and a link to the prior information notice (PIN) published*).

Summarise clearly the lessons learnt, in particular the reasons why the currently available solutions don't meet the procurement need.

3.3 PCP challenge

Explain the common challenge to be addressed and the scope of the R&D services to be procured:

This procurement is for **R&D services** to develop **solutions** to tackle the following **challenge**: [specify briefly the subject and scope of this PCP, *e.g. improving the energy efficiency of buildings*] *[OPTION for PCPs with sub-challenges:* and the following sub-challenges: [specify the sub-challenges]*]*

This is a common challenge shared by all procurers in the buyers group. *[OPTION for PCPs with sub-challenges:* All sub-challenges are shared by all members of the buyers group.*]*

The **main quality/efficiency improvements** sought for: [indicate the target quality/efficiency and/or functionality/performance improvements, compared to the current best available solutions, *e.g. 30 % energy efficiency improvement, interoperability*]

[OPTION for PCPs that include the purchase of some of the R&D results: The PCP includes the **purchase** of a limited set of *[***prototype(s)***] [*and*][*or*] [*first test products or services*]* resulting from the R&D.

Explain clearly who is procuring which/how many prototypes/test products and where and when they need to be delivered.***]***

Note:

Ensure that the target quality/efficiency improvements clearly enable to make a step-change beyond what currently available solutions are able to deliver. Use functional or performance-based specifications, including technical minimum requirements that innovative solutions must meet, rather than prescribing a specific solution. Take into account your analysis on the shortcomings of solutions available on the market, the analysis of the needs of the buyers group and the outcome of the open market consultation. Alert tenderers as far as possible to any specific requirements of the subsequent phases *(e.g. for phase 2: local technical and safety conditions where prototype testing is planned to take place at one of the procurers' labs; for phase 3: local technical, ethics and safety/security requirements for field-testing)*. Provide the metrics or indicators that will be used to compare, at the end of each PCP phase, to what extent each competing solution has made progress towards reaching the targets.

For PCPs that include the purchase of a limited set of prototype(s) or first test products or services resulting from the R&D, specify why these are needed for R&D purposes (*e.g. if the existing solution used by the procurers has to be destroyed in order to test the new solutions developed during the PCP and/or the procurers need to carry out further testing of the newly developed solutions after the PCP is finished)*. Specify which and how many prototypes or first products are to be procured.

3.4 Expected outcomes (per phase)

Describe the objectives, their associated output and results and the tasks to be carried out (milestones and deliverables) for each of the three phases:

Expected outcomes					
Phase 1					
	Objective:	Perform research to: 1. elaborate the solution design and determine the approach to be taken to develop the new solutions and 2. demonstrate the technical, financial and commercial feasibility of the proposed concepts and approach to meet the procurement need			
	Output and results:				
	Milestones and deliverables		**By when?**	**How?**	**Output and results**
	Milestones:	M1.1) [milestone 1.1]	[dd.mm.yyyy]	[*e.g.sent by email to lead procurer, on-site visit*]	…
		M1.2) [milestone 1.2]	…	…	…
		…..			

	Deliverables:	D1.1)[deliverable 1.1]			
		D1.1a)[interim deliverable 1.1a]			
		D1.1b)[interim deliverable 1.1b]			
		D1.2)[deliverable 1.2]			
		D1.3)[deliverable 1.3]			
		D1.3a)[interim deliverable 1.3a]			
		D1.4)[deliverable 1.4]			
		…			
Phase 2					
	Objective:	Develop, demonstrate and validate prototypes in lab conditions			
	Output and results:				
	Milestones and deliverables		**By when?**	**How?**	**Output and results**
	Milestones:	M2.1) [milestone 2.1]	[dd.mm.yyyy]	[*e.g.sent by email to lead procurer, on-site visit*]	…
		M2.2) [milestone 2.2]	…	…	
		…..			
	Deliverables:	D2.1)[deliverable 2.1]			
		D2.1a)[interim deliverable 2.1a]			
		D2.1b)[interim deliverable 2.1b]			
		D2.2)[deliverable 2.2]			
		D2.3)[deliverable 2.3]			

		D2.3a)[interim deliverable 2.3a]			
		D2.4)[deliverable 2.4]			
		…			
	Points to be addressed in report:				
Phase 3					
	Objective:	Original development and field-testing of a limited set of first *[*products*]* *[*services*]* (the test series)			
	Output and results:				
	Milestones and deliverables		**By when?**	**How?**	**Output and results**
	Milestones:	M3.1) [milestone 3.1]	[dd.mm.yyyy]	[*e.g.sent by email to lead procurer, on-site visit*]	
		M3.2) [milestone 3.2]	…		
		…..			
	Deliverables:	D3.1)[deliverable 3.1]			
		D3.1a)[interim deliverable 3.1a]			
		D3.1b)[interim deliverable 3.1b]			
		D3.2)[deliverable 3.2]			
		D3.3)[deliverable 3.3]			
		D3.3a)[interim deliverable 3.3a]			
		D3.4)[deliverable 3.4]			
		…			
	Points to be addressed in report:				

Specify the tasks and expected outcomes of each milestone and deliverable in more detail:

M1.1)

M1.2) …

D1.1)

D1.2) …

Note:

Do not forget to include the following deliverables:

- for each end-of phase deliverable, a section that explains the IPR measures taken by the contractor to protect the results and lists the names and location of personnel that carried out the R&D activities
- at the start of phase 1, phase 1 project abstracts (in the format required by the EU for publication)
- at the end of phase 1, a summary of the main results achieved by each contractor and conclusions from phase 1 (in the format required by the EU for publication)
- at the start of phase 2, phase 2 project abstracts (in the format required by the EU for publication)
- at the end of phase 2, a summary of the main results achieved by each contractor and conclusions from phase 2 (in the format required by the EU for publication)
- at the end of phase 2, a demonstration to the EU of the prototypes developed during phase 2
- at the start of phase 3, phase 3 project abstracts (in the format required by the EU for publication)
- at the end of phase 3, a summary of the main results achieved by each contractor and conclusions from the PCP in the format required by the EU for publication)
- a deadline by which the contractors must agree on the text for the summary of overall lessons learnt and results achieved from the PCP, for publication
- at the end of phase 3, a final demonstration to the EU of the final products or services developed during the three phases.

For phase 2, specify whether prototype validation is expected to be done at the premises of the procurer(s) or the contractor. In case of PCPs with lots, clarify if there is a need for validating prototypes of contractors from different lots together (to test dependencies between lots and to ensure that building blocks developed in different lots will ultimately work together as expected).

For phase 3, provide information on the site(s) where the testing of the test series will take place and its timing. State clearly how many solutions each contractor is expected to develop for the limited test series. Specify whether contractors need to set aside resources for testing the solutions on the premises of all the procurers in the buyers group. Indicate whether they need to plan to have resources available to carry out testing sequentially or in parallel at the different sites. In case of PCPs with lots, clarify if there is a need for field testing of products/services developed by contractors in different lots together (to test dependencies between lots and to ensure that building blocks developed in different lots ultimately work together as expected).

3.5 IPR — Commercial exploitation of the results — Declaration of pre-existing rights

Ownership of results (foreground)

Each contractor keeps ownership of the IPRs attached to the results it generates during the PCP implementation. The tendered price is expected to take this into account (see section 4.5.4).

The ownership of the IPRs will be subject to the following:

- the members of the buyers group have the right to:

  - access results, on a royalty-free basis, for their own use
  - grant (or to require the contractors to grant) non-exclusive licences to third parties to exploit the results under fair and reasonable conditions (without the right to sub-license)
- the contractors will have to transfer ownership of the IPRs to the members of the buyers group if they fail to comply with their obligation to commercially exploit the results (see below) or use the results to the detriment of the public interest, including security interests.

Commercial exploitation of results

*[*The market potential is estimated at [insert available figures for the expected size and type of the potential total market size, i.e. beyond the procurers alone].*]*

The contractors are expected to commercially exploit the results of the R&D undertaken in the PCP within a period of [insert number of years (minimum of four years after the end of the EU grant)] years after the end of the framework agreement.

Provide information about:

- whether contractors are required to undertake specific activities beyond product development to commercially exploit the results, *e.g. certification of solutions or contribution to standardisation;*
- activities that the procurers themselves plan to undertake to help remove barriers to the introduction onto the market of the solutions to be developed during the PCP *(e.g. promotion of R&D results among other procurers, contribution made by the demand side to regulation, standardisation, and certification)*

The feasibility of the business plan to commercially exploit the R&D results will be assessed as part of the award criteria (see section 4.5.3).

