

INNOBROKER TOOLKIT

**11 TOOLS TOWARDS
PROCURING INNOVATION**



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Authors: Marja Boström (Hållbar Utveckling Skåne), Núria Cases i Sampere (ACR+), Andreas Ek (Sustainable Business Hub), Astrid Hackl (Sustainable Business Hub), Sumaya Husain (CLEAN), Anita Lombardo (ACR+)

Reviewer: Joan Juul (CLEAN)

Layout: Gaëlle Colas (ACR+)

Description: A toolkit formalizing key decision frameworks, interview guides, and other relevant templates developed in the project.

Disclaimer: The information and views set out in this report are those of the authors and do not necessarily reflect the official opinion of the European Union. Neither the European Union institutions and bodies nor any person acting on their behalf may be held responsible for the use which may be made of the information contained therein.

We thank all the persons who contributed to this report by sharing their insight with the BRINC project and providing tools.

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INTRODUCTION

This toolkit is produced as part of the BRINC project: Brokering Procurement of Innovation Through Clusters. The BRINC project is co-funded by the European Union's COSME programme. This toolkit complements the InnoBroker model report, also developed by the BRINC project. Used together, the InnoBroker model report and toolkit will equip you to assume the role of Innobroker and support public buyers in advancing the use of public procurement to accelerate uptake of innovative solutions.

The report explains in detail how the InnoBroker could support the procurement across different stages and this toolkit provide concrete methodologies, templates, and guidelines that can be used by the InnoBroker in providing its services.

Each tool is linked to one or more stages as illustrated in Figure 1. The process prior to and during procurement can be split in many different ways, and is not always linear. For simplicity purposes we have divided the process in four stages:

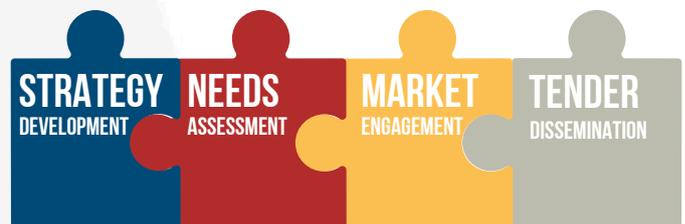


Figure 1 - Phases of the Innobroker process

Strategy Development

Tools that can help the InnoBroker inspire and brainstorm with the public buyer with the purpose of pushing their strategies and priorities to be more ambitious when it comes to public procurement and sustainability goals.

Needs Assessment

Tools the InnoBroker can use to facilitate brainstorming and rethinking needs. To help the public buyer not always do and think as they always do and to get input from relevant innovation stakeholders.

Market Engagement

Tools and Methodologies that can help structure the dialogue with the market, and possible solution providers.

Tender Dissemination

This stage has no connected tools, but the InnoBroker should use its outreach to help make relevant solution providers aware of the tender. The InnoBroker report provides more words on this support.

We hope these tools can help you in your role as InnoBroker and we invite you to scan the QR code on the right to find out more about BRINC, the training and reports developed during the project!



WHAT?

Methodology for a full-day workshop that can be used with public buyers to broadly scope their needs and jointly prioritize actions.

INNOBROKER PHASE



INTRODUCTION

Innovation procurement is usually not the primary goal when scoping for needs, but a means to an end when facing an issue that cannot be solved through “common” procurement.

A Back-casting methodology can be used to tap into your organisation’s needs before exploring if an innovation is needed or not. The purpose of the methodology is to get a common vision of the future and concrete ways of how to reach it. This workshop methodology is most effectively used in the very early stage of needs assessment. The public buyer will likely not be even thinking about procurement, but the methodology can help bring the public buyer together on joint priorities and challenges and identify areas where public procurement and public procurement of innovation will be effective tools and actions to explore further.

WORKSHOP OUTLINE

Step 1 ~20 min

Presentation of the day and exercise to kick-start participants’ imagination.

- For instance, for 5 minutes let the participants write down what can be done with a common thing (pick a thing like a stone/stick/piece of paper/can be one anything, really!).
- All or some of the participants, depending on the number of participants, get to share their ideas (hopefully you get some really creative ones, a stone may be used as a paper weight, if you are locked out or to paint as an animal for your kids imaginary farm).

Step 2 ~40 min

Group exercise to get started and to let the participants hear each other's thoughts about your organisation.

- Put post-its on the four-fielder below, drawn up on flipcharts.

<p>Main purpose (What is your business about today)</p>	<p>Value Basis (How do you want to be perceived)</p>
<p>Future vision (what is your business in YEAR)</p>	<p>Long-term goals (What do you want to have achieved by YEAR)</p>

Step 3 ~20 min

Let the groups report back to the full auditorium on what they have written down.

Step 4

Do not forget to schedule in a ~10 min break somewhere around here.

Step 5 ~40 min

Group exercise to start concretizing future visions and how to reach long-term goals.

- Brainwriting (template below): You each get a piece of A4 paper divided into fields to be filled in and sent around the table. Each person fills in the first row with tasks that can make you reach the visions/goals from the last exercise. After 5 min, the paper is sent on. The next person works further with the ideas written in row 1, this time in row 2. After 5 min the paper is passed on and this continues until all rows are filled in. It is ok to leave it blank if nothing comes to mind!

Step 6 ~30 min

Let the group report back to the full auditorium on what they have written down.

Step 7

Do not forget to schedule a ~10 min break somewhere around here.

Step 8 ~50 min

Ideas that came out in the Brainwriting are now to be put into a time perspective.

- Selects tasks from the Brainwriting and put Post-it notes in a new four-fielder on flipcharts:

This is a fun Idea that we should keep but not work on right now	This can be done in 1-2 years
This can be done in 3-5 years	This can be done in 5+ years

Brainwriting Template

FIRST PERSON				
SECOND PERSON				
THIRD PERSON				
FOURTH PERSON				
FIFTH PERSON				



Step 9

Probably time for lunch by now.

Step 10 ~15 min

Prioritising. Each person gets 3-5 dots to put on the 3-5 ideas they think are best (within their own groups four-fielder from step 8). The ideas that get the most dots goes further to the next step.

