

**D.2.3.2. Capacity Building  
Seminar Report  
Magdeburg, 18. March 2015**





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## D.2.3.2. Capacity Building Seminar Report

**Project acronym:** IMAILE

**Project title:** Innovative Methods for Award procedures within ICT Learning in Europe

**Grant Agreement number:** 619231

**Coordinator:** Halmstad Project manager Ellinor Wallin

Project co-funded by the European Commission,  
Seventh Framework Programme

**Funding Scheme:** FP7 – CP – CSA CALL 8.2.A

<b>Due date of deliverable:</b>	<b>M 27</b>
<b>Actual submission date:</b>	<b>30.04.2016</b>
<b>Start date of the project:</b>	<b>F eb 1, 2014</b>
<b>Project duration:</b>	<b>48 months</b>

<b>Workpackage</b>	<b>2</b>
<b>Task(s)</b>	<b>2.3</b>
<b>Lead beneficiary</b>	<b>INNOVA</b>
<b>Editor/ authors</b>	<b>Tamas Szabo</b>
<b>Quality reviewers</b>	<b>Istvan Kollar-Eri, Rita Freudenberg ( SAB)</b>

Dissemination level		
<b>PU</b>	Public	<b>x</b>
<b>PP</b>	Restricted to other programme participants (including the Commission Services)	
<b>RE</b>	Restricted to a group specified by the consortium (including the Commission Services)	
<b>CO</b>	Confidential, only for members of the consortium (including the Commission Services)	

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## 1. Capacity Building Seminar

In the framework of the IMAILE project, capacity building seminars are to be organised connected to each major milestone of the PCP process. Thus, according to the initial plans, a seminar has been organised to focus on the topic of the preparation of the tender, one connected to Phase 1) Solution Design, one to Phase 2) Prototype-development and one to Phase 3) First test products.<sup>7</sup>

The first CBS took place in Budapest on 17.06.2014.

The second CBS – covered by this report - took place shortly after the project review meeting of the 10th March 2015, where project IMAILE has received a number of recommendations mainly concerning the market consultation approach and the PCP tender documents. This is the reason why the second CBS was dedicated to these topics.

The third CBS is to be organized in the second quarter of 2016.

### 1.1 Brief description

The second capacity building seminar (CBS) took place in the framework of the project meeting in Magdeburg and thus was connected to the steering committee and the project consortium meetings.

Basic information	
Venue:	Oberfinanzdirektion (OFD) Branch Office in Magdeburg 4., Otto-von-Guericke Straße 4 Magdeburg
Date:	18. March 2015

Figure 1: Venue and date of CBS

### 1.2 Objectives

Ms. Sara Bedin and Mr. Christophe Veys - innovation procurement experts - have been invited to the second CBS to provide support in reviewing IMAILE's market consultation approach and tender documentation.

The CBS intended to support the IMAILE Consortium in the process of developing the invitation to tender, the challenge brief and the Framework Agreement.

Accordingly, the second capacity building seminar was focusing on the topics of

1. Market consultation, requesting information from the supply side, supplier engagement.
2. Recommended structure of the invitation to tender (ITT) document; Assessment of the existing draft.
3. Design of the Challenge Brief; Aspects to be considered while drafting a challenge brief.
4. Content of the Framework Agreement; Assessment of the existing draft.
5. Assessment criteria to consider in a PCP call for bids.
6. IPR and license agreements in the context of a PCP call.

