Procure Innovation EU Training Programme

May 2025

What are the main legal aspects for designing a PPI tender?

Designing a Public Procurement of Innovation (PPI) tender requires a deep understanding of the legal framework. The objective is to balance flexibility for innovation with legal certainty, transparency and competition. Here are the key legal considerations and red flags consider when preparing a PPI tender.

Ensure compliance with general law principles

A solid legal foundation in PPI starts with strict adherence to the general principles of public procurement law: **transparency, non-discrimination, equal treatment and proportionality**, enunciated in the articles 18 and 36 of Directive 2014/24/EU. These principles must be upheld throughout the entire process—from early market consultations to the drafting and award of the contract. In practice, this means ensuring that all communication with suppliers is properly documented and accessible, that the selection criteria are objective and published in advance, and that no supplier is given privileged access to information or decision-making spaces. For example, if a market consultation results in one supplier tailoring the final tender specifications or benefiting from confidential insights, this could be interpreted as a distortion of competition and a breach of equal treatment.

Define needs using functional requirements

To promote innovation and ensure fair competition, it is essential to move away from overly technical requirements of the object of the contract. According to **Article 42 of Directive 2014/24/EU**, technical specifications should, wherever possible, be formulated in terms of **functional or performance requirements**. This means focusing on what the solution must achieve rather than how it must be implemented. This approach allows for a wider range of innovative proposals and encourages suppliers to bring their own expertise and creativity. However, public buyers often fall into the trap of over-defining solutions, specifying technologies, components, or methods that limit competition and the potential for innovation. This can unintentionally exclude emerging players or SMEs and may even be considered illegal if it restricts the market without objective justification. **The right balance between clarity and openness is key to receiving diverse and high-quality offers.**

For example, we might want to build a steel suspension bridge with three vehicle lanes and a pedestrian sidewalk, using X materials and Y construction method. This type of restrictive specifications can limit the potential of the solutions, because it may exclude innovative alternatives such as cable cars, ferries, or tunnels, and it may exclude certain suppliers. On the other hand, a good functional specification could be: We need to ensure the safe and efficient transport of up to 400 people per hour between Point A and Point B, across a 200 metre canal, under all weather conditions. This approach focuses on the needs, gives a blank cheque to propose innovative and different solutions, and can also encourage the participation of new suppliers.

Clarify Intellectual Property Rights (IPR)

PPI often involves the joint development of new knowledge, prototypes or services, which makes the management of **IPR** a critical legal issue. For example, Innovation Partnerships, **(Article 31 of Directive 2014/24/EU)**, explicitly allow flexibility in structuring ownership and exploitation rights. It is essential that the tender documents minimally define how IPR will be handled. **Lack of clarity or late negotiations on IPR can lead to misunderstandings, conflicts and disincentives for innovative suppliers to participate**. In addition, a well-drafted IPR clause can help the public buyers ensure that the solution is scalable and can be reused beyond the initial pilot or project.
To learn more about this topic, watch the following webinar: **Webinar on Intellectual Property Rights and Innovation Procurement | Public Buyers Community**

Build flexibility into the contract

Innovation projects evolve over time and often require iterative development, testing phases and adjustments based on feedback. For this reason, PPI contracts need to include mechanisms that allow adaptation. **Article 67 of Directive 2014/24/EU** supports the use of **performance-based award criteria**, encouraging contracting authorities to evaluate tenders not only on price, but also innovation potential, scalability and expected impact. In addition, contracts can be structured with **different criteria**, allowing authorities to assess progress before committing to full-scale deployment. The inclusion of well-defined **exit clauses, revision options, or collaborative governance mechanisms also adds flexibility and reduces risk.** Without these elements, rigid contracts can lead to disputes during execution or result in incomplete or inappropriate solutions. Procurement strategies need to reflect the dynamic nature of innovation and the uncertainty that comes with developing something truly new.

Designing legally sound PPI tenders goes beyond ensuring legal compliance, which is a requirement in any procurement. The real challenge is to match the buyer's unmet needs with the innovative market solutions, allowing enough flexibility to adapt throughout the process, while we still respecting the principles of the law.

Learn more about

Do you want to know more about Innovation Procurement? Do you want to know what the legal keys to designing a PPI tender are?

- ✓ Discover how PPI can drive smarter solutions and transform public services when supported by the right legal and strategic tools.
- ✓ Learn how to choose criteria, define functional requirements, manage IPR and structure flexible contracts in line with EU law.

If you are interested, join this community!

Coming up next:

JULY 2025 - Strategic sectors for PPI implementation

European Commission