Step 11 ~45 min

Concretize the prioritized ideas that got the most dots in Step 10. Work either everyone together in the group, two-and-two together or alone and insert the ideas into the concretization matrix (one idea per matrix):

Step 12 ~45 min

Let the groups report back to the full auditorium.

Step 13 ~15 min

Next step: Make a plan when to meet up, select things to work on and develop an implementation plan.

Concretization Matrix Template

WHAT IS TO BE ACCOMPLISHED? SELECT A POST-IT FROM THE EXERCISE BEFORE	WHICH PARTS OF THE ORGANISATION NEEDS TO BE INVOLVED?
HOW LONG DOES IT TAKE TO PERFORM THE TASK?	WHO WILL BE RESPONSIBLE FOR THE IMPLEMENTATION?
WHEN WILL IT START?	WHICH ACTIVITIES NEEDS TO BE INCLUDED?
WHAT IS THE GOAL TO BE ACHIEVED?	

Marja Boström

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Project Manager, Hållbar Utveckling
Skåne, Sweden

TOOL 2 THE 5 WHYS?

WHAT?

The five Whys? technique is a brainstorming facilitation technique with the aim of having participants rethink and question assumptions and ideas they already have. The technique will force participants to go deeper into statements to get new perspectives that can further the idea.

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This tool is best used in the Needs Assessment phase. The tool is best used with public buyers who already have an idea of the need but have to find out if an innovation is needed to address it.

THE 5 WHYS? TECHNIQUE

The 5 Whys? technique is simple. It simply asks one member of the group to bring up a sustainability issue, and then requires the group to dig deeper into the issue by 5-times asking why....? which will allow the group to question some of the assumptions and might raise interesting and relevant questions to further look into afterwards. Below is a step by step guide using the technique.

Let someone in the group bring up a **sustainability issue** they have a need to fulfill in their daily work life in your organisation – it can be anything.

- Example: “We have a sustainability goal in our organisation that we should use less chemicals, but we cannot get clean working clothes without using environmentally hazardous chemicals”
- Now ask your **first Why?**
 - Example: “Why can you not find cleaning companies not using hazardous chemicals?”

- Now ask your **second Why?**
 - Example: if you on your Why asked in step b got the answer “we believe there are not any such companies on the market”, your next Why may be “Why do you have that believe?”
- Now ask your **third Why?**
 - Example: if you on your Why asked in step c got the answer “we did a market analysis last year and could not find any”, the next Why could be “Why couldn’t you find any?”
- And a **fourth Why?**
 - Example: if you on your Why asked in step d got the answer, “The companies have not explored if environmentally friendly alternatives”, the next Why could be “Why have they not explored that?”

- And a **fifth Why?**

- *Example: if you on your Why asked in step e got the answer, “The companies have never gotten demands from customers to use environmentally friendly alternatives”, the next Why could be “Why have they never gotten any demands from customers?”*

In this case the five Whys? may conclude that you further need to contact the market to find out if there are companies that are on the brink of putting such products on the market and set demands in your next procurement accordingly. If you still do not find any, an innovation procurement may be needed to fulfill your need.

In this case the five Whys? may conclude that you further need to contact the market to find out if there are companies that are on the brink of putting such products on the market and set demands in your next procurement accordingly. If you still do not find any, an innovation procurement may be needed to fulfill your need.

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The technique was first described by [Taiichi Ohno](#) at [Toyota Motor Corporation](#) but fitted for the InnoBorker purpose by Marja Boström, Project manager, Hållbar Utveckling Skåne, Sweden

TOOL 3 HOW MIGHT WE

WHAT?

The 'How Might We' tool, created by Danish Design Center, is a design thinking method that can be used in workshops with public authorities to explore how challenges can be transformed into opportunities. Posing 'How Might We' questions can help narrow down the scope of a challenge while leaving space for creative exploration.

INNOBROKER PHASE



HOW MIGHT WE

The 'How Might We' tool is an effective method used during the needs assessment phase to help finalize the scope of a challenge. By encouraging users to think in terms of value creation, target groups, and context, the tool helps narrow down the challenge and provides a clearer picture of the public buyers' actual needs. It can be used by public buyers to not only clarify the issue but also to gain a deeper understanding of their underlying needs and define their core challenge more concretely.

- ⊕ [Explore DDC's collection of design thinking tools and methods.](#)
- ⊕ [Access the Miro developed for the BRINC project with more guidance on the tool.](#)

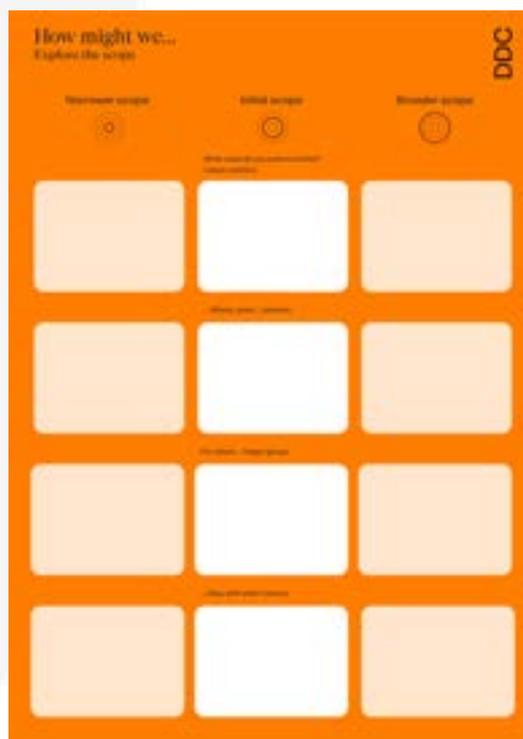


Figure 2 - How might we
Source: Danish Design Center

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Danish Design Center

WHAT?

The Ecosystem Map is a practical tool provided by Danish Design Center that during workshops can help individuals get an overview of stakeholders and potential new collaborators. This particular stakeholders mapping addresses different areas allowing the user to understand and work out where value lies in their existing network.