### 1.3 Agenda

09:00 – 09:15	Participants arrival and welcome, presentation candidate Contract manager <b>Steve Hammond</b>
09:15 – 09:45	Analysis of the structure of the invitation to tender formal document – <b>Mr. Christophe Veys</b>
09:45 – 10:00	Open questions – partners
10:00 – 10:30	Design of the Challenge in brief concept – <b>Ms. Sara Bedin</b>
10:30 – 10:50	Open questions – partners
10:50 – 11:10	<i>Coffee break</i>
11:10 – 12:30	Content of the framework Agreement between lead procurer and selected bidders – <b>Mr. Christophe Veys</b>
12:30 – 13:00	Open questions – partners
13:00 – 14:30	<i>Lunch break</i>
14:30 – 15:15	Types of assessment criteria to consider in a PCP call for bids – <b>Ms. Sara Bedin</b>
15:15 – 15:45	Brainstorming to identify examples of suitable assessment criteria for our call – <b>Ms. Sara Bedin</b> and partners
15:45 – 16:00	<i>Coffee break</i>
16:00 – 16:45	IPR and license agreements in the context of a PCP call – <b>Mr. Christophe Veys</b>
16:45 – 17:30	Open questions – partners
17:30 -	End of day

Figure 2: Agenda of the CBS.

### 1.4 Brief summary of the presentations

#### 1.4.1 Analysis of the structure of the invitation to tender formal document

In the framework of his presentation, Mr. Christophe Veys has

- presented the structure of ITT used in project Smart@fire
- reviewed IMAILE's preliminary tender documentation highlighting the importance of market consultation for developing a solid invitation to the tender (ITT)

#### Mr. Christophe Veys:

- Senior Legal Expert in Innovation procurement
- Programme Director of IWT (Knowledge Center Procurement of Innovation at the Flemish governmental Innovation Agency).

• Coordinator of the Smart@fire



### The structure of ITT used in project Smart@fire

Mr. Veys presented the Smart@fire’s ITT document, which had dedicated chapters for

- PCP regulations,
- The scope of PCP within Smart@fire project,
- The definition of the contracting parties,
- The description of the tendering procedure,
- Submitting the tender,
- Evaluation and
- Awarding.

The project Smart@fire presented the PCP regulation within its ITT document through a short introduction to the method of procurement, to EU and national legal frameworks and through a detailed presentation of the general and specific principles of PCP. It has highlighted

- the prohibition of commercial activities during the PCP
- the requirement of
  - dividing the R&D service procurement into three subsequent phases
  - developing a single framework agreement for the whole process
  - R&D amounting for more than 50% of all the procured services and that 80% of these must to be realized in the EU
  - defining standards, certifications and IPRs
- importance of the Risk-Benefit principle

Describing the scope of PCP within Smart@fire, the ITT developed by the project presented a state of the art study and a short description of the development the Consortium intended to procure.

As for the contracting parties, Smart@fire defined three different levels with corresponding responsibilities and roles.

Within the project “the deployment of the PCP” has been under the supervision of the PCP call manager, a representative of the Lead Procurer, who has been working under the supervision of the Group of Procurers (GoP).

The “decisional level” has been delegated to the Group of Procurers composed of the representatives of the Lead Procurer and the Buyers Group. This level has the responsibility of supervising the overall tendering procedure, the development of the tender documents, the proper execution of the PCP and the awarding as well.

The legal aspects (legal level) have been under the supervision of two legal experts, each a representative of a project partner.

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Figure 3: Table of contents of ITT



Smart@fire also set up an evaluation Committee (of 5) composed of 3 representatives of the consortium and 2 additional, external evaluators.

The Smart@fire has been also planning with the involvement of external procurers giving them the opportunity to join in the commercial tender.

Project Smart@fire (also) had to comply with the EU regulations demanding the lead procurer to be able to enter international agreements and to launch a tender in the name of or/and on behalf of other European procurers.