Declaration of pre-existing rights (background)

The ownership of pre-existing rights remains unchanged by the PCP.

In order to be able to distinguish clearly between results and pre-existing rights (and to establish which pre-existing rights are held by whom):

- tenderers are requested to list the pre-existing rights for their proposed solution in their offers (see section 4.5.3)
- procurers and contractors will establish a list of respective pre-existing rights to be used — before the start of the contract.

[OPTION for lead procurers, members of the buyers group and third parties providing in-kind contributions to the PCP that do NOT hold any relevant background: The lead procurer and members of the buyers group *[*and third parties providing in-kind contributions to the PCP*]* do not hold any pre-existing rights relevant to the PCP contracts.*]*

[OPTION for lead procurers, members of the buyers group and third parties providing in-kind contributions to the PCP that hold relevant background: The following members of the buyers group and/or lead procurer and/or third parties providing in-kind contributions to the PCP hold the following pre-existing relevant rights: [list all pre-existing rights held by the lead procurer or by members of the buyers group that tenderers should be aware about to prepare their offer — and specify those that are available for use and those that must be used to build upon for carrying out the R&D for the PCP]*]*

The framework agreement contains a provision that describes in more detail the rights and obligations of the different parties regarding the pre-existing rights and results.

Note: Note that some of the IPR-related terms used in this document (e.g. background) do not necessarily have the same meaning as in the EU grant agreement.

4. Conditions of tender

4.1 Eligible tenderers, joint tenders and subcontracting

Explain that the call for tenders is open to all operators (companies or other type of legal entities):

Participation in the tendering procedure is **open** on equal terms to **all types of operators from any country,** regardless of their geographic location, size or governance structure.

Tenders may be submitted by a **single entity** or in collaboration with others. The latter can involve either submitting a **joint tender** or subcontracting, or a combination of the two approaches.

a. For joint tenders:

- explain that the group of tenderers must assume joint and several liability for the performance of the contract
- require that the group of tenderers must mandate one of them with the power to sign the framework agreement and specific contracts provide in their name and on their behalf ('lead contractor')

b. For subcontracting:

- specify if there are restrictions on the allowed amount(s) that can be subcontracted
- indicate the provisions of national law that apply to subcontracting
- explain that the tender must mention which parts of the contract will be subcontracted
- specify that the contractors remain fully liable to the buyers group for the performance of the contract (and that subcontracts must therefore reflect the rules of the EU grant agreement, *including as relates to the place of performance, the definition of R&D services, confidentiality, results and IPRs, the visibility of EU funding, conflicts of interest, language, obligation to provide information and keep records, audits and checks by the EU, the processing of personal data, liability for damages and ethics and security requirements*).

Participation in the open market consultation is not a condition for submitting a tender.

Attention:

There will, however, be a requirement relating to the place of performance of the R&D services (see below).

For phases 2 and 3, participation is limited to tenderers that successfully completed the preceding phase.

4.2 Exclusion criteria

List the exclusion criteria and the evidence to be provided that will be used for the evaluation of the tender.

The exclusion criteria are as follows:

Exclusion criteria	Evidence
Include conflict of interest and all mandatory (and if applicable, optional) exclusion criteria according to national law.	Specify the required evidence for each criterion.
A) Conflict of Interest	A) a declaration of honour for 'absence of conflict of interest'
B) …	

⚠ Tenderers that do not comply with these criteria will be excluded.

Explain each exclusion criterion in more detail:

A) Conflict of interest

Tenderers that are subject to a conflict of interest may be excluded. If there is a potential conflict of interest, tenderers must immediately notify the lead procurer in writing.

A conflict of interest is any situation where the impartial and objective implementation of the evaluation of tenders and/or implementation of the contract is compromised for reasons relating to economic interests, political or national affinity, family, personal life *(e.g. family of emotional ties)* or any other shared interest.

⚠ **Attention:** If an actual or potential conflict of interest arises at a later stage (i.e. during the implementation of the contract), the contractor must contact the lead procurer, who is required to notify the EU and to take steps to rectify the situation. The EU may verify the measures taken and require additional information to be provided and/or further measures to be taken.

B) …

4.3 Selection criteria

List the selection criteria and the evidence to be provided:

The selection criteria are as follows:

Selection criteria	Evidence
A) Ability to perform R&D up to original development of the first products or services and to commercially exploit the results of the PCP, including intangible results in particular IPRs	Description of the capacity, materials and equipment that are available to the tenderer for research, prototyping and limited production and supply of the first set of products or services Description of the financial and organisational structures that are available to the tenderer for management, exploitation and transfer of IPRs and for generating revenue by marketing commercial applications of the results
B) …	

⚠ Tenderers that do not comply with these criteria will be excluded.

Explain each selection criterion in more detail:

A) Ability to perform R&D up to original development of the first products or services and to commercially exploit the results of the PCP, including intangible results in particular IPRs

Tenderers must have:

- the capacity, tools, material and equipment to:
    - carry out research and lab prototyping
    - produce and supply a limited set of first products or services and demonstrate that these products or services are suitable for production or supply in quantity and to quality standards defined by the procurers
- the financial and organisational structures to
    - manage, exploit and transfer or sell the results of the PCP (including tangible and intangible results, such as new product designs and IPRs)
    - generate revenue by marketing commercial applications of the results (directly or through subcontractors or licensees).

B) …

Attention: Should there be any doubt as to any of these criteria, tenderers may be requested to provide additional information.

Note:

Avoid selection criteria that are based on disproportionate qualification and financial guarantee requirements *(e.g. with regard to references from past customers, references for professional or technical qualifications and minimum turnover)*. Instead, use the business plan as one of the award criteria for deciding whether to award a contract (i.e. by requiring tenderers to show that they are able, during the PCP, to gradually build up sufficient financial capacity to successfully market their results).

4.4 Compliance criteria

List the compliance criteria and the evidence to be provided. Explain that the offers for each phase will be evaluated against the compliance criteria A to E.

Tenders must comply with the following compliance criteria:

Compliance criteria	Evidence
A) Compliance with the definition of R&D services	
B) Compatibility with other public financing	
C) Compliance with the requirements regarding the place of performance of the contract	
D) Compliance with ethics requirements	

E) Compliance with security requirements	
Additional compliance criteria for the call-off for phase 2	
X) …	
Additional compliance criteria for the call-off for phase 3	
X) …	

⚠ Tenders that do not comply with these criteria will be excluded.

Explain each compliance criterion in more detail:

A) Compliance with the definition of R&D services

Tenders that go beyond the provision of R&D services will be excluded.

R&D covers fundamental research, industrial research and experimental development, as per the definition given in the EU R&D&I state aid framework[5]. It may include exploration and design of solutions and prototyping up to the original development of a limited volume of first products or services in the form of a test series. Original development of a first product or service may include limited production or supply in order to incorporate the results of field-testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards.[6] R&D does not include quantity production or supply to establish commercial viability or to recover R&D costs. It also excludes commercial development activities such as incremental adaptations or routine or periodic changes to existing products, services, production lines, processes or other operations in progress, even if such changes may constitute improvements. The purchase of commercial volumes of products or services is not permitted.

The definition of services means that the value of any products covered by the contract must be less than 50 % of the total value of the PCP framework agreement.

Specify the evidence to be provided to demonstrate compliance with this criterion.

The following evidence is required:

- the financial part of the offer for the framework agreement must provide binding unit prices for all foreseeable items for the duration of the whole framework agreement
- the financial part of the offer for each phase must give a breakdown of the price for that phase in terms of units and unit prices for every type of item in the contract, distinguishing clearly the units and unit prices for items that concern products
- the offers for all three phases may include only items needed to address the challenge in question and to deliver the R&D services described in the request for tenders
- the offers for all three phases must offer services matching the R&D definition above
- the total sum of the value of products offered in each phase and all previous phases must be less than 50 % of the total value of the framework agreement
- …

5 See Point 15 of the Commission Communication on a framework for state aid for research and development and innovation (C(2014) 3282).

6 See Article XV(1)(e) WTO GPA 1994 and the Article XIII(1)(f) of the revised WTO GPA 2014.

B) Compatibility with other public financing

Tenders that receive public funding from other sources will be excluded if this leads to double public financing or an accumulation of different types of public financing that is not permitted by EU legislation, including EU state aid rules.

Specify the evidence to be provided to demonstrate compliance with this criterion. Require for example a declaration of honour for absence of other incompatible public financing.