INNOBROKER PHASE



ECOSYSTEM MAP

The Ecosystem Map serves as a valuable tool during the needs assessment phase, helping to visualize and analyze the different actors and relationships within your network. It is particularly useful when there is uncertainty or gaps in understanding who is currently involved or could be involved in addressing a challenge. By mapping out both existing and potential stakeholders, the tool enables you to identify missing actors who could bring additional value to your ecosystem. This process not only clarifies the current landscape but also reveals opportunities for collaboration and innovation.



Figure 3 - Ecosystem map
Source: Danish Design Center

- ⊕ [Explore DDC’s collection of design thinking tools and methods.](#)
- ⊕ [Access the Miro developed for the BRINC project with more guidance on the tool.](#)

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Danish Design Center

TOOL 5 THE PROBLEM DISC

WHAT?

The problem disc is a design thinking tool developed by Danish Design Center, that can be used during a workshop with public authorities to help establish agreement on the core problem. The Problem Disc can be used as a tool to have public buyers dig deeper into the challenge, the causes, and the consequences.

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THE PROBLEM DISC

This tool is best used in the needs assessment phase. It can be that the public buyer has a sustainability challenge or goal they need to reach, but need to circle in on the problem. They might have an idea what the challenge they want to tackle is, but need to become more concrete, or they already think they know what the problem is as well as the solution, but should be pushed to rethink what is actually the challenge to be able to open up for considering alternative and more innovative solutions.

- ⊕ [Explore DDC's collection of design thinking tools and methods.](#)
- ⊕ [Access the Miro developed for the BRINC project with more guidance on the tool.](#)

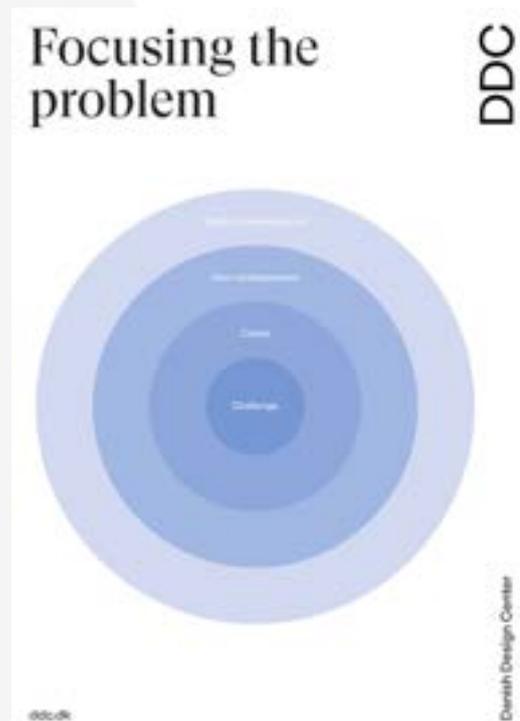


Figure 4 - The Problem Disc
Source: Danish Design Center

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Danish Design Center

WHAT?

This is a guideline addressed to the contracting authorities wishing to collaborate for the purpose of carrying out procurements of products and services which are fully or partly not yet existing on the market.

DISCLAIMER: This is a guideline only and it is made mainly on the basis of the relevant EU legislation e.g relating to public procurement. Local legislation, policies, court judgements etc. in the individual EU member states may include other practices and principles which must be considered. Thus, the guidelines below should be considered as examples of what to consider when collaborating with other contracting authorities and not as an exclusive or exhaustive list of considerations.

INNOBROKER PHASE



INTRODUCTION

This guideline covers how public buyers can collaborate across the different stages of the procurement, both prior, during and after the procurement. Public buyers can use the guide to get an overview of how and when they can engage with other public buyers. Innobrokers can similarly use the guideline when supporting and helping to facilitate the contact and collaboration between public buyers.

Collaborations between contracting authorities in relation to public procurements are fairly common on a national level but less common on a cross-border level. The European Commission, however, aims to promote joint cross-border public procurement and there may very well be benefits for the contracting authorities to cooperate also on a cross-border basis.

Collaboration during different phases

Collaborations can take place during different phases and below are given some examples.

Before a public procurement

- Joint R&D projects involving public parties and private parties in different Member States. Such projects may be funded through any of the EU funding programmes (e.g. Horizon Europe) or through other sources. (These types of projects fall outside the scope of this guideline and will not be further addressed below.)
- Joint assessments and market analysis.
- Joint market consultations, requests for information.

Public procurement

- Public procurements using a central purchasing body located in another Member State. (This will most likely not be a relevant alternative for procurements of innovative products and services and will not be further addressed below.)
- Joint public procurements based on mutual agreement between the contracting authorities

After the public procurement

- Joint know-how and knowledge sharing

Legal framework for the collaborations

The legal framework to consider when collaborating may depend on at what stage you are collaborating.

Table 1 presents an overview of the legal issues that may be relevant at the different stages.

GUIDELINES ON COLLABORATIONS

Following is a high level guide to the legal issues to consider when collaborating with other contracting authorities in other Member States with respect to procurements.

Joint assessments and market analysis

- The EU procurement directives include no provision regarding how a collaboration with respect to joint assessments and market analysis may be formed. As long as the assessment/analysis does not involve any consultation with the market participants (relevant suppliers) it will not fall under the scope of the procurement directives.

Table 1 - Overview of relevant legal issues at different stages

Collaboration	Legal issues	Comments
Joint assessments and market analysis	Intellectual property rights Business secrets Administrative/public laws Contract law	What the legal issues are (if any) will depend on e.g. how the assessment and analysis is being conducted.
Joint market consultations, requests for information	Public procurement law Business secrets Administrative/public laws Contract law	See Art. 40 of Directive 2014/24/EU and Art. 58 of Directive 2014/25/EU, which set out certain rules relating to market consultations.
Joint cross-border public procurement	Public procurement law Business secrets Administrative/public laws Contract law	E.g. Art. 39 of Directive 2014/24/EU and Art. 57 of Directive 2014/25/EU
Joint know-how and knowledge sharing	Business secrets Administrative/public laws Contract law	