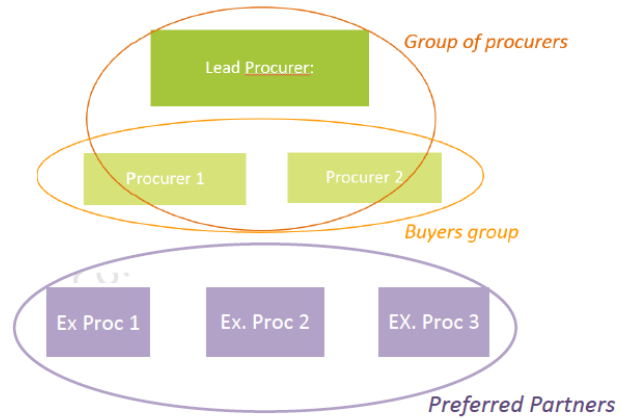
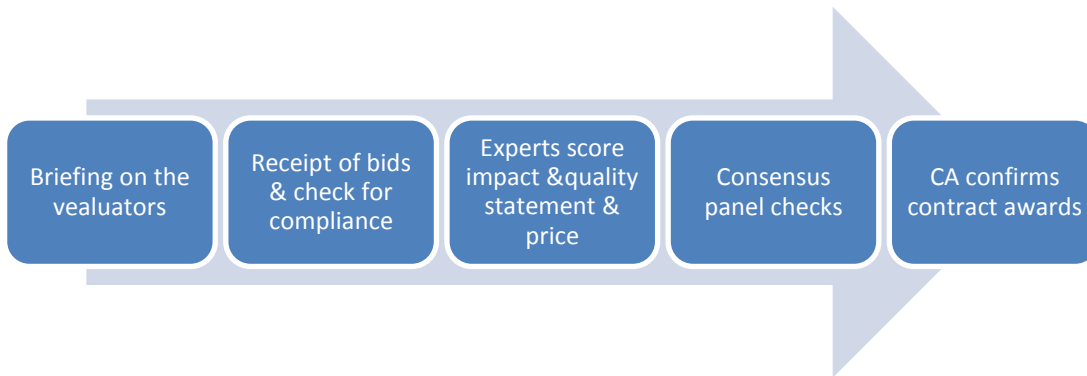


Figure 4: Structure of Smart@fire GoP



IFigure 5: Tender evaluation procedure in project Smart@fire

Under the title of “Submitting a tender”, the Smart@fire consortium listed all the necessary documents that were to be submitted by the bidders, the deadline and the opening dates of all the sessions, the requirement of specifying the p/m costs of the developers, the unit prices, a clause of acceptance of the terms and conditions set out by the call, the rules of confidentiality, the possibility of involving subcontractors and the contact details of the Lead procurers.

The evaluation procedure of the tender has also been incorporated into the ITT of the Smart@fire project. Within this procedure the general assessment has been carried out by 5 evaluators. Evaluation has been done individually by these with a consensus panel organised to reach a common agreement.

During the evaluation of the 1<sup>st</sup> stage has been to assess the administrative compliance, followed by an assessment by the pre-defined evaluation criteria. Also, minimum threshold scores have been pre-defined.



## Recommendations

**Based on his experiences within Smart@fire, Mr. Veys formulated the following recommendations for the IMAILE project:**

Most of the suppliers do not have the time, resources and the competences to read and understand the whole tender documentation, therefore Procurers must invest into communication and organization of dedicated meetings.

A useful form of communication is the Pre-Information Notice (PIN) made available at Tender Electronics Daily.

An online tool is advisable to provide access to the tender documents and to be the platform of Q&As.

The tender documents should provide guidance to the applicants how to use the templates.

The method of submission has to be clear during the whole process, as well as the use of administrative documents. Furthermore, it is advised to set a minimum number of service providers, instead of a maximizing their quantity.

Contracting Authorities can save a lot of time if they are using a single tender procedure with one Framework Agreement for the whole duration of the process.

All of the three PCP phases need transparent and public conditions in terms of maximum budgets and number of applicants

The GoP must nominate and/or hire a number of internal and external evaluators. It is advisable to set up a standby list of experts before the launching of the call.

The evaluators should be provided with a scoring guide for each criterion in order to ensure objectivity and comparability.



### 1.4.2 Design of the Challenge in brief concept

**Ms. Sara Bedin** highlighted in her presentation the importance of the needs assessment, whose results define the requirements and the challenge brief. Through experiences gained within the framework of the DECIPHER and the PROBIS project, she draw the attention to the fact, that the defined user needs should cover the functional and performance aspects of the solution sought.

