

## Continuous improvement

‘Continuous improvement’ is designed to encourage a supplier to come up with innovative solutions during the term of a contract. Opportunities and incentives to do so must be included at the outset in the contract. In addition, it is necessary to agree terms about an open method of collaboration in order to allow freedom for the innovation. In doing so, you increase the mutual trust between yourself and the supplier and lower the threshold for innovative proposals.

### 1. When is continuous improvement useful?

The goal of continuous improvement is to make optimum use of the innovative opportunities for your suppliers so that you can continuously innovate. This is especially appropriate for long-term contracts in which you expect innovative solutions to become available during the term of the contract.

### 2. Step-by-step plan

This step-by-step plan will help you decide what form of tender is suitable for you as a means to encourage innovation throughout the term of the contract and what measures you can take to encourage this innovation in addition to the contract provisions.

#### Step 1: Make a choice: continuous improvement or innovation procurement

Continuous improvement is not always the best choice. In many cases it is better to procure innovation via a separate tendering process and to encourage suppliers to submit a tender for innovation. Which form is more suitable depends on a number of factors.

You should choose ‘continuous improvement’ if it is important that new innovations be adapted for products or service that develop quickly during long-term contracts and if the complete replacement of these implemented products or services is too expensive. A good example of an industry in which this occurs a lot is IT. In respect of a maintenance contract it may also be that future innovations enable costs savings and improvements in performance during the term of the contract.

You should choose ‘innovation procurement’ if it is possible to purchase an already developed product with a clear potential. You should also choose ‘innovation procurement’ if you wish to encourage a development project by means of an award process.

The following table sets out some of the characteristics, advantages and disadvantages of both options.

Continuous improvement	Innovation procurement
<b>Characteristic</b>	<b>Characteristic</b>
Include opportunities and incentives for innovation in the contract between yourself and the supplier.	Encourage innovation through competition with other suppliers.
<b>Advantages</b>	<b>Advantages</b>

By working together for longer you and the supplier learn to know each other better. This can lead to unexpected innovations.	There is no obligation to purchase.
Purchased products or services remain up-to-date due to ongoing innovation.	The potential for innovation is already clear before the purchase.
You can make maximum use of the knowledge and expertise of your supplier.	
<b>Disadvantages</b>	<b>Disadvantages</b>
There is a greater risk of absence of innovation following the purchase.	You need to make a good assessment of innovation for the award.
Success depends heavily on the relationship between you and the supplier.	Purchased products could become outdated in the future due to innovation.
The contract is more complex because you also need to take account of ongoing innovation.	There is a lot of market and/or product knowledge required for drawing up the tender.

To make the right choice between a tender for continuous improvement or innovation procurement you could also conduct a market consultation. At the end of this step have you selected ‘continuous improvement’? Then the next step describes how you can incorporate this within your tendering process.

## Step 2: Decide on your form of tender

If you are looking for continuous improvement, you need to include this in the contract you enter into with the supplier. All aspects of this contract must be clear at the time of the tendering process. A transparent and fair competition must be guaranteed. What kinds of contract can you enter into with the supplier in order to achieve this?

### *Contract with plus package*

The plus package consists of agreed provisions on how to financially value the supply of a higher quality during the term of a contract.

- The supplier has the opportunity to think outside the box and offer innovative solutions at an additional price. Plus packages also offer the opportunity to specify the area for which the innovation is sought and how you can share any investment costs and revenues.
- The payment for innovation within a plus package can be agreed such that the supplier is paid more if it supplies higher quality.
- In addition, a pre-agreed reduction in price during the contract may be a means of initiating innovation. The supplier knows in advance that it must innovate to remain in profit.

### *Integrated forms of contract (such as DBFMO in the construction sector)*

These are forms of contracts in which after the sale a supplier remains responsible for certain parts of the process, such as maintenance. This is a way of incentivising a supplier to produce innovations that lead, for example, to a reduction in maintenance costs. See the DBFMO guide [here](#).