- It is recommended that the participating contracting authorities among themselves conclude an agreement which sets forth at least:
 - The purpose of the cooperation
 - The responsibilities of the respective parties
 - The financing/principles for costs sharing with respect to the joint activities.
 - How to handle information received from suppliers during the market consultation, RFI etc.
- Each participating contracting authority should verify that their national legislation, including public procurement legislation, does not provide limitations as to collaboration with other contracting authorities in other Member States.
- If the joint assessment will involve business secrets the contracting authorities must consider how such information can be handled, see below in this guideline regarding considerations with respect to business secrets.
- The EU procurement directives include no provision regarding how a collaboration with respect to market consultations may be formed. However, it is recommended that the participating contracting authorities among themselves conclude an agreement which sets forth at least
 - The purpose of the cooperation.
 - The responsibilities of the respective parties.
 - The financing/cost sharing with respect to the joint activities.
 - How to handle information, including business secrets, received from suppliers during the market consultation, RFI etc.
 - How to ensure compliance with the provisions of the EU procurement directives regarding preliminary market consultations, i.e. that the advice obtained from market participants (i) does not have the effect of distorting competition; and (ii) does not result in a violation of the principles of non-discrimination and transparency (Art. 40 of Directive 2014/24/EU and Art. 58 of Directive 2014/25/EU)

Joint market consultations, requests for information

- Before starting a joint market consultation/RFI the participating contracting authorities should, if possible, have determined in what respect they shall cooperate, i.e. whether the collaboration shall extend to include also the procurement. This may have an impact on how to organise and structure the market consultation.
- Each participating contracting authority should verify that their national legislation, including public procurement legislation, does not provide limitations as to collaboration with other contracting authorities in other Member States.
- The contracting authorities must consider how business secrets obtained in connection with the market consultation can be handled, see below in this guideline regarding considerations with respect to business secrets.

Joint cross-border public procurement

- Joint cross-border public procurement is generally permitted under the EU procurement directives (c.f Art. 39 of Directive 2014/24/EU and Art. 57 of Directive 2014/25/EU).
- The Directive provides that the participating contracting authorities shall among themselves conclude an agreement which sets forth
 - The responsibilities of the parties;
 - Relevant national provisions;
 - The internal organisation of the procurement procedure (management of the procedure, distribution of works, suppliers or services to be procured, conclusion of contracts).
 - (see Art 39.4 of Directive 2014/24/EU and Art. 57.4 of Directive 2014/25/EU).
- Note that joint cross-border procurements are complex and there are many issues to consider, for example:
 - Regulatory conflicts. The rules in the relevant Member States relating to the procurement and award of contract may in not be fully compatible;
 - The choice of language of the procurement documents including contract. In theory this may seem like a fairly simple questions, but depending on the market, which Member States are involved, there may be many practical matters connected to choice of language and also, in some countries, you may not be allowed to choose - may be a mandatory to draft the documents in the local language.

This means that you will need adequate time to plan and assess the procurement process and issues connected thereto. It is also recommended to involve local lawyers that can assist on the legal aspects.

- An alternative to a joint cross-border public procurement could be to jointly develop procurement documents, but then each contracting authority, subject to making adaptations to comply with national legislation, policies and practices, executes its own procurement. An additional alternative could be to reuse another contracting authority' procurement documents, see further below regarding joint know-how and knowledge sharing.

Joint know-how and knowledge sharing

- Collaborations with respect to know-how and knowledge sharing is not covered by the scope of EU's procurement directives. Thus, there are, at least with respect to EU legislation, no formal requirements to consider as regards the form of collaboration.
- It is recommended that the participating contracting authorities among themselves conclude an agreement, which could be a fairly short and simple document, indicating the parties' intention to collaborate rather than hard contractual obligations for the involved parties. Such agreement could include provisions regarding:
 - The purpose of the collaboration (e.g. indicate which areas are subject to the collaboration);
 - Which knowledge shall be shared;

- The means of communication and sharing of information, including the format for the shared information;
 - How the shared information may be used - this is in particular important if the information is developed by a third party and subject to limitations with respect to the right of use;
 - As what point in time the information will typically be shared (e.g. sharing of information during ongoing procurements may not be permitted according to law).
- Assess whether the know-how/knowledge is the contracting authority's information or a supplier's information. Some know-how may include suppliers' business secrets and may not be shared at all.

HANDLING OF INFORMATION CONTAINING BUSINESS SECRETS RECEIVED IN CONNECTION WITH CONTRACTING AUTHORITIES' COLLABORATION

There is no EU harmonised legislation on contracting authorities' handling of suppliers' business secrets included in information and/or documents received e.g. during market consultations and/or the public procurement process.

Before collaborating with respect to activities where the contracting authorities involved may receive information from suppliers' containing business secrets, each authority should assess to what extent the authority, according to its national legislation, can guarantee to keep the information secret and if and to what extent it will be permitted to share the information with contracting authorities in other Member States.

If in doubt about what will apply in this respect under national law, it is recommended to obtain the advice from a local lawyer.

Malin Håkansson

PROVIDED BY

Lawyer and partner, Advokatbyrån
Sigeman & Co AB, Malmö, Sweden

malin.hakansson@sigeman.se

FOR WHOM?

Contracting authorities engaging with the market for the purpose of finding out among other things what the market has to offer, which products and services are available, innovation potential, pricing, acceptable delivery terms etc. in order to assess different alternatives and to prepare procurements and develop procurement documents.

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INNOBROKER PHASE



INTRODUCTION

Are market engagements always allowed?

The timing must be right. As long as you have not initiated the public procurement process, for example by publishing a contract notice, market engagements are generally ok.

What is the legal framework?

The EU's procurement directives expressly state that preliminary market consultations may be undertaken (see Art. 40 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Art.58 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC).