C) Compliance with requirements relating to the place of performance of the contract

Tenders will be excluded if they do not meet the following requirements relating to the place of performance of the contract:

- At least [add percentage — minimum 50 %] of the total value of activities covered by the framework agreement must be performed in the EU Member States or H2020 associated countries. The principal R&D staff working on the PCP must be located in the EU Member States or H2020 associated countries.

- At least [add percentage — minimum 50 %] of the total value of activities covered by each specific contract for each PCP phase must be performed in the EU Member States or in H2020 associated countries. The principal R&D staff working on each specific contract must be located in the EU Member States or H2020 associated countries.

The percentage is calculated as the part of the total monetary value of the contract that is allocated to activities performed in the EU Member States or in other countries associated to Horizon 2020. All activities covered by the contract are included in the calculation, i.e. all R&D and operational activities that are needed to perform the R&D services *(e.g. research, development, testing and certifying solutions)*. This includes all activities performed under the contract by contractors and, if applicable, their subcontractors.

The principal R&D staff are the main researchers, developers and testers responsible for leading the R&D activities covered by the contract.

The countries associated to Horizon 2020 are those listed as associated countries in the Participant Portal Online Manual[7].

Both percentages must be set at a minimum of 50 % to ensure that tenders that do not go through to phase 2 or 3 still satisfy the place of performance requirement.

Specify the evidence to be provided to demonstrate compliance with this criterion:

The following evidence is required:

- the financial part of the offer must provide binding unit prices for all foreseeable items for the duration of the whole framework agreement and give a breakdown of the price for the current phase in terms of units and unit prices (hours and unit price per hour), for every type of item in the contract *(e.g. junior and senior researchers)*
- a list of staff working on the specific contract (including for subcontractors), indicating clearly their role in performing the contract (i.e. whether they are principal R&D staff or not) and the location (country) where they will carry out their tasks under the contract
- a confirmation or declaration of honour that, where certain activities forming part of the contract are subcontracted, subcontractors will be required to comply with the place of performance obligation to ensure that the minimum percentage of the total amount of activities that has to be performed in the EU Member States or in countries participating in Horizon 2020 is respected
- …

[7] List of H2020 associated countries.

D) Ethics and research integrity

Tenders will be excluded if they:

- do not comply with the following rules:
    - ethical principles (including the highest standards of research integrity, notably as set out in the European Code of Conduct for Research Integrity[8], and, in particular, avoiding fabrication, falsification, plagiarism and other research misconduct)
    - applicable international, EU and national law
- include plans to carry out activities that are prohibited in all Member States or in a country outside the EU (where those activities are allowed)
- include activities whose aim is to:
    - carry out human cloning for reproductive purposes
    - modify the genetic heritage of human beings in such a way as could make such changes heritable (with the exception of research relating to cancer treatment of the gonads)
    - create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer
- include activities that do not focus exclusively on civil applications
- *[OPTION if EU grant agreement contains ethics requirements that affect the PCP contracts:* do not comply with the following ethics requirements:
    - [insert the ethics requirements from Annex I to the EU grant agreement]*].*

If the tender involves activities that raise ethical issues, the tenderer must submit an ethics self-assessment that:

- describes how the tender meets the legal and ethical requirements of the country or countries where the tasks raising ethical issues are to be carried out
- explains in detail how the tenderer intends to address the ethical issues identified, in particular as regards:
    - objectives *(e.g. dealing with vulnerable populations and dual-use goods[9])*
    - methodology *(e.g. involvement of children and related consent procedure and protection of data collected)*
    - the potential impact *(e.g. issues relating to the dual use of goods, environmental damage, stigmatisation of particular social groups, political or financial retaliation, benefit-sharing and malevolent use of results)*.

ⓘ For information on ethics issues, see the guidance for EU grant beneficiaries How to complete your ethics self-assessment.

Attention:

Call-offs for phases 2 and 3 may request that this information be updated in the offers submitted for these phases.

[8] The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011.

[9] See Article 2(1) EU export control Regulation No 428/2009.

Before starting the particular task that raises ethical issues, contractors must provide a copy of:

- any ethics committee opinion required under national law; and
- any notification or authorisation for activities raising ethical issues required under national law.

The framework agreement contains a provision on ethics.

E) Security

Tenders will be excluded if they do not:

- comply with:
  - EU, national and international law on dual-use goods or dangerous materials and substances
  - *[OPTION if EU grant agreement provides for a security classification that affects the PCP contracts:* the security aspect letter (SAL) annexed to the EU grant agreement and Decision No 2015/444[10]*]*
  - *[OPTION if EU grant agreement contains security recommendations that affect the PCP contracts:* the following security recommendations:
    - [insert the security recommendations from Annex I to the EU grant agreement]*]*

Tenders themselves must not contain any classified information.

If the output of activities or results proposed in the tender raise security issues or uses EU-classified information, the tenderer must show that these issues are being handled correctly. In such a case, tenderers are required to ensure and to provide evidence of the adequate clearance of all relevant facilities. They must examine any issues (*such as those relating to access to classified information or export or transfer control*) with the national authorities before submitting their offer. Tenders must include a draft security classification guide (SCG), indicating the expected levels of security classification.

Attention:

If necessary for the tender procedure or for performing the contract itself, contractors will be requested to ensure appropriate security clearance for third parties *(e.g. for external experts needed to evaluate the proposal)*.

Call-offs for phases 2 and 3 may request that this security information be updated in the offers submitted for that phase.

Before starting the particular task that raises security issues, contractors must provide a copy of any export or transfer licences required under EU, national or international law.

The framework agreement and/or the specific contracts contain a provision on security.

F)…

Attention: Should there be any doubt as to any of these criteria, tenderers may be requested to provide additional information.

[10] Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU classified information

4.5 Award criteria

Specify the award criteria (and sub-criteria, where applicable), weightings and thresholds for each of the three phases:

Award criteria	Maximum points	Thresholds	Weighting
Phase 1			
Technical quality criteria			
A) [insert technical quality criterion 1]			
B) [insert technical quality criterion 2]			
C) [insert technical quality criterion 3]			
D)…			
Total technical quality criteria			
Price			
Phase 2			
Technical quality criteria			
A) [insert technical quality criterion 1]			
B) [insert technical quality criterion 2]			
C) [insert technical quality criterion 3]			
D)…			
Total technical quality criteria			
Price			
Phase 3			
Technical quality criteria			
A) [insert technical quality criterion 1]			
B) [insert technical quality criterion 2]			
C) [insert technical quality criterion 3]			
D)…			
Total technical quality criteria			
Price			

Explain each award criterion in more detail:

A) …

B)…

Attention:

Additional sub-criteria may be added for the call-offs for phases 2 and 3, as a way of making the award criteria more precise, provided that they do not substantially change the existing criteria.

Should there be any doubt as to any of these criteria, tenderers may be requested to provide additional information.

Note:

The award criteria must ensure that the procurer gets the best value for money. It is therefore not permitted to use either lowest price as the sole criteria, without taking quality into account, or highest quality as the sole criteria, without taking price into account.

Set the technical quality and price award criteria, weightings and thresholds so as to favour the most economically advantageous tenders. Define the thresholds per criterion and the total threshold.

Pay particular attention to the weighting given to price. It should be sufficiently high to avoid this criteria being neutralised in the evaluation. *(For example, a weighting of less than 20 out of 100 for price is too low for it to have a significant effect on the result.)*

State clearly whether all the award criteria will be evaluated by examining the written tender or whether some award criteria will be evaluated on the basis of hearings with or presentations to the evaluation committee.

4.6 Submission content and format

4.6.1 Submission and format of tenders, tender closing time

Explain the formal requirements that tenders must meet (including the address for submission of the tender, the deadline for submission of the tender and requirements relating to the presentation of the offer and its packaging).

State that all tenders must:

- contain administrative, technical and financial sections
- indicate their minimum validity period (from submission)
- be signed.

Specify that tenders that do not comply with the formal requirements will automatically be rejected.

Explain that more detailed information about the final layout requirements for the phase 2 and 3 offers will be provided in the call-off.

4.6.2 Administrative section of the tender

List the information that must be included in this section of the tender (including the documentary evidence necessary to identify the tenderer and to evaluate the tender against the exclusion, selection and compliance criterion B and — for joint tenders — the mandate for the lead contractor).

Mention that the lead procurer may request clarification or additional evidence where there is any doubt.

Explain that more detailed information for the phase 2 and 3 offers will be provided in the call-offs.

