Pre-commercial procurement & public procurement of innovative solutions

**What is Pre-Commercial Procurement and Public Procurement of Innovative Solutions?**

The public sector in the EU, as elsewhere in the world, is faced with important challenges. These include modernising internal operations of public services to make them run more efficiently, as well as improving the external quality of public services to the citizens: improving high quality affordable health care to cope with an ageing population, the fight against climate change, improving energy efficiency, ensuring higher quality and better access to education, etc.

Addressing such challenges can require new and better solutions. When looking for such innovative solutions, typically procurers find themselves in one of two situations:

- In some cases, the required improvements can be addressed by solutions that are already or nearly on the market and don’t require any new R&D. Solutions have typically been tested on a small scale but what is lacking are early adopters, committed to procuring a critical mass of end-products, to creating the incentive for industry to scale up its production chain and make some final products adaptations to meet the end-users’ price / quality requirements for large scale deployment. This is when Public Procurement of Innovative solutions (PPI) can be used effectively.

- In other cases, the required improvements are so technologically demanding that there are no near-to-the-market solutions yet, and new R&D is still needed to prove that the market can really deliver commercially stable solutions with the desired price / quality requirements before procurers can commit to buy large volumes of end-solutions. Typically in such a case there are different potential suppliers proposing alternative competing solution approaches, but there is no conclusive test evidence yet as to which of the approaches will finally deliver the best value for money solution. This is when Pre-Commercial Procurement (PCP) can be used effectively.

**Why should MS and regions use PCPs and PPIs?**

By increasing "local" public sector demand to develop innovative solutions for the societal challenges of the future, PCP can help combat delocalisation and encourage companies to invest in highly qualified R&D in Europe. By triggering the development of breakthrough solutions ahead of the rest of the market, public authorities can, through their role of demanding first buyer, create opportunities for companies in Europe to take international leadership in new markets.

Compared to R&D subsidy programmes pre-commercial procurement enables an earlier reality check of industry R&D against concrete public purchasing needs, which can help to maximise the effectiveness of the R&D process and optimise public R&D spending. In that way, "local" industry R&D efforts can also be expected to produce fit-for-purpose products and the percentage of successful commercialisation of results coming out of "local/regional" government financed R&D projects can be expected to increase.

Pre-commercial procurement can attract foreign investors (e.g. venture capitalists) looking for promising opportunities to invest in companies involved in new emerging areas of innovation. By
engaging actively as first potential customers in getting new solutions developed and tested, public authorities involved in PCPs can act as a "seal of approval" confirming the market potential of new emerging technological developments, thereby attracting new investors.

PCP and PPI are separate but complementary procurements. US evidence shows that this split PCP-PPI approach delivers significantly higher quality and on average 20% cheaper products compared to long term partnership R&D and deployment contracts that are prone to vendor lock-in. Focusing PCP on ‘development’ and PPI on ‘deployment’ also enables the use of PPI for closer to the market cases where no R&D is required to address the procurement need or R&D has already finished. A split between PCP and PPI thus allows companies that have developed products through means other than a PCP (e.g. through SME instruments, other grants, own company R&D resources) to still compete for PPI deployment contracts, avoiding issues of foreclosing of competition and crowding out of other R&D financing sources.

**HOW TO ACT?**

For the member state or region wishing to prepare their operational programmes in order to include PCPs and PPIs, the implementing process could then be the following:

1. **Analysis:**

   Everything starts with the identification and description of the selected thematic objectives and corresponding investment priorities and justification of their choice with regard to the innovative investment needs that are referred to in the operational programme. PCP and PPI could be identified and used for specific prioritised areas or they could act horizontally affecting all priority axes and investment priorities.

2. **Awareness raising – Promotion:**

   It is essential that Member States or regions during the info days organised in the framework of the calls for proposals, and on other relevant occasions, inform potential applicants and the final beneficiaries about the available opportunities to achieve better and more innovative results for the public sector through the use of PPP and PPI.

3. **Identification of the projects suitable for PCP or PPI:**

   Focusing PCP on development and PPI on deployment also enables the use of PPI closer to the market cases, where no R&D is required to address the procurement need (e.g. organisational, design type of innovation), or R&D has already finished. In that sense it is important to first identify those projects / investments – or parts of them – for which solutions are already so close-to-the market that commercial end-solutions could be procured right away via PPI. Secondly, separate out those projects / investments – or parts of the above same projects / investments - that require new and better solutions not yet close-to-the market for which the R&D could be performed via PCP.

   Consultation with key players in the region or in the eligible area of the programme would enable the managing authority or the region to analyse the big upcoming investment projects and to identify the parts which require innovations that are so new that they still require technology de-risking (development, and comparison and testing of alternative solution approaches from different vendors), suitable in that case for PCP.
4. Implementation of PCP and PPI in Compliance with the Legal Framework:

The 2007 PCP Communication and associated Staff Working Paper clarify that PCP falls outside of the WTO government procurement rules and outside the EU public procurement directives (article 14 of directive 2014/24 EU that repealed directive 2004/18, EC article 32 of directive 2014/25 EU that repealed directive 2004/17 EC, and article 13 (f) (j) of directive 2009/81 EC) and is therefore also not subject to the remedies directive. However, in order to procure the R&D services in the PCP at market conditions without involving state Aid, the EU Treaty principles and competition rules must be respected in the implementation of PCPs. As with all other public procurements, PCPs must thus be implemented through transparent, competitive and non-discriminatory procedures. The exemption of PCP from the directives thus does not allow regions any more than in public procurement procedures that are subject to the public procurement directives, to favour local or SME suppliers over others or to require tenderers to locate R&D or make other types of investments in the region. Attention should also be given to the particular approach of distribution of IPR rights between procurer and suppliers in PCP, which is of key importance for exemption from the public procurement directives to apply to PCP.

In PPI, procurers act as early adopters committed to purchase and deploy a critical mass of end-products/services that are already on the market (or close to the market) but not fully commercialized yet. PPI uses classical public procurement procedures offered by the public procurement directives to buy goods and services on the commercial market. In PPIs that do not follow preceded PCPs on the same subject procurers can announce early their intention to deploy innovative solutions to encourage the market to make changes to their production chain to deliver solutions with the higher than available functionality and performance within a specified time frame. PPI is sometimes known under different local brand names in different EU countries, such as Technology Procurement in the US and Nordic countries and Forward Commitment Procurement in the UK. National legislation related to the PCP and PPI procedures, whenever existing is of course applicable.

Examples PCP and PPI projects:

- SILVER in the field of robotics solutions for elderly care: [http://www.silverppc.eu](http://www.silverppc.eu)
- An EU funded cross-border PPI project is the STOP&GO PPI project [http://stopandgoproject.eu/](http://stopandgoproject.eu/)


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