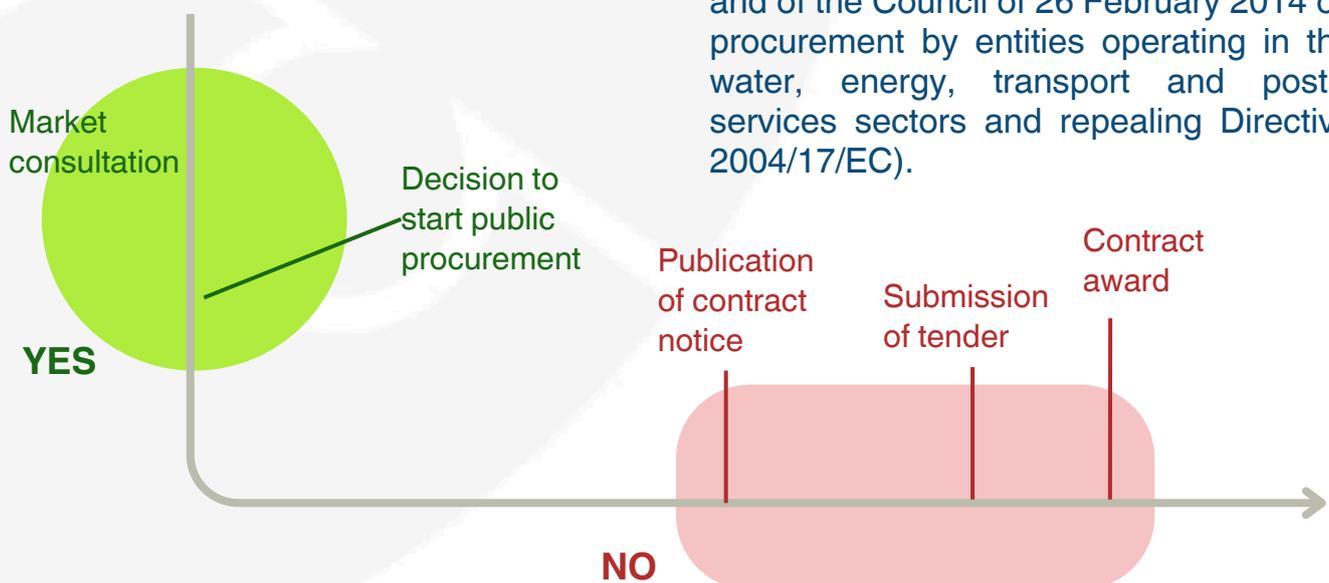


Figure 5 - Timing for starting a market engagement

By preliminary market consultations are meant consultations which are undertaken:

- Before launching a procurement procedure; and
- For the purpose of preparing the procurement and informing the suppliers of the procurement plans and requirements.

The previous indicates that the market consultation may be a somewhat formal procedure or at least that it is a process that is in time fairly close to the start of the intended procurement. However, this should not be read as prohibiting informal meetings and discussions with suppliers. Just keep in mind that the closer in time you get to the start of a procurement the higher level of formal procedure may be required to ensure that the consultation does not distort competition.

GUIDELINES ON HOW TO CONDUCT THE MARKET ENGAGEMENT

Different alternatives for performing market consultations

The EU's procurement directives do not provide any requirements with respect to the form of the market consultation. This is a matter that is left to the contracting authorities to decide. There are different ways of performing market consultations, but typically they are done through one or more of the following alternatives:

- Physical information meetings with suppliers, mainly with the purpose of informing of an upcoming procurement.
- One-on-one meetings with suppliers
- Request for Information (RFI) sent out to suppliers in order to collect information.
- External referrals, i.e. the contracting authority sends out drafts of a

technical specification, contractual terms and conditions etc. in order to obtain comments from suppliers before finalisation of the procurement documents.

Principles to uphold during the market engagement

You may seek all kinds of advice from market participants, provided however that such advice:

- does not have the effect of distorting competition; and
- does not result in a violation of the principles of nondiscrimination and transparency.

In practice, this means that you may need to consider the following:

1. The market consultation should be open to all suppliers;
2. The suppliers should be given same information;
3. The suppliers should be posed with similar questions;
4. The suppliers should be given equal time.

1. The market consultation should be open to all suppliers

To ensure that the market consultation is open consider the following:

- Define the purpose of the consultation. This is important as it will frame whom to invite;
- Spread the invitation e.g. through your website, through the same service as invitations to tender etc.;
- Send out the invitation in due time;
- Ensure that the invitation includes enough information to the suppliers so that they know whether the meeting is of interest to them and to make them feel comfortable participating. You may for example include the following information:

- Information meeting open to all suppliers at the same time or one-to-one meeting;
- Dialogue or just an information meeting from the contracting authority;
- Principles for handling of business secrets;
- How the meeting will be documented.

If you are worried that the consultation will attract the interest of too many suppliers, note that minimum requirements for participation, for the purpose of limiting the number of suppliers in the market consultation, may be regarded as limiting competition. Instead, work on defining the purpose of the consultation to ensure that the process will attract the suppliers that may be relevant.

2.The suppliers should be given the same information

To ensure that the suppliers as far as possible are given the same information consider the following.

- Take notes. If it is a pure information meeting (one way communication) consider whether the meeting can be recorded and shared on your website;
- Document the meeting for internal use. This is documentation you can refer back to/review in the event you will later receive questions about the procedure;
- Document for external use. This is documentation you prepare for the purpose of informing the suppliers. Such documentation could consist of for example the following:
 - The invitation is a good piece of information;
 - A summary of the market consultation procedures to make suppliers aware that there have been a market consultation;

- A summary of Q&A:s from the consultation (should be suppliers Questions and contracting authority's Answers);
- Distribute to participating suppliers, publish on website, if relevant include in later procurement documents;

- Be careful not to reveal business secrets;
- If it could be avoided, refrain from revealing the names of participating suppliers.

3.The suppliers should be posed with similar questions

This is linked to the issue above of providing the same information to all suppliers. To ensure that the suppliers are handled in a similar way you may consider the following.

- Distribute questions before the meeting to the suppliers;
- Keep the same meeting agenda;
- Take notes.

4.The suppliers should be given equal time

- Equal time in terms of adequate time – mainly commercial issue – no point of preparing a consultation if the suppliers don't have time to participate
- Equal time – a way to ensure that no supplier is treated preferentially
- In the procurement procedure consider whether more time to calculate the bid may be needed to ensure that all suppliers – also suppliers that have not participated in consultation – are given equal opportunity to submit a competitive bid.

HOW TO HANDLE LEGAL CONCERNS DURING MARKET ENGAGEMENT

Be aware that the parties may have different legal concerns when participating in a market engagement. Table 2 shows some examples of legal concerns of the contracting authority and legal concerns of the suppliers.

