WEBINAR
Opportunities to tackle the COVID-19 Crisis through Innovation Procurement
–a legal and economic perspective -

3 April 2020 -11 CEST

Q&A

This document gives answers to the main questions that were posed during or straight after the eafip webinar 'Opportunities to tackle the COVID-19 Crisis through Innovation Procurement' that was held on 3 April 2020.

1. Where can the information related to the H2020 calls and the changes dues to the outbreak of COVID 19 be found?

All the information related to the H2020 calls and the changes caused by the outbreak of the COVID 19 crisis. In particular the new deadlines for ongoing calls.
https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/covid-19

For more detailed information on a specific H2020 call, please ask the questions on the H2020 platform.

2. Which is the relevant legal framework to start a procurement procedure during the COVID 19 crisis?

At EU level, the Contracting Authorities need to follow the Public Procurement Directives from 2014 interpreted according to EU Case Law. Regarding the procedures explained during the webinar please see:

Please bear in mind that several Member States have issued regulations regarding the use of the negotiated procedure without prior publication and the accelerated open and restricted procedures. Depending on their availability, you will also need to refer to these regulations from your Member State.

3. Are patent analytic tools reliable to perform a prior art analysis if they only show published patents (taking into account that the granting of a patent is long procedure)?

Prior art analysis identifies "all" information available in the public domain (existing products, ongoing product development and published ideas) whether IPR protected or not. A contracting authority should conduct a prior art analysis, to make sure that his information is accurate and that he has a good knowledge of the market. For more information see https://eafip.eu/toolkit/

The publication of patent applications and granted patents could take a significant time depending on the patent office. Due to timelines to grant patents, we recommend to consider both patent applications and granted patents. They both serve as indicators of industry interest in a particular area of innovation. While

firms can apply for patent protection even after the IP has been embedded in a solution and brought to market, in most instances it can be expected that it is in the interest of firms to take early action in protecting their IP by filing a patent.

Nevertheless, in case of extreme urgency or urgency, due to time restrictions a more expedite analysis could be performed in place of the standard detailed analysis. In this case, a fast IP search will help the Contracting Authority to identify suppliers who own IP in the relevant jurisdiction which meets user needs and any technical requirements. It will also serve as an ex post justification of the selection of the supplier in a rapidly changing landscapes, with high uncertainty and extreme and dispersed demand.

	Extremely urgent	Urgent	Non-urgent
COTS Solutions *(Commercial Off The Shelf)*	**Negotiated procedure without prior notice** (Art.32(2)(c) Directive 2014/24/EU; Art.50(d) Directive 2014/25/EU; Art.28(1)(d) Directive 2009/81/EU)	**Accelerated procedures** (Art. 27(3), 28(6) and 29(1 in fine) Directive 2014/24/EU; Art.45(3), 46(1)(2), 47(1)(2), 48 and 49 Directive 2014/25/EU; Art.33(7) Directive 2009/81/EC)	**Standard procurement procedures** (Art.26 & 31 Directive 2014/24/EU; Art.44 & 49 Directive 2014/25/EU; Art.25 Directive 2009/81/EC)
TRL7		**Negotiated procedure without prior notice** (prototype testing) (Art.32(3)(a) Directive 2014/24/EU; Art.50(b) Directive 2014/25/EU; Art.28(2)(b) Directive 2009/81/EC)	**Negotiated procedure without prior notice** (prototype testing) (Art.32(3)(a) Directive 2014/24/EU; Art.50(b) Directive 2014/25/EU; Art.28(2)(b) Directive 2009/81/EC)
TRL3 – TRL8			**PCP** (Art.14 Directive 2014/24/EU; Art.32 Directive 2014/25/EU; Art.13(j) Directive 2009/81/EC)
TRL3 – TRL9			**Innovation Partnership** (Art.31 Directive 2014/24/EU; art.49 Directive 2014/25/EU)
TRL9 (PPI)	**PPI (negotiated procedure without prior notice** (Art.32(2)(c) Directive 2014/24/EU; Art.50(d) Directive 2014/25/EU; Art.28(1)(d) Directive 2009/81/EU)	**PPI (accelerated procedures)** (Art. 27(3), 28(6) and 29(1 in fine) Directive 2014/24/EU; Art.45(3), 46(1)(2), 47(1)(2), 48 and 49 Directive 2014/25/EU; Art.33(7) Directive 2009/81/EC)	**PPI (standard procurement procedures)** (Art.26 Directive 2014/24/EU; Art.44 Directive 2014/25/EU; Art.25 Directive 2009/81/EC)

4. What is the role of a doctor or end-user in an urgent procurement? Does the negotiated procedure without prior publication allow for an individual to start the procedure by himself?

The negotiated procedure without prior publication due to extreme urgency allows the contracting authority to purchase in a very short time Commercial Off the Shelf (COTS) products that do not require R&D and are directly available on the market. It is a procedure that reduces deadlines and even allows direct awarding, but it still has to be carried out by the contracting authority, not by individual staff of the entity.

What this staff can do is to indicate the needs to the procurement team of the hospital and help define the requirements that meet the needs. The role of doctors (in coordination with the rest of the relevant medical personnel) is essential in identifying the needs in the daily practice at the hospital. However, the procurement team is supposed to coordinate the needs identification and assessment and to start the procedure.