#### Ms. Sara Bedin

- Expert on innovation procurement
- Independent expert of European Commission, and The European

In her experience, during the market consultation, procurers are to ask suppliers about the kind of resources, standards and licences that might be required to develop the final product of the PCP.

She also stressed, that instead of describing just the technical requirements, the challenge brief must focus on functional and performance requirements as well, where the performance indicators should be defined based on the expected functions.

### 1.4.3 Content of the framework Agreement between lead procurer and selected bidders

Mr. Veys's second presentation was focusing on the structure of the Legal Framework Agreement as elaborated in project Smart@fire.

The framework agreement of that project has been organised around 48 topics<sup>1</sup> of which Mr. Veys highlighted the most relevant ones for the IMAILE project.

#### Administration and direction of the project

Within Smart@fire it has been treated as of utmost importance that the contractor shall ensure the continuity of the service and key staff or secure mutually accepted replacement if needed. This is why it has elaborated the

#### Obligations of the contractor and the lead procurer

to define the legal obligations of both parties. It has been made the contractors responsibility to observe laws, rules and regulation and make procedures of the project to comply with these. Furthermore, the contractor also bore the responsibility for all tender documents to be accurate and thus that they allow to deliver the expected results. Smart@fire also declared, that the possibility for

#### Variation or amendment

should be limited to the contract "that are specific to the company's offer", prohibiting modification of general contract clauses to avoid discrimination among the tenders. Corresponding

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<sup>1</sup> see slide 24-26 of his presentation.

### **Publication**

of any communications has to be approved by the Lead Procurer, which on the other hand can publish the results of the project freely. Publication without the consent of the Lead Procurer could have the result of the termination of the agreement within Smart@fire. Such

### **Termination**

on the other hand, had to be written and ensuring a 3 month notice, with “indemnity of the executed part”. Smart@fire also left the opportunity open for immediate termination for the cases of poor service, lack of license, insolvency, ect.

The termination of the contract can be ordinary or immediate. Ordinary termination is to be issued without liability and indemnity from the executed part of the contract. On the other hand, immediate termination might occur due to poor service or lack of background knowledge.

The framework agreement of the Smart@fire project also stressed the importance of

### **Confidentiality**

It demanded that all information provided by the CA and the Lead Procurer remain confidential, but gave the CA the right to distribute information “to other tenders.” As for

### **Warranties and representations,**

Smart@fire’s Framework agreement ruled out infringements to third party rights, and demanded that all information provided by the suppliers are “true, complete and accurate.” It has also defined

### **Indemnity and insurance**

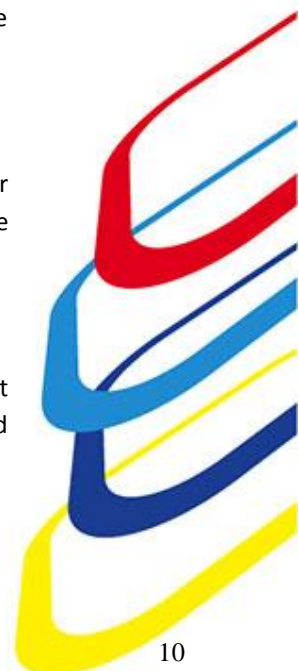
conditions, defining full “indemnity against liability, loss, damage, costs, expenses or proceedings.” Furthermore, it has limited the contractor’s liability to 1M EUR or 2times the value of the contract, the Lead Procurer’s liability to the total value of the contract, and prescribed a professional insurance for the contractor, the subcontractor/or consultant for an amount of 1,5M EUR for the project duration. The document also regulated the

### **Assignability and “piggy-backing”**

stating the it is prohibited to use the services of third parties without prior consent of the CA. As for “piggy-backing”, the document left open the opportunity for other preferred partners to join for the commercial procurement of the final solution.