If you are aiming at having the suppliers sharing their knowledge and experience rather than just collecting the suppliers' "yes" or "no" responses to questions, you may need to consider to what extent the level of formality in your market consultation procedure may have an impact on the suppliers' willingness to participate.

Thus, you may need to find a suitable way to adequately balance your own legal concerns as well as the suppliers' legal concerns, while at the same time creating an "environment" where the participating suppliers are interested in contributing with their knowledge and experience.

In the following page are two examples of how to meet the parties' legal concerns. Example 1, aims to illustrate what it could look like when doing an overly strict interpretation of the regulations in Art. 40 of Directive 2014/24/EU and Art.58 of Directive 2014/25/EU. Example 2, aims to illustrate a more balanced approach where you may still be in compliance with the aforesaid regulations.¹

Table 2 - Overview of relevant legal issues at different stages

Contracting authority concerns	Supplier concerns
Transparency – sharing of information	Business secrets
Equality treatment – sharing of information	No help to competitors
Non-distortion of competition	Fear that prior involvement = preferential treatment = disqualification in upcoming procurement
	Procurement strategies to ensure successful bidding later on

1. See inter alia a paper by A.-M. Holma et al; "Market dialogue in public procurement: Buyer-supplier interfaces and relational abilities", published in Industrial Marketing Management, 104 (2022) 51-67, which regard a study concerning interaction matters. In section 6.2.2 of the paper the researches conclude that overly strict interpretations of the regulations can hamper interaction.

Example 1: A strict compliance approach

Contracting authority concerns	Measures e.g.
Transparency – sharing of information	Document as much as possible and share all that can be shared.
Equality treatment – sharing of information	Meetings which follow a strict manuscript.
Non-distortion of competition	Have a lawyer attending all meetings with focus on compliance.
	Written consultations rather than oral.

Supplier concerns	Measures e.g.
Business secrets	Encourage not to share business secrets.
No help to competitors	Focus on informing suppliers rather than obtaining information from suppliers.
Fear of preferential treatment equals disqualification	Don't involve the supplier too much, limit amount of advice requested.
Procurement strategies	

Example 2: A balanced approach

Contracting authority concerns	Measures e.g.
Transparency – sharing of information	Have a plan and adhere to the plan – describe the plan in the invitation to consultation.
Equality treatment – sharing of information	Focus on documenting all relevant information that you provide during meetings and make that information available to all suppliers.
Non-distortion of competition	Keep track of how you use your gained knowledge in the procurement documents. Functional requirements rather than detailed specified requirements etc.
	You may want to be careful of disclosing information of which suppliers you have met and/or how many.

Supplier concerns	Measures e.g.
Business secrets	Meetings documented by short minutes. Information from supplier in separate minutes so that it is clear what is supplier information.
No help to competitors	Encourage suppliers to indicate clearly which information include business secrets and ask them to provide arguments in respect thereof.
Fear of preferential treatment=disqualification	Be clear about all steps in the consultation, how information will be shared, the time plan for the procurement.
Procurement strategies	Provide good arguments for why it may be beneficial for the supplier to participate actively.

Note: these are examples only and not a recommendation

HANDLING OF INFORMATION CONTAINING BUSINESS SECRETS RECEIVED IN CONNECTION WITH CONTRACTING AUTHORITIES' COLLABORATION

There is no EU harmonised legislation on contracting authorities' handling of suppliers' business secrets included in information and/or documents received e.g. during market consultations and/or the public procurement process. If you are in doubt about what will apply in this respect under local law, please consult a local lawyer.

Malin Håkansson

PROVIDED BY

Lawyer and partner, Advokatbyrån
Sigeman & Co AB, Malmö, Sweden

malin.hakansson@sigeman.se

WHAT?

When a public buyer has found a need for innovation the market needs to be invited to discuss possible solutions. To get the market's interest it is of importance that the need is formulated in a straightforward, short, but informative way.

INNOBROKER PHASE



INTRODUCTION

In the BRINC project we have used the same simple one-page outline when inviting stakeholders, such as companies and research institutes. Keep the focus on what is important for the market to know in order to be intriguing enough for them to join the meeting. Below you find two examples of needs statements that can be used as templates for making needs statements.

NEED STATEMENT 1: RECYCLING OF SINGLE-USE SANITARY SAFETY MATERIALS

Need: Ways to recycle single-use sanitary safety materials

To ensure the safety of patients and their workers, large quantities of health safety materials and single-use personal protection are used, which must be discarded once they have fulfilled their purpose. In the 8 hospitals managed by the ICS¹ on average, large quantities of disposable sanitary safety items are consumed every month: 60,000 gowns;

30,000 aprons; 200,000 surgical drapes, sheets, and other cloths; 1,000,000 masks; 17,000,000 gloves; and 400,000 caps, pants, gloves, overalls and other protective equipment. Once used only once, these materials are rejected as group II sanitary waste, destined for urban waste dumps, despite the fact that they are high-quality materials with many opportunities for recovery.

Apart from the 8 hospitals, the ICS also manages a network of more than 900 Primary Care Centers and Local Consultations, which, to a lesser extent but with larger geographical coverage, also generate this type of waste.

A preliminary market consultation is launched, March 23, 2023, to explore the proposals that industry, entities and economic operators can offer to reuse or recycle of these large amounts of waste. The difficulties that motivate this consultation, and that the proposals presented must take into account are that:

- These are materials of plastic origin, but of different types (polyethylene, polypropylene, latex, nitrile, vinyl, neoprene, etc.) which can be mixed together.

1. The eight hospitals are: Arnau de Vilanova University Hospital, Bellvitge University Hospital, Germans Trias i Pujol University Hospital, Joan XXIII University Hospital, Josep Trueta University Hospital, Tortosa Verge de la Cinta Hospital, Viladecans Hospital.

- These are materials that have had a sanitary use and are classified as Group II sanitary waste, with a low biological risk, but that may need a biological decontamination treatment before being valued.

Participating companies or entities must submit a duly completed B2 question form, as well as a project that responds to the needs raised, and that includes:

- Details of the proposed technical and logistical solutions.
- Innovations and benefits offered by the proposal
- Current state of development of the proposal
- Breakdown of the economic costs that would entail the execution of the proposal to the contracting body.
- Other additional information that is considered necessary

Once the project submission period has ended, the contracting body will call the participating companies or entities separately to present their project, explain the details and answer any questions that may arise.