4.6.3 Technical section of the tender

Explain what the technical section of the tender must include:

Tenders must include a **technical offer**, containing:

- a technical plan that outlines: 1. the tenderer's idea for addressing all the requirements given in the PCP challenge description, relating both to functionality and performance; and 2. technical details of how this would be implemented
- a draft business plan that explains the proposed approach to commercially exploit the results of the PCP and to bring a viable product or service onto the market
- a list of the pre-existing rights (background) relevant to the tenderer's proposed solution, in order to allow IPR dependencies to be assessed
- a risk assessment and risk mitigation strategy
- a reply to the question "Does this tender involve **ethical issues**? (YES/NO)" and if YES, an ethics self-assessment, with explanations how the ethical issues will be addressed (see section 4.2)
- a reply to the question "Does this tender involve: activities or results that may raise **security issues** and/or **EU-classified information**[11] as background or results? (YES/NO)" and if YES information on how these issues will be addressed (see section 4.2)
- …

Attention:

Tenders failing to meet these requirements will be excluded.

The technical part must provide a *detailed* technical offer for phase 1 (including an explanation of the methodology, a work plan and details of deliverables and milestones), and must specify the plans for and objectives of the subsequent phases 2 and 3 and beyond (including a plan for commercial exploitation of the results).

Explain how the technical section of the tender should be drafted (possibly by providing a template).

State that the information provided in the technical section of the tender will be used to evaluate the tenders, on the basis of the technical award criteria and the compliance criteria A, D and E.

Explain that more detailed information for the phase 2 and 3 offers (in particular on the technical implementation plan, updated business plan and list of IPRs) will be provided in the call-offs.

4.6.4 Financial section of the tender

Explain what the financial section of the tender must include:

The tender must include a detailed **financial offer** specifying:

- binding **unit prices** for all items needed for carrying out phase 1 and for items that are expected to be needed for phases 2 and 3 (given in euros, excluding VAT but including any other taxes and duties)
- a fixed **total price** for phase 1 and an estimated total price for phases 2 and 3, broken down to show unit prices and the number of each unit needed to carry out phase 1 (given in euros, excluding VAT but including any other taxes and duties).

In addition, the financial section must include:

- a **price breakdown** that shows the price for R&D services and the price for supplies of products (to demonstrate compliance with the definition of R&D in compliance criterion A)
- a **price breakdown** that shows the location or country in which the different categories of activities are to be carried out *(e.g. x hours of senior researchers in country L at y euro/hour;*

[11] See Decision 2015/444/EC, Euratom on the provisions on security of EU-classified information.

a hours of junior developers in country M at b euro/hour) (to demonstrate compliance with the requirement relating to place of performance in compliance criterion C)

- the **financial compensation** valuing the allocation of ownership of the **IPRs** generated during the PCP to the tenderer, either:

  - *[OPTION if the procurers choose 'ex ante' valuation of the IPRs:* by giving an absolute value for the price reduction between the price offered in the tender compared to the exclusive development price (i.e. the price that would have been quoted were IPR ownership to be transferred to the procurers)*]*

  - *[OPTION if the procurers choose 'ex post' valuation of the IPRs:* by confirming the tenderer's agreement with the chosen royalty scheme specified by the procurers, including the percentage of royalties that contractors will have to pay on sales/profits made from commercial exploitation of the IPRs*]*

  in order to ensure compliance with the EU R&D&I state aid framework.

⚠ **Attention:** The unit prices quoted for each category of items *(e.g. hourly rates for junior and senior researchers, developers and testers)* remain binding for all phases (i.e. for the duration of the framework agreement).

Explain how the financial section of the tender should be written.

Explain whether and according to which formula unit prices can be indexed for phases 2 and 3.

Explain that the financial compensation for IPRs must reflect the market value of the benefits received (i.e. the opportunity that the IPRs offer for commercial exploitation) and the risks assumed by the contractor *(e.g. the cost of maintaining IPRs and bringing the products onto the market)*.

State that the information provided in the financial section of the tender will be used to evaluate the tenders on the basis of the price award criteria and the compliance criteria A and C.

Explain that more detailed information for the phase 2 and 3 offers will be provided in the call-off. The price for phase 2 and 3 offers must be based on the binding unit prices in the tender and the price conditions set out in the framework agreement. Where new units/unit prices *(e.g. for new tasks or equipment)* are subsequently added to the phase 2 or 3 offers, they will become binding for the remaining phases.

Similar price breakdowns will be requested for the call-offs for phase 2 and 3.

Note:

Indicate which VAT regime(s) apply. If all contractors will be paid by the lead procurer (centralised payments), it will be the VAT regime of the lead procurer. If all contractors will be paid by each member of the buyers group individually (pro rata to its contribution to the PCP procurement budget; decentralised payments), it will be the VAT regime for each member of the buyers group for its share of the payment.

4.7 Other tender conditions

4.7.1 Signed tenders

A signed tender will be considered to constitute a firm, irrevocable, unchangeable and binding offer from the tenderer.

The signature of an authorised representative will be considered as the signature of the tender (and will be binding on the tenderer or, for joint tenders, the group of tenderers).

4.7.2 Confidentiality

Tenderers must keep confidential any information obtained in the context of the tender procedure (including EU-classified information[12]).

4.7.3. Language

Tenders as well as offers for phase 2 and 3 call-offs must be submitted in English *[*and [insert additional language(s), if any]*]*.

Deliverables must be submitted in English *[*and [insert additional language(s), if any]*]*.

Communication (relating to either the tender procedure or the implementation of the contract) must be carried out in English *[*or [add additional language(s), if any]*]*.

Note:

Indicate specific language requirements, if necessary (for example, if certain tasks need to be carried out in cooperation with third parties locally, *e.g. for field-testing with end-users who may speak only the local language*).

4.7.4 Cancellation of the tender procedure

The procurers may, at any moment, cease to proceed with the tender procedure and cancel it.

The procurers reserve the right not to award any contracts at the end of the tender procedure.

The procurers are not liable for any expense or loss the tenderers may have incurred in preparing their offer*[*, except for [insert if mandatory limits under national law]*]*.

[12] Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU-classified information.

5. Process rules and information

5.1 Opening of tenders

Describe the composition of the opening committee, i.e. the number and type of members, without giving their names.

Specify which points will be checked during the opening of tenders, in particular in relation to compliance with the conditions on the content and format of the offer (see above).

State that tenders not complying with the formal requirements will be excluded from the tender evaluation.

Give the date for the opening of the tenders and explain how tenderers can participate.

For phases 2 and 3, explain any differences in the composition of the opening committee or in the procedure.

5.2 Evaluation of tenders

Describe the composition of the evaluation committee (and its panels, where applicable), i.e. specify:

- whether the evaluation committee is the same as the opening committee
- the number and type of members, without giving their names
- whether, in addition to the lead procurer and the members of the buyers group, there will be independent experts on the committee *(e.g. technical experts on the subject, financial experts for evaluating the commercial viability of the solutions proposed or ethical or security experts)*.

The evaluation committee will evaluate the tenders, carrying out the following four steps:

Step 1 — Checking whether the tenderer is not in one of the situations covered by the exclusion criteria

Step 2 — For tenderers passing Step 1, assessing whether the tenderer has the capacities necessary to perform the contract, on the basis of the selection criteria

Step 3 — For tenderers passing Step 2, evaluating the tender based on the compliance criteria

Step 4 — For tenders passing Step 3, evaluating the tender based on the award criteria

Explain the tasks of the chair and the members (and the different panels, where applicable).

Specify which members will be involved in the different steps of the evaluation.

Describe how the committee (and its panels) will work *(e.g. when and how they will meet)*, and explain the process to be used for making decisions at each of the different steps *(e.g. decision by unanimity)*.

Explain the system for scoring, qualitative appraisal and ranking *(e.g. starting from a first round of individual evaluations and concluding with a final agreed qualitative appraisal; the scoring for each tender and the final ranking list of all tenders agreed by the lead procurer and the buyers group)*.

Specify the type of feedback tenderers will receive from the evaluation of their tender.

For phases 2 and 3, explain any differences in the composition of the evaluation committee or in the procedure (Highlight in particular that the evaluation of offers for phase 2 has only two steps: evaluating the offers based on the compliance and award criteria.)

Note:

The buyers group and the lead procurer must evaluate the tenders and offers for the call-offs for phase 2 and 3 jointly and must make a *joint* award decision.

Avoid potential conflicts of interest.