In order to accelerate this process, during the COVID 19 outbreak contracting authorities and medical teams can work together side by side in order to make sure that the needs identified are matched with related products to be immediately purchased.

There are various methodologies that can be used to identify and assess needs. For more information check the eafip guide, module 2 section "needs identification and assessment": www.eafip.eu/toolkit

5. Could you provide us with additional concrete examples?

The webinar was intended to provide an overview of the different procedures available to public authorities in the short term (to tackle urgent needs in this COVD 19 crisis) and in the medium to long term (to address needs via Innovation Procurement). Due to time restrictions, the webinar did not provide an introduction to innovation procurement approaches. For more information on how to implement Innovation procurement please see https://eafip.eu/toolkit/ .

6. Under which initiative could we develop AI algorithms to be put into use in portable, real-time device for DNA and RNA sequencing in order to analyse virus RNA/DNA (e.g. Covid-19)?

Please have a look into the Health program. In particular:

- DTH 14 : Digital health and care (€ 9M; deadline 18 June 2020)_PCP https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/sc1-dth-14-2020;freeTextSearchKeyword=SC1-DTH-14-2020;typeCodes=1;statusCodes=31094501,31094502,31094503;programCode=H2020;programDivisionCode=null;focusAreaCode=null;crossCuttingPriorityCode=null;callCode=Default;sortQuery=openingDate;orderBy=asc;onlyTenders=false;topicListKey=topicSearchTablePageState
- BHC 20A : Integrated care solutions (€ 25M*; deadline 4 June 2020)_PPI https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/sc1-bhc-20b-2020;freeTextSearchKeyword=SC1-BHC-20B-2020;typeCodes=1;statusCodes=31094501,31094502,31094503;programCode=H2020;programDivisionCode=null;focusAreaCode=null;crossCuttingPriorityCode=null;callCode=Default;sortQuery=openingDate;orderBy=asc;onlyTenders=false;topicListKey=topicSearchTablePageState

7. Which information must a Market Consultation Report contain?

There are no EU legal requirements regarding the format of an open market consultation (OMC) report.[1] However, the contracting authority needs to ensure that the principles of transparency, equal treatment and non-discrimination are observed. This entails, for example, that the findings of the market consultation (namely the answers/remarks provided by the participants to a questionnaire or as part of a physical meeting) are summarized in a report and published. The summary should cover the key aspects and examples in a manner that guarantees confidentiality and protection of sensitive relevant commercial/business information.

For more information see the market consultation section of the eafip toolkit: www.eafip.eu/toolkit

[1] Nevertheless, there might be national requirements in your country.

8. Could you provide examples of digital procurement needs and topics?

The digital field presents many opportunities to help effectively tackle the COVID-19 crisis:

- **Robotics** can effectively be used to replace or assist medical and support personnel in tasks such as the disinfection of hospitals (e.g. through the use of ultra violet light), prevention and diagnosis (e.g. through lab robotics), transporting medical equipment, medicines or food as well as interaction with infected patients to reduce exposure.

- **Imaging** (e.g. CT scans) play an important role in the diagnosis and management of COVID-19 patients. Artificial Intelligence-based image analytics have already been deployed in the context of the current outbreak. AI-powered platform across the EU could also be used to recognise signs of COVID-19 on CT scans. The software would provide significantly fast diagnostic and prognostic interpretation.

- **Mathematical models a**re increasingly being used to understand the spreading of infectious diseases and to assess the potential impact of public health interventions to reduce morbidity and mortality**. Artificial Intelligence (AI)-based** solutions powered by anonymised and aggregated information from mobile operators could be used **to map and predict the spread of the disease over** time and across geographical areas and **assess the effect of social distancing measures**. Hospital capacities can be proactively reinforced in areas predicted to be at high risk of introduction of the outbreak; resources distribution could be effectively planned (e.g. medical equipment such as masks, personal protective equipment, ventilators). Furthermore, in regions currently or prospectively affected by the outbreak, modelling can support decision making on which measures to apply (e.g. social distancing, school closure, teleworking, quarantine). Where restrictions have been imposed on mobility, modelling can support the evaluation of the effectiveness of response measures. Finally, with a perspective for the next stages of the outbreak, modelling will also be instrumental in informing the way forward in progressively relaxing and/or lifting lockdown measures. A forecast of disease transmission dynamics in different scenarios where only part of the measures are maintained could help decision makers to identify the most effective measures, while avoiding a rebound in disease transmission.

- **Supercomputers can help in epidemiologic modelling** the COVID-19 outbreak. e.g. The EU funded Exscalate4CoV project is currently processing digital models of the protein of the virus and is matching them against a database of thousands of known active anti-molecules that are part of existing drugs with the aim to find out which combinations of active molecules could react to the virus. Very first promising outcomes of this matching operation are now becoming available: For example, from the very first docking operations, a set of 63 molecules have been identified as useful and were now sent for biological screening, with the aim of coming up with first results of a possible drug. The project is also about to check 6000 additional compounds identified as promising from ongoing research works in Europe and beyond for screening them too.

Should you have any other questions or need for support – please mail us through: *a.jaramillo@corvers.com*

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