At the end of the analysis of the projects presented and the presentations made, the contracting body will publish a final report on the procurement platform with the conclusions of the consultation.

NEED STATEMENT 2: CIRCULAR DEMANDS ON EVC

Need: A new focus on circular requirements regarding lifespan and take-back for electric vehicle chargers

Public buyers are committed to creating a circular economy by buying products, services, and infrastructure that are designed, used, and operated to maximise value and minimise waste, reducing demand for primary resources, lowering carbon emissions, and allowing the regeneration of natural systems.

ECOS (Environmental Coalition on Standards) who work on the communication standards needed for smart charging have published [this guide](#) for public authorities last year. In it they explain the benefits of smart charging, the standards needed and provide recommendations regarding the implementation of standards and the upgradability (which they see as key for circularity).

Some general demands in procurement that are of interest to discuss before upcoming procurements:

- Apply R (reuse, etc..) strategies for Circularity/ambition chart/waste hierarchy
- Exploring charging-as-a-service business models (also their financial sustainability) and other take-back systems -reusing components leads to reduced recourses. Functional specification
- Let circularity and sustainability take a bigger role in awarding contracts.

Some specific demands for electric vehicle chargers also to be explored in upcoming procurements are:

- Use % of post-consumer recycled content and increase every year to challenge the sector. Plastics and metals/minerals.
- % of reused content
- Applicants shall ensure that the infrastructure's processor and memory have sufficient resources, or can be upgraded in the future. This is important to support the simultaneous use of multiple versions of standards on all communication interfaces (e.g. a newer version as well as a fallback option for backwards compatibility, or a different standard on the same interface).

Communication between the following interfaces must be ensured:

- car <> charging station;
- charging station <> charging station management system;
- charging station management system <> third-party roaming systems.
- Applicants shall provide full documentation of the software protocols and hardware specifications, such as physical connectors to allow for modular upgrades throughout the entire lifetime of the infrastructure.
- Modularity and Repairability (spare parts) for XX years.
- Applicants shall demonstrate a commitment to lifetime interoperability of the charging infrastructure by declaring which methodologies the company is using to determine real world interoperability with EVs, and by regular testing.
- Include the taking back of EVC's in contractual arrangements at end-of-life/end of contract
- Origins of metals, minerals.
- Product passports. With details on the type of materials used, the design and state of product. This can be useful for recycling/reuse/waste partners.

Marja Boström

PROVIDED BY

Project manager, Hållbar Utveckling
Skåne, Sweden

WHAT?

This tool provides a structured approach to market engagement. Market engagement will help develop a stronger understanding of the market capabilities and the level of development of the available solutions.

INNOBROKER PHASE**INTRODUCTION**

Public authorities often face challenges in understanding what solutions and innovations already exist in the market and whether a desired solution is readily available. This tool provides a structured approach to help public authorities determine if the needs identified in a project are unmet by the market or if off-the-shelf solutions already meet those needs. The methodology offers essential steps for authorities to assess the landscape of available solutions before initiating a procurement process. The InnoBroker can facilitate the market engagement for the public buyer and take over some tasks such as desk research completely. The below steps should be seen as a selection of different options that will provide a deeper understanding of solutions on the market. Together with the Public Buyer the InnoBroker can scale the market engagement up and down, and choose relevant steps, with respect to time and resources available, as well as the wishes of the public buyer

PRELIMINARY MARKET ENGAGEMENT PROCESS**Desk Research**

Desk research is a simple way to get initial insights by exploring publicly available information on existing solutions and potential suppliers. Relevant sources to consult could be: industry reports, academic articles, and case studies to understand the current landscape, including available technologies, emerging trends, and key players in the market. If accessible, previous procurement data can also provide relevant insights on what has been effective in similar contexts. Desk research helps form a foundational understanding of the market.

Request for Information (RFI)

Request for Information (RFI) can be issued if any public authority seeks detailed, structured feedback from potential suppliers. An RFI, typically published on public procurement platforms like TED (Tenders Electronic Daily), invites suppliers to provide information on their products, services, or capabilities relevant to the needs identified in the initial assessment.

The main objective of an RFI is twofold: first, to determine whether the identified need truly lacks a current market solution, and second, to refine or adjust any functional specifications developed during the needs assessment phase. Through responses to the RFI, the public buyer gains valuable insights into the feasibility of their requirements and can identify any existing solutions that could be adapted to fit their needs. Additionally, the RFI process can help public buyer evaluate the market's capacity and readiness to address the identified requirements, ultimately ensuring that the final procurement is both realistic and aligned with market capabilities and that the right procurement procedure is chosen.

Interviews

Targeted interviews with relevant stakeholders, including research institutions, other public agencies, potential suppliers, and industry experts can help validate the identified needs, gauge market interest, and gather feedback on potential solutions. Additionally, these discussions can provide a platform for public buyers to refine project requirements and identify any market constraints early on, setting the stage for a smoother, more informed procurement process.

Workshop for stakeholders

Workshops can then be held with stakeholders to learn more about potential solutions and get more in-depth knowledge about the market capabilities. To have as high outreach as possible, invitations to the workshops can be sent out using different channels, such as national and European tender sites, social media, for example LinkedIn, the websites of the public buyer and direct mails to potential companies identified during the desk research.

Workshops can include a broader or narrower range of stakeholders and the InnoBroker can consider using tools 3, 4, 5 for facilitating the discussion.

Market dialogue meetings

The purpose of the market dialogue is to develop a stronger understanding of market capabilities and to address the functional specifications of the challenge. By using functional specifications, the focus of the procurement shifts from specific goods or services to the result the procuring authority wants to achieve. This process opens for more innovative and circular procurements.

It must be clearly communicated that these dialogue meetings do not pay any special consideration to the suppliers participating and are distinct from the competitive phase of the procurement to be implemented later.