⚠ Please note that, for each phase and each tender received, the procurer must send an evaluation form to the Commission or its agency as part of the deliverables to be submitted at the end of the tender evaluation. (It should include: the final scores awarded, a qualitative appraisal per evaluation criterion, minutes of the evaluation meeting and the final ranking list)

5.3 Communication — Q&A

The Q&A from the open market consultation can be found on [indicate the website where the Q&A from the open market consultation phase can be found].

For further questions, you may contact [the lead procurer via email and/or by other means] in English [and any additional languages chosen by the lead procurer and buyers group] until [insert date].

The summary of all questions and answers will be presented in an anonymised Q&A document that will be published on [indicate the website where the Q&A will be uploaded] in English [and any additional languages chosen by the lead procurer and buyers group] (final version planned for [insert date]). For phases 2 and 3, the answers will not be published, but distributed to all contractors that successfully completed the previous phase.

Unless otherwise instructed, please do not use any other contact addresses or contact any other persons in connection with this procurement.

5.4 Procedures for appeal

Specify:

- the names of the appeal and mediation bodies foreseen under the national law applicable to the lead procurer and the time periods for filing a complaint and the different stages of dispute settlement.

6. Conditions of the contracts

Successful tenderers will be requested to sign both a framework agreement and specific contracts for phases 1, 2 and 3 (see the models given in Annexes 1 and 2).

6.1. Monitoring

During each phase, contract implementation will be monitored periodically and reviewed against the expected outcomes (milestones, deliverables and output or results) for the phase.

Each contractor will be assigned a main contact person (their supervisor) from the monitoring team appointed by the procurers.

There will be regular monitoring meetings between contractor and the supervisor/monitoring team.

Explain how often they will take place, how they will be conducted (physical meetings or remote/online meetings), and what they will involve. The contractors could be asked to discuss the results achieved in the preceding period and present their updated work plan; the monitoring team or supervisor could visit the contractor's premises to periodically monitor progress; the contractors could visit the procurer's premises (in particular at the start of a phase to get to know better the operational environment that solutions need to be designed for). Clarify that the contractor must

cover its own costs and thus foresee personnel and travel budgets in its offer. In case of PCPs with lots, clarify if and when there will be meetings that involve contractors from the different lots to sort out dependencies between lots and to ensure that building blocks under development in different lots will ultimately work together as expected.

The monitoring team *[*or supervisor*]* will provide regular feedback to contractors after meetings or visits.

Explain how and when this will take place and how this will allow contractors to continuously improve the way in which their solutions address the problem set out in the PCP description.

6.2. Payments based on satisfactory completion of milestones and deliverables of the phase

Payments corresponding to each PCP phase will be subject to the *satisfactory* completion of the deliverables and milestones for that phase.

Satisfactory completion will be assessed by an assessment committee composed of [describe the composition of the assessment committee, without mentioning their names].

Satisfactory completion will be assessed according to the following requirements:

- if the work corresponding to that milestone / deliverable has been carried out
- if a reasonable minimum quality has been delivered
- if the reports have been submitted on time
- if the monies have been allocated to the planned objectives
- if the monies have been allocated and the work has been carried out according to the compliance criteria (place of performance, public funding and R&D definition criteria)

and

- if the work has been carried out in compliance with the provisions of the contract (including in particular verification if the contractor has duly protected and managed IPRs generated in the respective phase)

'Reasonable minimum quality' of a report means that:

- the report can be read by somebody who is familiar with the topic, but not an expert
- the report gives insight in the tasks performed in and the results
- the report is made using the end of phase report form or (if applicable) the milestone report form and the requirements of this form have been met
- …

'Reasonable minimum quality' of a demonstration (for phase 2 or 3) means:

- the demonstration can be understood by somebody who is familiar with the topic, but not an expert (for instance, somebody with operational but not technical knowledge)
- the demonstration shows how the innovation works, how it can be used and (if applicable) how it is operated and maintained
- the demonstration is accessible to parties appointed by the procurers, unless these are direct competitors of the contractor
- ...

Satisfactory completion in each of the phases does not mean successful completion. (A PCP could, for instance, be satisfactorily completed even if it concludes that the innovation is not feasible.)

The assessment will consider the efforts made by contractors to take into account the feedback from the supervisor or the monitoring team.

Specify the terms of approval for deliverables (for reports and demonstrations respectively), in particular how many days the contractor has to approve/request modifications/reject deliverables, how many days the contractor has to resubmit deliverables.

Where the assessment committee judges the completion of deliverables or milestones to be unsatisfactory, [explain what happens, in particular the possible consequences in terms of reducing or withdrawing payments for that deliverable and/or terminating the contract].

Invoices must be submitted *[*to the lead procurer*][*pro-rata to each member of the buyers group*]*.

[*OPTION in case pro-rata payments are used:* For every payment the contractors must create [insert a number equal to the amount of members in the buyers group] number of invoices, dividing the amount of the payment over the invoices for the different members of the buyers group, according to the following distribution:

- [insert percentage that equals the ratio between the financial contribution of member X of the buyers group to the total PCP subcontracting cost (including the applicable VAT in country X) and the total PCP subcontracting cost (including VAT)] percent of the payment to be invoiced to [insert name of member X of the buyers group]]
- […] percent of the payment to be invoiced to [insert name of member Y of the buyers group]]
- …

Note: In an example of a buyers group with 3 procurers, each procurer must contribute the same amount (including VAT) to the total PCP subcontracting cost (i.e. for each payment 3 invoices equal to one third of the total payment amount; one invoice to each of the 3 procurers). ***]***

Contractors' invoices must provide:

- a **price breakdown** showing the price for R&D services and the price for supplies of products (in order to demonstrate compliance with the definition of R&D in compliance criterion A)
- a **price breakdown** showing the location or country in which the different categories of activities were performed *(e.g. x hours of senior researchers in country L at y euro/hour, a hours of junior developers in country M at b euro/hour)* (in order to demonstrate compliance with the requirement relating to the place of performance in compliance criterion C).

Explain when payments will be made. Provide information on the amounts of the pre-instalments and interim payments (where applicable) and the payment of the balance.

6.3. Eligibility for the next phase based on successful completion of the phase

Eligibility for participation in the next phase will be subject to *successful* completion of the current phase.

Successful completion of a phase will be assessed by the assessment committee against the following requirements:

- if all milestones have been successfully completed
- if the R&D results meet the minimum functionality/performance requirements of the challenge description (i.e. the minimum quality/efficiency improvements which the procurers set forward for the innovative solutions to achieve)
- if the results of the R&D are considered to be promising

- …

'Promising' means:

- for phase 1, that the feasibility is convincing
- for phase 2, that the feasibility, the applicability in an operational setting and the potential impact of the product is convincing

Note: Note the difference between satisfactory completion (requirement for payment) and successful completion (prerequisite for passing from one phase to the next).

6.4. Finalisation of phase 3: link with possible follow-up PPI procurement

A new call for tenders will be launched for any follow-up public procurement of innovative solutions (PPI) to deploy a commercial volume of innovative solutions.

If possible, please provide an indicative schedule for the procurement process that the procurers in the buyers group would organise for deploying commercial volumes of the solutions, were the PCP to be completed successfully.

Annex 1

PCP Framework Agreement

Disclaimer: This annex is aimed at assisting H2020 PCP grant beneficiaries. It is provided for information purposes only and is not intended to replace consultation of professional legal advice. It can be used as a starting point to draw up the framework agreement, but beneficiaries remain responsible for adapting it to their situation and checking full compliance with the applicable law. Neither the European Commission nor its Agencies (or any person acting on their behalf) can be held responsible for the use made of this guidance document.

In order to comply with the conditions of the EU grant agreement, the framework agreements should contain at least the following elements/provisions:

PREAMBLE

This is a framework agreement ("agreement') between the following parties:

on the one part,

the "lead procurer", [insert details of the lead procurer],

acting in the name and on behalf of the *[*other*]* members of the buyers group:

1. [insert the details of the members of the buyers group (NOT of preferred partners or third giving in-kind contributions to the PCP!)]
2.

and on the other hand, the "contractor", [insert details of the contractor],

[*OPTION for joint tenders:* acting in the name and on behalf of the other members of group of tenderers:

1. [insert the details of the members of the group of tenderers]
2.

The members of the group of tenderers are hereafter collectively referred to as the "contractor" and will be jointly and severally liable vis-à-vis the lead procurer for the performance of this agreement and the specific contracts.***]***

The lead procurer, buyers group and the contractor(s) shall be referred to together as "parties", unless otherwise specified.

By signing this agreement the parties agree to implement the pre-commercial procurement in accordance with the agreement and all the obligations it sets out.

