

# SERN response to the European Commission Consultation on the draft Guidance on Public Procurement of Innovation

On 4 October 2017, the European Commission DG Grow launched a consultation on the draft Guidance on Public Procurement of Innovation, announced in the Public Procurement package of 3 October 2017. This consultation is aimed to received feedback from all stakeholders by 2 January 2018. **SERN** welcomes the opportunity to provide comments on the subject and **would like to make the following statements:**

Public procurement represents a great potential for start-ups/scale-ups to grow. However, its potential is still today not yet sufficiently used as SMEs are still under represented. In spite of the significant contribution of startups to the European economy they do not get a proportionate share of public contracts. Furthermore, National and regional/local tendering authorities are not yet sufficiently aware of the possibilities for start-ups to access public procurement within the public procurement framework adopted by the EU in 2014. Therefore, a new approach is needed for improving government procurement of innovative solutions in the EU, bringing untested ideas to market thus creating crossborder growth opportunities.

SERN recommends two specific recommendations for facilitating public procurement for startups:

- 1) **Government procurers should be directed to spend a small percentage of their purchasing budgets on research and development.** The Scale Up Europe manifesto requested Europe to specific ambitious targets for precommercial procurement (3% of all public procurement expenditure) and public procurement of innovative solutions (20% of all public procurement expenditure). This should be included in the guidance document (the current version of the document mentions target setting but does not recommend any concrete level of ambition for such targets).
- 2) A warning should be included in the guidance document (referring to the 2014 R&D&I State aid rules) to emphasise that **public procurers should be more cautious to use the new innovation partnership procurement procedure only for unique/specialised products (as it is creating foreclosing of competition/discrimination against Startups and SMEs).** This is important in the context of the Scale Up Europe manifesto that called for a “more open” public procurement market in Europe.



- 3) Under the 2014 public procurement directives a new innovation partnership procurement procedure was launched that is destructive for startups/scale ups/SMEs. In this procedure procurers preselect companies that are allowed to make offers based on 'past track record'. As this procedure combines also the purchase of all R&D plus commercial deployment in one procedure, contract sizes and financial/professional guarantee requirements on companies are high (companies have to prove even before they start R&D that they already have the financial and professional capacity not only to develop but also to deploy widely, do after sales support/maintenance etc. for the products...). Most procurers also start innovation partnership procedures with only 1 or 2 companies. This all leads to the selection of large vendors at the detriment of smaller companies. When smaller innovative companies develop a better product in parallel with the partnership on their own, they are not able to sell it to the procurer anymore because he has already locked himself into buying only from the companies in the partnership. The 2014 R&D&I state aid rules say that, because of this danger of foreclosing competition and crowding out other R&D investments, innovation partnership procedures should only be used in very exceptional situations when the procurer needs unique, highly specialised products for which there is only 1 potential suppliers anyway (so that other companies are not disadvantaged by the lock-in effect of setting up a partnership with one specific company). However, in practice procurers are not really paying attention to this and are using the innovation partnership procedure for just about everything.
- 4) **Public procurers should allocate IPR ownership in public procurements to companies** (instead of the procurers). In most European countries, the national public procurement law foresees either no clear IPR regime or an IPR regime that leaves IPR ownership with the public procurer. This is not the case in other parts of the world as in the US, Canada, Israel, or Japan where public procurers leave by default IPR ownership to companies in public procurements. This deters innovative companies from participating in innovation procurements, or simply prevents them from commercialising their innovations to other customers afterwards and this makes innovation procurements also expensive and thus financially risky/unattractive for procurers in Europe. Therefore, SERN recommends to follow the example of other parts of the world, and set more innovation friendly IPR conditions in public procurements in Europe that leave IPR ownership by default to the companies.
- 5) Finally, SERN would like to take this opportunity to call the European Commission to financially support the **development of a pilot project with European regions aimed at providing training for contracting authorities and vendors on public procurement to make it more attractive for consumers.**



The project would contribute to assist the regions in providing startups with a better and easier access to public procurement and would contribute to improve the communication between procurers and vendors. The public procurement process would be based on a “challenge based approach” and would be break up into different stages.

- The contracting authority would describe the challenge faced and would launch a call for expression Interest (EOI).
- Startups would respond to the call providing their understanding of the challenge and a description of their solution.
- The 3 best solutions provided would be selected for the next exploration and prototype stage.
- On the next phase the 3 vendors would enter into a close discussion and collaboration with the procurer and would be paid for their work to develop 3 prototypes.
- The best of the 3 of them would be selected for the next stage. The successful vendor spends 3 months building a minimum viable product (MVP) that implements the solution, and is paid for this work.
- The procurer has acquirer a good understanding of the problem and the proposed solutions and has built close relations with the solution providers.
- In each phase, payments would be distributed with half of the total payment at the start of the phase, and the rest on successful completion.

This approach offers benefits both for the procurer and for vendors and therefore for the overall ecosystem as it fosters collaboration. For the procurer: costs and risks are known up front, open process to diverse set of players. For the vendor: greater access to small vendors, closer relation with procurers, low up-front investment, known cost and timeframes, higher quality.

### **About SERN:**

SERN was officially launched in Brussels in October 2015 as a non for profit organisation with a strong commitment to support startups. SERN main activities focus on the mapping and promotion of support activities to startups conducted at regional level across Europe and in mobilizing regional efforts to address relevant barriers to startups' growth, such as harmonization of policies and regulations, access to talent and to major research infrastructures. The founding members of SERN are: North of Portugal (INOVA+), Baden-Wurtemberg (bwcon) and Nice/Cotê d'Azur.

For more info, please see: <http://startupregions.eu>