Invitation to participate: To ensure transparency as well as reaching great outreach to potential suppliers, invitations should be issued in English. Communication channels to consider for outreach could be Facebook, LinkedIn, BABEL, Ignite, ConneCTA, ICN solutions relevant trade organizations and other more traditional channels in addition to postings on webpages and other national or international channels, and sharing with other relevant InnoBrokers. To ensure that the participating stakeholders are relevant to the PAs, a brief presentation of the needs are included.

The public buyer may consider asking those interested in participating in the meeting to fill in a Technology Request Form providing information on company profile and suggested solution(s) to the presented need.

Meeting facilitation: The meeting can be structured as a classic match-making meeting with the needs firstly presented by the public buyer, followed by short pitches from the potential solution providers. In the BRINC project, pitches of 3min have been used. The next step is to open for an inclusive dialogue between all participants.

The companies have generally thought 3min presentations were too short, but we found that it is enough to start the conversation and that the dialogue following the presentation gives more value than spending more time on presentations. The point is the dialogue, not the pitching.

The format can and should of course be adjusted to the specific case. Some points to take into consideration in this regard could be:

- Total number of registered participants
- Number of Public Buyers
- Number of needs or the complexity of the need(s) presented
- Number of solution providers
- Potentially sensitive business information
- Cross border procurement involving multiple countries and languages.

Follow-up with Public Authorities

After the different steps of the market engagement, the InnoBroker follow up with the public buyer to make sure new information is being considered and to help move things along and discuss next steps.

PROVIDED BY

**Sustainable Business Hub and
CLEAN**

WHAT?

This template can be used by Innobrokers alone or together with public buyers, to brainstorm on needs and wants in relation to the early market engagement. The answers can be used to plan your early market engagement to make sure you get the outcome you are seeking.

INNOBROKER PHASE



INTRODUCTION

The below template can be used as a starting point for planning the market engagement in relation to a procurement or when accessing if procurement is relevant. Fill in the boxes below and use the input to design the strategy. The exercise could with benefit be done with public buyer and participation from different involved/impacted departments.

EARLY MARKET ENGAGEMENT STRATEGY

What is the aim of the early engagement strategy?

What tools will you use and why? (can use some you know)

What outcomes do you want out of the engagement strategy?

What is the timeframe for proposed engagement strategy?

PROVIDED BY
Scott Grønnegaard Allison
Clean - The Danish Water & Environmental Cluster

FOR WHOM?

Public buyers wishing to carry out procurements of solutions (products and/or services) which are fully or partly not yet existing on the market.

INNOBROKER PHASE



INTRODUCTION

In 2021, the European Commission issued a guideline to assist public buyers choosing procurement procedure when buying innovations. The guideline takes its starting point from the question of whether the solution to be procured requires R&D work or not. If R&D work is required certain procurement procedures may be applicable while other may be applicable if not R&D work is required.

The tool presented here supplements the Commission’s guideline with some additional matters which the public buyers may consider when choosing a public procurement procedure.

DETERMINE WHAT YOU ARE BUYING

Innovation procurements could mean different things, but typically one would mean any of:

1. the buying of the process of innovation, i.e. the research and development service and the potential outcomes thereof;
2. the buying of the outcomes of innovation; or
3. a combination of 1) and 2).

When assessing which procurement procedure to apply the first step would be to assess what solution you wish to buy. To what extent or in what parts does the solution require innovation. Does it fall within any of the categories 1) – 3) above or are you mainly aiming at giving the bidding suppliers the opportunity to offer innovative alternatives?

DIFFICULTIES IN DETERMINING WHAT TO BUY

If it is difficult to establish what solution to buy, e.g. whether R&D work is needed, whether there is an existing solution available on the market which could possibly be further developed or adapted to suit the needs of the public buyer, it is most likely too early to initiate a public procurement process.

In such case, consider to what extent you could further engage with the market, for example through a preliminary market consultation, to gain more knowledge on what the market is ready to offer and/or how long it would take to develop the required solution.

ENGAGE WITH THE MARKET TO ENSURE THAT THE PROCUREMENT WILL ATTRACT BIDDERS

When you have established that there may be suppliers potentially interested in your procurement, it is recommended to perform a preliminary market consultation regarding the specifications, terms and conditions of the contemplated procurement. The purpose of such market consultation is to ensure that you will receive competitive offers from a few suppliers.

The market consultation could regard all kinds of matters, including those helping you to determine the most suitable procurement procedure given the circumstances. Matters that may be beneficial to consult about include:

- Estimated time frames. The purpose would inter alia be to establish whether a development of the required solution is doable within planned time frames.
- Supplier's investment requirements. New innovative solutions may require that the supplier invest in new plant and machinery. This will have an effect on time as well as costs and may impact on the supplier's ability and interest to participate in a procurement. The purpose of consulting about the investment requirements would be to establish if and how you will be able to adapt the procurement to accommodate your own needs as well as the needs of the suppliers.
- Which risks the suppliers would typically be unwilling to take and/or which risk would have a material impact on the price if not born by the buyer.
- Price and payment models.
- Mandatory and facultative requirements in the procurement. The purpose would be to ensure to set out appropriate requirements to ensure competition.

- Procurement procedure. For example, what issues would be important for the supplier when assessing whether to submit a bid or not for the required solution.
- Technical specifications. The purpose would be to obtain information to be able to draft appropriate specifications. During a market consultation you may also ask for the participants' comments to drafts of specifications.
- Contract terms and conditions. Depending on the required solution as well as the other circumstances at hand, the contract(s) between the buyer and the eventually selected supplier may at least in parts need to include innovative elements (e.g. customized contract structure, price models, incentive models etc. which deviate from "market standard"). During a market consultation you may also ask for the participants' comments to drafts of terms and conditions.
- The level of participation the supplier would expect to need from the buyer.

ASSESS THE INSIGHTS FROM THE MARKET ENGAGEMENT, CHOOSE PROCUREMENT PROCEDURE AND FINALISE THE CONTRACT DOCUMENT

Consider the insights from the market engagement when you choose procurement procedure. Use the information obtain during the market engagement to develop appropriate contract documents.

Malin Håkansson

PROVIDED BY

Lawyer and partner, Advokatbyrån
Sigeman & Co AB, Malmö, Sweden

malin.hakansson@sigeman.se



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