The agreement is composed of:

- Preamble
- Terms and Conditions

Annex 1 Request for tenders

Annex 2 Contractor's tender

TERMS AND CONDITIONS

In order to comply with the conditions of the EU grant, the framework agreements should contain at least the following provisions:

Article 1 — Subject of the agreement

This framework agreement defines the general terms and conditions for the implementation of the PCP procurement of R&D services set out in Article XX and for the specific contracts that will be awarded for each of the 3 PCP phases.

Article XX — Duration

Define the duration for the framework agreement and starting and end date for the implementation of the tasks.

Specify that the period of execution of the tasks may be extended only with the express written agreement of the parties before the expiration of the period for execution of the tasks.

Article XX — R&D services to be provided

The contractor shall provide the R&D services (tasks, deliverables and milestones) to develop solutions to tackle the challenge set out in the tender and the specific contracts.

Article XX — Pricing, payment and accounting

The price for the R&D services to be implemented for each PCP phase will be set out in the specific contracts.

The prices shall be based on the binding unit prices in the tender and the following price conditions:

- if new units/unit prices are added to phase 2 or 3 offers, they shall become binding for the remaining phases
- … specify the other price conditions

Specify the payment and invoicing conditions that will apply. Ensure consistency with the request for tenders/tender (if needed via cross-references).

[*OPTION in case there are preferred partners and third parties providing in-kind contributions to the PCP:* **Article XX — Participation of preferred partners and third parties providing in-kind contributions to the PCP)**

Complete as applicable to the specificities of the PCP. Name the preferred partners and third parties providing in-kind contributions to the PCP and explain the boundary conditions for their participation, i.e. the rights and responsibilities with respect to the provisions under the agreement and specific contracts.

Pay particular attention to clearly set out the rules for participating in testing /monitoring/evaluation of results, confidentiality, processing of personal data and communication.

Specify also clearly IPR-related rights *(e.g. access rights to results needed to follow the implementation of the PCP)* or obligations of preferred partners and third parties providing in-kind contributions to the PCP *(e.g. access rights to pre-existing rights, sideground or results (foreground) needed by contractors to implement the PCP or exploit its results).****]***

Article XX — Ownership of the results (foreground), pre-existing rights (background) and sideground (including intellectual and industrial property rights)

Include provisions that clarify the rights and obligations related to pre-existing rights (background), sideground and results (foreground) for:

- procurers,
- contractors and

– their subcontractors (if any).

Note:

Such provisions may not conflict with the obligations of the lead procurer and the buyers group under the EU grant.

Third parties providing in-kind contributions to the PCP and preferred partners should be covered in the Article on participation of preferred partners and third parties providing in-kind contributions.

Provide definitions, notably for:

- 'results (i.e. foreground)' means any tangible or intangible output, such as data, knowledge or information, that is generated in the PCP, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights ('attached IPRs' or 'IPRs attached to the results').

  'Generated in the PCP' means in activities described in the PCP framework agreement and specific contracts.

- 'pre-existing rights (i.e. background)' means any data, know-how or information — whatever its form or nature (tangible or intangible), including any attached rights such as intellectual property rights ('background IPRs') — that is held prior to the signing of the framework agreement, and identified by the parties involved in the PCP as background and is needed to implement the PCP or exploit the results of the PCP.

- 'sideground' means any data, know-how or information — whatever its form or nature (tangible or intangible), including any attached rights such as intellectual property rights ('sideground IPRs') — that is generated during the timespan of the PCP but not in the PCP and is needed to implement the PCP or to exploit the results of the PCP.

  'Not generated in the PCP' means not generated in activities described in the PCP framework agreement or specific contracts.

- 'fair and reasonable conditions' means appropriate conditions, including financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access (for example, the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged).

Provide for the rights and obligations in relation to results. Specify:

- that each contractor that generates results **owns** the attached IPRs

- who will **own results that are not IPRs** *(e.g. prototypes and first products resulting from the R&D, design, prototype and first product/service specifications, simulations, data models, drawings, source code)*

- that each contractor is responsible for the **management** (including protection) of its IPRs and bears the costs associated with this

- that the lead procurer and the buyers group have the right to **monitor** the management of the IPRs

- that the contractors must inform the buyers group (via the lead procurer) of results that can be **exploited**, regardless of whether they can be protected or not, within [insert number] days from when they are generated. The information submitted to the lead procurer must include information about the contents of the results, the confirmation by the contractor to protect them and the planned timing for protection.

- that if a contractor does not seek **protection** for results that should be protected, the buyers group has the right to request (via the lead procurer) that the results are transferred to them

- that the contractors grant to the members of the buyers group irrevocable, royalty-free, non-exclusive, world-wide **access** rights to use the results, for their own purposes (for IPRs: until their expiry date)

- that, for results that are an implementation of design specifications into simulations, prototypes, demonstrators or first products /services, those access rights are limited to a duration of [insert duration] years and to the following purposes for fulfilling the R&D objectives of the PCP: [specify those purposes for your PCP]

  Note: The limitation of the scope and duration of the access rights (to 'what is needed by the members of the buyers group to fulfil the R&D objectives of the PCP') is needed for the PCP to remain an 'R&D procurement' where the 'procurers do not retain all the benefits' and thus be exempted from the WTO rules and the EU public procurement directives.

- that the members of the buyers group have *[*the right to grant*] [*the right to require the contractors to grant — within a reasonable time period specified in the request —*]* **non-exclusive licences to third parties** to commercially or non-commercially exploit the results under fair and reasonable conditions, without the right to sub-license

- that the contractors may grant non-exclusive licences to third parties allowing them to exploit the results (or otherwise give the right to exploit them) — unless this impedes the access rights of the buyers group

- that the contractors may **transfer ownership** of their results — unless this is prohibited (or restricted) by the security obligations and provided that they ensure that their obligations (in respect of the results) apply to the new owner and that this new owner is obliged to pass them on in any subsequent transfer *(e.g. by including a requirement to do so in their arrangements with the new owner)*

  Note: You may foresee a right of first refusal for the members of the buyers group to buy the results.

  You should also foresee a procedure for transfers when there are members of the buyers group that still have (or may still request) access rights to the results (*e.g. that the contractor must give them at least 45 days advance notice of its intention to transfer ownership of the results and that this notification must include sufficient information on the new owner to enable the members of the buyers group to assess the effects on their access rights. Any member of the buyers group may object within 30 days of receiving notification, if it can show that the transfer would adversely affect its access rights. Should an objection be raised, the transfer may not take place until agreement has been reached between the parties concerned).*

- whether the contractor is required to deposit copies of results *(e.g. the source code and design specifications), for example, under an ESCROW agreement designed to guarantee the buyers group continued access to results in the case of financial bankruptcy of the contractor (or any of its subcontractors)*.

Provide for the rights and obligations concerning pre-existing rights (background) and sideground. Specify:

- rules regarding **ownership** of pre-existing rights and sideground (normally remains unchanged)

- that the parties must inform each other about the generation of/changes in pre-existing rights and sideground within [insert number] days from the generation /change

- that the contractors introducing background must within [define period *e.g. 2 weeks*] of the signing of the PCP framework agreement provide the lead procurer with a **list of the pre-existing rights** it holds and/or has access to *(e.g. via its subcontractors)* (at the date of the agreement) and a list of the software necessary for the operation of the prototype and first *[*products*][*services*]* that will be developed during the PCP, specifying which software is closed source software. An updated list (to the extent necessary) must be provided with each bid for the next phase

- the **access** that the parties must grant each other to each other's pre-existing rights and sideground for carrying out the tasks assigned to them in the PCP, for exploitation of results generated in the PCP and for using the results for their own purposes *(normally at least to the buyers group)*

  Note: Don't forget to fix conditions for access that are fair and reasonable to all parties, e.*g. — if appropriate for your PCP —*

  - *on a royalty-free, non-exclusive basis, access to each other's background, for carrying out the tasks assigned to them in the PCP*
  - *under fair and reasonable conditions and on non-exclusive basis, access to each other's background, for exploitation of results generated in the PCP and for using the results for their own purposes*
  - *under fair and reasonable conditions and on non-exclusive basis, access to each other's sideground, for carrying out the tasks assigned to them in the PCP, for exploitation of results generated in the PCP and for using the results for their own purposes*

Note:

Don't forget to foresee:

- rules that define third party rights and obligations with respect to the above points on results, pre-existing rights and sideground (in the Article on participation of preferred partners and third parties providing in-kind contributions)
- rules on subcontractor rights and obligations with respect to the above points on results, pre-existing rights and sideground *(e.g. that the contractors must ensure that they comply with their obligations under the framework agreement and specific contracts if they use subcontractors; that they must obtain all necessary rights (transfer, licences or other) from subcontractors, as if they were generated by themselves in order to be able to respect their obligations under the framework agreement; that they should refrain from using subcontractors if obtaining those rights needed to respect their obligations under the framework agreement is impossible)*

You may specify additional intellectual property provisions, provided they:

- do not conflict with the obligations of the lead procurer and the buyers group under the EU grant agreement and
- help lead procurers, the buyers group and contractors to implement the PCP and exploit the results.