### *Performance-related contracts*

A performance-related contract gives you space to decide your working methods during the term of the contract, provided that you comply with certain agreements. In this way you could, for example, include provisions in the case of repeat projects to raise the performance level according to a set

schedule, thereby incentivising the supplier to work in a continually more efficient and/or smarter way.

#### *Inclusion of the right exit and modernisation clauses*

Exit and modernisation clauses stipulate that you may terminate the contract if the market comes up with innovations that the supplier is unable to supply. This is a way of ensuring that the supplier does its best to make sure that you can make use of the innovation.

- Naturally you enter into most contracts with the intention of serving out the full contract term. However, it may be important to agree provisions covering termination before the end of the fixed term. Certainly in the case of any conflict it is beneficial to be able to act in accordance with a pre-agreed protocol.
- These clauses are intended to amend the contract in the event that innovations overtake what is possible under the contract. Ensure that you do not act too defensively because this could damage the relationship of trust. It is important that suppliers know precisely when you are able to rely on such clauses.
- An exit clause enables you to terminate the contract before the end of its fixed term. The clause promotes competition because you can use it to exert pressure and as a way of avoiding a lock-in.
- An alternative is to extend the contract as a reward for innovation.

#### *Enter into a framework agreement with one supplier*

By entering into a framework agreement with just one party, you have the option within that period to enter into various contracts appropriate to the innovation phase and to the knowledge built up following the completion of each separate contract. You could first enter into a contract to form ideas, followed by one for determining implementation/planning, then one for actual implementation and evaluation, followed by another contract for forming ideas, etc. There is no obligation to purchase, which means that to obtain follow-up contracts the supplier will have to come up with good ideas or plans. The supplier does, however, have a relatively large degree of certainty that it will be given new contracts if the preceding contracts were successfully concluded. This is a way to avoid having to make immediate choices and specifications for phases that still lie far ahead in the future. You can also terminate a framework agreement after one or two years if it is not providing you with sufficient value.

### **Step 3: Agree to communicate on matters aimed at innovation**

There are aspects to encouraging innovation that are not included in a contract. Many of these aspects relate to the relationship of trust between you and your supplier. In the end, you both need to be incentivised to produce innovations. There are several ways in which you can create a climate for innovation:

- Organise meetings at which you both indicate where your need for innovation lies and where you can assist each other in innovation. You can include agreed terms in a contract. Irrespective of the contract it is important that you regularly consult each other on the opportunities for innovation within the current work activities.
- Ask the supplier to regularly draw up an innovation plan. This makes optimal use of the supplier's creativity. In contrast to the meetings and innovation discussions, the initiative here lies with the supplier, to whom you can offer your support.
- Communicate openly and honestly, even on negative aspects of the collaboration or innovation project, without giving the supplier any cause to fear the consequences.

- Effectively communicate your needs with regard to innovation, so that suppliers are able to anticipate these.

#### Step 4: Ensure that your supplier complies with the agreements

Once you have begun the collaboration it is important that you are able to profit from the opportunities for innovation that the contract offers. Monitor the collaboration and make use of exit and modernisation clauses in the contract where necessary. This does not mean that you should be in a rush to pull the plug on the collaboration. It might also be that you and the supplier are not on the same wavelength or haven't been sufficiently incentivised towards innovation. The use of discussions and meetings as a form of communication as described in step 3 is therefore extremely important.

### 3. Legal framework

It is important to keep changes to the contract to a minimum, because changes are often very expensive. Changes should not be too far-reaching, because then the tendering process is no longer transparent. It must therefore already be clear in the tender what contract form has been chosen and what scope this allows for innovation (and thus changes). A legal expert in procurement law can advise you on what contract provisions are appropriate and help you draft them, so that the innovative capacity is genuinely expressed as a requirement in the tendering process.

### 4. Further information

[PIANOo series Public Procurement for Innovation Jurisprudence](#)

### 5. Source

This information was taken from the "Innovation Procurement for Contracting Authorities" document that was prepared by [PIANOo](#) in 2017.