### **Performance management**

has also been covered by the Framework agreement of Smart@fire, declaring that payments must be linked to the satisfactory completion of milestones. The quality assessment is to be realized through monitoring and evaluation of the deliverables and the end of phase reports.



Mr. Veys also presented a Special condition the Smart@fire incorporated into its legal framework, which stated that shall the suppliers fail to commercialize the product, the CA is allowed to enforce its call back provision right within 1 year.

### Recommendation

Transparency shall be ensured in case of all the tender documentation. The legislative conditions of the call and the innovation procurement procedure must be defined clearly and transparently in the tender documents.

#### 1.4.4.4 Types of assessment criteria to consider in a PCP call for bids

Ms. Bedin's second presentation focused on the admission and award criteria used in PCP calls.

In her presentation she distinguished between admission and award criteria.

She suggested that Admission criteria must be objective, should ensure that no bidders are excluded from the public procurement without reason. The terms should be clear, not over-dimensioned in extent of qualification requirements and financial guarantees.

Furthermore, she pointed out that the award criteria must be objective as well, prioritizing the economically most advantageous offer (that might not be the one with the lowest price). Within PCP, the weights dedicated to economic and technical aspects might differ, but in her experience the economical ones usually account for 20% of the evaluation scores, technical aspects, this the ability to minimize running costs, sustainability, etc. for the other 80%.

#### 1.4.4.5 Intellectual Property Rights and license agreements in the context of a PCP call

Christophe Veys in his 3<sup>rd</sup> presentation highlighted the legislative aspects of IPRs and licenses.

He advised to follow the practice of Smart@fire and to discuss and present IPR issues during Market Consultation and information session in order to gather feed-back from the possible tenderers, but also to build on the support of a legal advisor.

Smart@fire had no negotiation on IPR after the publication of the tender, but also realised that the conditions of IPR ownership must be defined before the launching of the call.

Building on the Smart@fire experience it is advisable to consider a risk-benefit sharing principle between the parties.

In PCP, the Contracting Authority (CA) usually does not get exclusive ownership on intellectual property, is does "not pay for exclusive development". Therefore the required budget should be in line with the average market prices. On the other hand, CA can negotiate for a financial compensation for leaving IP ownership to the supplier.

#### Possible scenarios

- Equity share for CA
- Royalty payment for CA



- Discount on R&D

#### Last scenarios

- IP ownership rights are retained by companies that allows them to use of IPR rights for future developments and commercialization.
- GoP gets suitable license free user rights to ensure the continuity of its internal operations.

#### Recommendations

The tender documentation must cover the topic of user rights/licenses.

It is advisable to list beneficiaries that might gain licencing/user rights, even though not being.

A small amount of the dedicated budget might remain unclaimed at the end of the phases, therefore the GoP should plan in advance how to use this. They should leave the opportunity open to carry over the remaining amounts to the next phases.

## 2. Lessons learnt

IMAILE Consortium should use all available channels to inform potential suppliers who might be interested in the PCP tender.

Companies should be reminded on the dates and important features of the tender

A template might be useful to support the applicants requesting amendments in the tender documentation in order to enable their participation.

The list of tender documents and the planned deadline for submission should be reviewed.

The list of tender documents and the planned deadline for submission should be reviewed.

Budget dedicated to individual suppliers in the phases of the PCP should be revised.

The bid form should contain a specific clause of acceptance of terms and conditions.



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The Consortium should monitor the individual RTD processes with a special focus on the used tangible and intangible assets and their effect on the future price of the product.

The Contracting Authority of the PCP will be the Coordinator, thus making the procurement fall under the jurisdiction of the Swedish law.

### 3. Appendixes

#### Appendix 1)

Please find below the following link to get access to the external appendix:

[Mr. Christophe Veys's presentation](#)

#### Appendix 2)

Please find below the following link to get access to the external appendix:

[Ms. Sara Bedin's presentation](#)