Article XX — Confidentiality

The parties shall keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed. This applies during the implementation of the framework agreement and up to [insert number of years (minimum 4 years after the end of the EU grant)] years after the end of the framework agreement.

If information has been identified as confidential only orally, it shall be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

The parties may disclose confidential information to their staff or to third parties involved in the PCP implementation only if:

(a) they need to be aware of this information in order to implement the PCP activities under the framework agreement and specific contracts; and

(b) they are bound by an obligation of confidentiality.

The confidentiality obligations cease to apply if:

(a) the disclosing party agrees to release the other party from the obligation;

(b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;

(c) the recipient proves that the information was produced without the use of confidential information;

(d) the information becomes generally and publicly available, without breaching any confidentiality obligation; or

(e) the disclosure of the information is required by EU or national law.

This does not change the security obligations, which still apply. Stricter confidentiality obligations apply for information that is EU-classified or subject to a security recommendation.

Note:

If the duration of the EU grant agreement is longer than foreseen (i.e. if the action duration is extended), you must also extend the confidentiality obligation for the framework agreement (via an amendment).

Article XX — Promotion, publicity and communication

XX.1 The contractor shall undertake communication activities to create publicity about its participation to the procurement, and to promote the objectives and the results of the R&D carried out under the PCP (in particular, to other potential customers beyond the lead procurer and buyers group with the objective to achieve commercial exploitation of the results (see Article XX – Commercial exploitation of results)).

All communication activities shall comply with the applicable confidentiality and security restrictions.

During the implementation of the contract and for a period of [insert number] *[*years*][*months*]* after the end of the contract, the contractor shall inform the lead procurer [indicated number] days in advance of any (written or oral) publication or any other type of communication (in any media or form) relating to the services or results. Information on communication activities expected to have a major media impact shall be provided sufficiently in advance to allow the lead procurer to inform the EU.

All communication activities (including in electronic form and via social media) and infrastructure, equipment and major results financed by the PCP shall display the EU emblem and include the following text:

- for communication activities: 'This is part of the [acronym of the EU grant] project that has received funding from the European Union's Horizon 2020 Research and Innovation Programme';

- for infrastructure, equipment and major results: 'This [infrastructure][equipment][insert type of result] is part of the [acronym of EU grant] project that has received funding from the European Union's Horizon 2020 Research and Innovation Programme'.

When displayed together with another logo, the EU emblem shall have appropriate prominence. The contractor may use the EU emblem without first obtaining approval from the EU. This does not, however, give the contractor the right to exclusive use. Moreover, the contractor may not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

All communication activities shall indicate that they reflect only the author's views.

XX.2 The lead procurer and the buyers group may use, for the purposes of communication and publicity, all information relating to the PCP, documents (notably summaries) and deliverables, and any other material (such as pictures or audiovisual material) from the contractor (including in electronic form).

The lead procurer and the buyers group may, in particular, publish the names of the participating contractors and their project abstracts, the summaries of the main results from the R&D and the

lessons learnt during the PCP *(e.g. relating to the feasibility of the different approaches to meeting the procurers' requirements that were explored, and the lessons learnt for potential future use of the solutions proposed)*.

This does not change the confidentiality obligations under Article XX.

Moreover, before publishing this information, the lead procurer and the buyers group shall consult the contractor, in order to avoid harm to legitimate business interests *(e.g. regarding aspects of the solutions that could be IPR-protected)* or distortion of competition.

XX.3 The EU may use, for the purposes of communication and publicity, information relating to the PCP, documents (notably summaries) and deliverables, and any other material (such as pictures or audiovisual material) from the contractor (including in electronic form).

If the EU's use of these materials, documents or information would risk compromising legitimate interests, the contractor may, however, ask the lead procurer to request the EU not to use it.

The right to use the contractor's materials, documents and information includes:

(a) use for its own purposes (in particular, making them available to staff working for the EU (including for the European Commission, EU executive agencies, other EU institutions, bodies, offices or agencies) or for EU Member State institutions or bodies; and copying or reproducing them in whole or in part, in unlimited numbers);

(b) distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);

(c) editing or redrafting for the purposes of communication and publicity (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts *(e.g. audio or video files)*, dividing into parts or using in a compilation);

(d) translation;

(e) giving access in response to individual requests made under Regulation EC No 1049/2001, without the right to reproduce or exploit;

(f) storage in paper, electronic or other form;

(g) archiving, in line with applicable rules on document management, and

(h) authorising third parties to act on its behalf or sub-licensing the modes of use set out in points (b), (c), (d) and (f) to third parties if needed for the purposes of communication and publicity.

If the right of use is subject to rights of a third party (including the contractor's staff), the contractor shall ensure that it obtains the necessary approval from the third parties concerned).

Article XX — Commercial exploitation of results

The contractor shall, for at least [insert number of years (minimum 4 years after the end of the EU grant)] years after the end of the framework agreement, take measures to ensure that its results are exploited commercially (directly or indirectly, in particular through transfer or licensing).

If the contractor fails to commercially exploit the results within this period (or uses the results to the detriment of the public interest, including security interests), the buyers group has the right to require that ownership of the results be transferred to them.

'Failure to commercially exploit results' means not marketing a commercial application of the results (directly or indirectly, through a subcontractor or licensee).

Note:

Set the period of time allowed in such a way as to give contractors a fair and reasonable amount of time to exploit the results in the relevant sector. This will ensure that the potential for marketing the product or service is valued correctly (an appropriate length of time would typically be longer than 4 years, *e.g. 5 years*). The period should take account of the fact that: 1. the contractors need to start producing the good or service in quantity and to invest in large scale promotion activities; and 2. the potential first customers, public procurers, generally take time to prepare and launch a PPI after the PCP has been completed.

If the duration of the EU grant is longer than foreseen (i.e. if the action duration is extended), you must also extend the obligation on the commercial exploitation the framework agreement (via an amendment).

Article XX — Conflicts of interest

XX.1 The contractor shall take all measures necessary to prevent a situation arising where the impartial and objective implementation of the framework agreement or a specific contract is compromised for reasons involving economic interests, political or national affinity, family, personal life or any other shared interest.

XX.2 The contractor shall notify the lead procurer without delay of any situation constituting or likely to lead to a conflict of interest (including changes of ownership) and shall immediately take all steps necessary to rectify this situation.

The lead procurer may instruct the contractor to take specific measures to remedy the situation.

Article XX — Ethics and research integrity

XX.1 The contractor shall carry out the tasks assigned to it in the framework agreement and in the specific contracts in compliance with:

(a) ethical principles (including the highest standards of research integrity) and

(b) applicable international, EU and national law.

The contractor may not carry out activities that are prohibited in all EU Member States in a country outside the EU (where those activities are allowed).

The contractor may not carry out activities whose aim is to:

(a) carry out human cloning for reproductive purposes;

(b) modify the genetic heritage of human beings in such a way as could make such changes heritable (with the exception of research relating to cancer treatment of the gonads); or

(c) create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer.

The contractor may not carry out activities that do not focus exclusively on civil applications.

The contractor shall respect the highest standards of research integrity — as set out, for instance, in the European Code of Conduct for Research Integrity[13].

This implies notably compliance with the following essential principles:

- honesty;
- reliability;
- objectivity;

[13] The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011.
http://www.esf.org/fileadmin/Public_documents/Publications/Code_Conduct_ResearchIntegrity.pdf

- impartiality;
- open communication;
- duty of care;
- fairness and
- responsibility for future science generations.

This means that contractor must ensure that persons carrying out research tasks:

- present their research goals and intentions in an honest and transparent manner;
- design their research carefully and conduct it in a reliable fashion, taking its impact on society into account;
- use techniques and methodologies (including for data collection and management) that are appropriate for the field(s) concerned;
- exercise due care for the subjects of research — be they human beings, animals, the environment or cultural objects;
- ensure objectivity, accuracy and impartiality when disseminating the results;
- allow — as much as possible and taking into account the legitimate interest of the contractor — access to research data, in order to enable research to be reproduced ;
- make the necessary references to their work and that of other researchers;
- refrain from practicing any form of plagiarism, data falsification or fabrication;
- avoid conflicts of interest and misrepresentation of credentials or other research misconduct.

XX.2 Before starting any activity that raises an ethical issue, the contractor shall submit to the lead procurer a copy of:

(a) any ethics committee opinion required under national law and

(b) any notification or authorisation for activities raising ethical issues required under national law.

[OPTION if EU grant agreement contains ethics requirements that concern the PCP contracts: XX.3 In addition, the contractor shall comply with the following ethics requirements:

- [insert the ethics requirements from Annex I to the EU grant agreement].*]*

Article XX — Security related obligations

[OPTION if the contracts involve dual-use goods or dangerous materials or substances: XX.X Activities involving dual-use goods or dangerous materials and substances shall comply with applicable EU, national and international law.

Before starting the activity, the contractor shall provide the lead procurer with a copy of any export or transfer licences required.*]*

[OPTION if the EU grant agreement provides for a security classification that affects the PCP contracts: XX.X Classified information shall be treated in accordance with the security aspect letter (SAL) annexed to the EU grant agreement and EU Decision No 2015/544[14] until it is declassified.

Tasks involving classified information may not be subcontracted without prior written approval from the lead procurer.

[14] Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU-classified information.

The contractor shall inform the lead procurer of any changes relating to security and, if necessary, request an amendment to the framework agreement.*]*

[OPTION if the EU grant agreement contains security recommendations restricting disclosure or dissemination that affect the PCP contracts: XX.X The following results may be disclosed or disseminated only if the contractors have first obtained written approval from the lead procurer:

- [insert the results subject to a security recommendation restricting disclosure or dissemination from Annex I to the EU grant agreement].*]*

[OPTION if the EU grant agreement contains other security recommendations that affect the PCP contracts: XX.X In addition, the contractor shall comply with the following security recommendations:

- [insert the security recommendations from Annex I to the EU grant agreement].*]*

Article XX — Processing of personal data

XX.1 The lead procurer and the buyers group shall process personal data in compliance with the applicable EU and national law on data protection.

XX.2 The contractor shall process personal data in compliance with the applicable EU and national law on data protection (including as relates to authorisations and notification requirements).

The contractor may grant its staff access to data only in so far as is strictly necessary for implementing, managing and monitoring the framework agreement and specific contracts.

The contractor must inform the staff whose personal data are collected and processed by the lead procurer, the buyers group and/or the EU. For this purpose, the contractor must provide them with the privacy statements of the lead procurer, the buyers group and the EU, before transmitting their data. If explicit prior consent from the subjects of the data is needed, the contractor must obtain such consent.

Article XX — Obligation to provide information and keep records

XX.1 The contractor must, at any time during the implementation of the framework agreement and specific contracts or afterwards, provide any information requested by the lead procurer or the buyers group in relation to the agreement or contracts.

XX.2 The contractor must keep, for a period of up to [insert number of years (minimum 5 years after the end of the EU grant agreement)] years after the end of the framework agreement, records and other supporting documentation relating to its implementation or the implementation of the specific contracts.

This obligation includes records and other supporting documentation on scientific and technical implementation (in line with the accepted standards in the field) and on the price charged and the costs incurred by the contractor.

The contractor must keep the original documents. Digital and digitalised documents are considered originals if they are authorised under national law.

Should there be ongoing checks, reviews, audits, investigations, litigation or other pursuits of claims (including against the lead procurer or buyers group), the contractor must keep the records and other supporting documentation relating to the implementation of the framework agreement and specific contracts until the end of these procedures.

Article XX — EU checks, reviews, audits and investigations

Should the EU (including as represented by the European Court of Auditors or the European Anti-Fraud Office (OLAF)) decide to carry out a check, review, audit or investigation, the contractor must make available all information, records and other supporting documents relating to the implementation of the framework agreement and specific contracts.

Should there be an on-the-spot visit, the contractor must allow access to its premises and must ensure that the information requested is readily available.

Article XX — EU impact evaluation

Should the EU carry out an impact evaluation (of its grant to the lead procurer and buyers group), the contractor must make available all information, records and other supporting documents relating to the implementation of the framework agreement and specific contracts.

Article XX — Breach of contract

Set out the consequences in case of breach of contract (in line with the law applicable to the contract).

Don't forget provisions on partial/improper implementation of tasks and breach of other obligations.

Include a section on liability for damages:

XX.1 The contractor must compensate the lead procurer and the buyers group if they are held liable by the EU for damage it sustained as a result of the implementation of the framework agreement or a specific contract or because it was not implemented properly.

XX.2 The EU cannot be held liable for any damage caused to the contractor or caused by the contractor in connection with the implementation of the framework agreement or a specific contract.

Article XX — Amendments

Include a provision on amendments. Specify that they must be made in writing.

Include a clause that the amendment may not have the purpose or the effect of making changes to the contracts which might call into question the decision awarding the contracts or result in unequal treatment of tenderers.

Article XX — Interpretation

Include a provision specifying that the terms set out in the framework agreement have precedence over those in annexes and that the terms set out in Annex 1 (request for tenders) have precedence over those set out in Annex 2 (contractor's tender).

Specify that the same applies to the specific contracts.

Article XX — Applicable law and dispute settlement

Choose:

- *the law applicable to the framework agreement and to the specific contracts*
- *the dispute settlement mechanisms, in particular the competent court or other dispute settlement mechanisms (e.g. arbitration or mediation, if allowed under national law) and the deadlines to respect.*

Article XX — Entry into force

Define the entry into force *(e.g. upon signature of the last party)*

SIGNATURES

The lead procurer signs for the buyers group and — in case of joint tenders — the lead contractor for the group of contractors (see also section 4.1 of the request for tenders).

Annex 2

PCP Specific contract for phase *[*1*][*2*][*3*]*

Disclaimer: This annex is aimed at assisting H2020 PCP grant beneficiaries. It is provided for information purposes only and is not intended to replace consultation of professional legal advice. It can be used as a starting point to draw up the specific contracts, but beneficiaries remain responsible for adapting it to their situation and checking full compliance with the applicable law. Neither the European Commission nor its Agencies (or any person acting on their behalf) can be held responsible for the use made of this guidance document.

Specific contracts must contain at least the following elements/provisions:

PREAMBLE

Similar set-up as the framework agreement: Lead procurer concludes and signs in in the name and on behalf of the members of the buyers group.

Annex the contractor's offer.

TERMS AND CONDITIONS

Article 1 — Subject of the contract

This specific contract defines the specific terms and conditions for the implementation of the PCP procurement of R&D services set out in Article XX — for the *[*1st*][*2rd*][*3rd*]* PCP phase.

Article XX — Duration

Specify the duration of the specific contract and starting and end date for the implementation of the tasks.

Specify that the period of execution of the tasks may be extended only with the express written agreement of the parties before the expiration of the period for execution of the tasks.

Article XX — R&D services to be provided

The contractor shall provide the R&D services (tasks, deliverables and milestones) set out in the offer for this phase.

Specify the scope of the specific contract (i.e. which phase and which lot, if any).

Specify the individuals in charge of carrying out the R&D activities for the specific contract and their location (country where they carry out the R&D activities).

Article XX — Price and payment arrangements

The price to be paid by *[*the lead procurer*][*the members of the buyers group*]* for the R&D services set out in Article XX shall be *[*EUR*][*other currency*]* [amount in figures and in words].

Specify the amounts of pre-instalments and interim payments (if applicable) and final payment in figures and words. In case of pro rata payments by the different members of the buyers group split the amount pro rata per member of the buyers group according to their contribution to the total PCP subcontracting cost (with and without VAT).

Specify which invoice for which payment x the contractor has to send to whom (to the lead procurer or to the individual members of the buyers group) after approval of deliverable x. Specify how many days after receipt of the invoice (the lead procurer or to the individual members of the buyers group) will make the payment(s) to the contractor.

Specify the contractor's bank account details and the currency in which payments will be made.

Article XX — Security related obligations

Add a provision on security if specifically needed for the phase and not already covered by the provision in the framework agreement.

Article XX — Entry into force

Specify the entry into force date.

SIGNATURES

Same as for framework agreement: The lead procurer signs for the buyers group and — in case of joint tenders — the lead contractor for the group of contractors.

HISTORY OF CHANGES		
VERSION	PUBLICATION DATE	CHANGE
1.0	09.03.2016	Initial version