

Deliverable D5.6: **Consolidated Generic Pre-Commercial Procurement Process**

Consolidated Generic Pre-Commercial Procurement Process (Generic PCP_0)

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Executive summary

This document describes a generic process for pre-commercial procurement (PCP), suitable for use across European national boundaries and fitting within the European legal framework on procurement of research and development (R&D) services.

The generic process can be used as a hands-on tool for planning and performing a PCP. The description of the generic process is complemented by several artefact documents, consisting of materials such as templates for invitation to tender, framework agreement, assessment sheets etc.

The generic PCP process is designed in a way that stimulates companies to locate a relevant portion of the R&D and operational activities related to the PCP contract in the European Economic Area, or a country having concluded a Stabilisation and Association Agreement with the EU.

The generic process is based on the EU Commission's PCP model and existing experience and knowledge of PCP both from within the partners and from other sources.

Glossary

Term	Used in report as
Pre-commercial procurement, PCP	<p>The EU Commission definition of the concept is: “an approach to procuring R&D services other than those where ‘the benefits accrue exclusively to the contracting authority for its own use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority’ and that does not constitute State aid”.¹</p> <p>The EU Commission also states: “Pre-commercial procurement consists of a procurement of R&D services that involves a risk-benefit sharing at market conditions and in which a number of companies develop in competition new solutions for mid- to long term public sector needs”.² A PCP takes place in several phases, to handle risk.</p>
Tender	An official written offer from a potential supplier to a contracting authority that contains a price proposal to perform the works, services or supplies required (the PCP cases are only concerned with services).
Tenderers	The tendering legal entities, i.e. the potential suppliers that submit tenders.
Contracting authority	Public bodies when engaged in a public procurement. “For the purposes of the Services Directive, the following are all contracting authorities: <ul style="list-style-type: none"> - the State, - regional and local authorities, - bodies governed by public law as defined below, - associations formed by one or more local or regional authorities or bodies governed by public law.”³
Cooperation PCP	A PCP in which several contracting authorities cooperate in performing a common PCP.
Common pot	When, in a cooperation PCP, the contracting authorities pool their budgets for PCP contracts into a common pot.

¹ European Commission (2007), *Pre-commercial Procurement: Driving innovations to ensure sustainable high quality public services in Europe*, COM (2007) 799 final, page 2.

² Ibid.

³ Guide to the Community rules on public procurement of services other than in the water, energy, transport and telecommunications sectors directive 92/50/EEC.

Lead authority	In a PCP performed by a consortium of contracting authorities using a common pot, it is recommended that one of the contracting authorities is chosen to be lead authority: the entity that has the ultimate responsibility for running the PCP process from the point of view of the tenderers. This role encompasses being the legal entity that runs the procurement, but can also include responsibility for assessment and monitoring.
Catalytic procurement	A public body encouraging the development of innovations or diffusion of new products or services through systematic work on development and evaluation in order to influence the market.
Process costs	The costs incurred for setting up and running the process of a PCP.
Contract costs	The price of the contracts that are awarded in the PCP.
Qualification criteria	Certain minimum requirements the tenderers must fulfil, concerning e.g. technical/ professional ability in order to have their tender/ proposal/ quotation evaluated.
Exclusion criteria	Circumstances that entail the exclusion of tenderers, such as bankruptcy, guilt of professional misconduct, bribery, money laundering, fraud and tax debts.
R&D Service Contract	<p>At least 50% of the value of what is procured should be dedicated to research and development (R&D) services, not products/ supplies.</p> <p>According to the OECD Frascati manual, R&D covers three activities; basic research, applied research and experimental development.</p> <ul style="list-style-type: none"> - Basic research is experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view. - Applied research is also original investigation undertaken in order to acquire new knowledge. It is, however, directed primarily towards a specific practical aim or objective. - Experimental development is systematic work, drawing on the existing knowledge gained from research and/or practical experience, which is directed to produce new materials, products or devices, to installing new processes, systems and services, or to improving substantially those already produced or installed. R&D

	<p>covers both formal R&D in R&D units and informal or occasional R&D in other units.⁴</p> <p>Thus, R&D can cover activities such as solution exploration and design, prototyping, up to the original development of a limited volume of first products or services in the form of a test series. Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards.</p> <p>R&D does not include commercial development activities such as quantity production, supply to establish commercial viability or to recover R&D costs, integration, customisation, incremental adaptations and improvements to existing products or processes.</p>
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⁴ OECD, latest edition: 2002: *Frascati Manual, Proposed Standard Practice for Surveys on Research and Experimental Development*).

Introduction to the generic pre-commercial procurement process

Intended use

This description of a generic pre-commercial procurement (PCP) process is intended as a hands-on tool for planning and performing a PCP. The generic process description is complemented by artefact documents, such as templates for invitation to tender, contracts, assessment sheets etc. Together, the generic process description and the artefact documents should enable contracting authorities to perform PCPs.

The generic process is based on the Commissions' model as well as on existing experience and knowledge of PCP, and fits within the European legal framework on procurement of research and development (R&D) services, the EU competition rules and the principles of the Treaty on European Union. The two EU procurement directives exempt from application contracts for research and development services, under specified conditions; see Utilities Directive 2014/14/EC, Article 14; and Public Sector Directive 2014/24/EC, Article 14.

The generic process presented here is suitable for use in cooperation PCPs across European national boundaries, but can also be used by a single contracting authority that wishes to perform a PCP.

[Appendix A](#) contains a brief background to the PCP process and specific issues surrounding it. For more detailed information, reference information and suggestions for further reading can be found in appendix B.

Delimitations

The process only covers the PCP itself, but not preceding and proceeding stages.

The procurement process in a PCP is a substantial part of a full PCP project, but it is not the sole part. Before a PCP process can start, contracting authorities must identify needs and discuss how to strategically address them. A budget must be allocated, and needs have to be formulated as a challenge. After the PCP process has finished, a commercial stage follows where the contracting authority decides whether to proceed with a regular procurement, while contractors resolve how to commercialise the results that were developed in the PCP process.

As this is a tool-oriented description for contracting authorities on how to manage a PCP process, it will not cover stages that precede or succeed the procurement process itself. Thus, issues such as strategy discussions (deciding whether or not to perform a PCP), budget discussions, possible buyer partnerships etc. are beyond the scope of the report. Nor is the final commercial procurement treated: the process description ends when a final report from the PCP has been delivered from the contractors. Legal options for the commercial procurement phase are out of scope.

The process has been constructed with cross-border PCP cooperation in mind, where several contracting authorities collaborate around a PCP. There are several ways of doing this:

- as a joint procurement by a consortium of contracting authorities, where a lead authority has the primary responsibility for the process (that is, acts as an interface in between the consortium and tenderers); or
- where the consortium of collaborating authorities sets up a common procurement entity.

There are advantages and drawbacks for each alternative. For example, using a lead authority facilitates management. Joint procurements however increases the risk of legal action in multiple countries (this risk can be reduced by stating the jurisdiction of the PCP). With regards to the second option, a lot of work is involved in setting up a common procurement entity, but it creates a clear framework for the collaboration and removes the need for a consortium agreement.

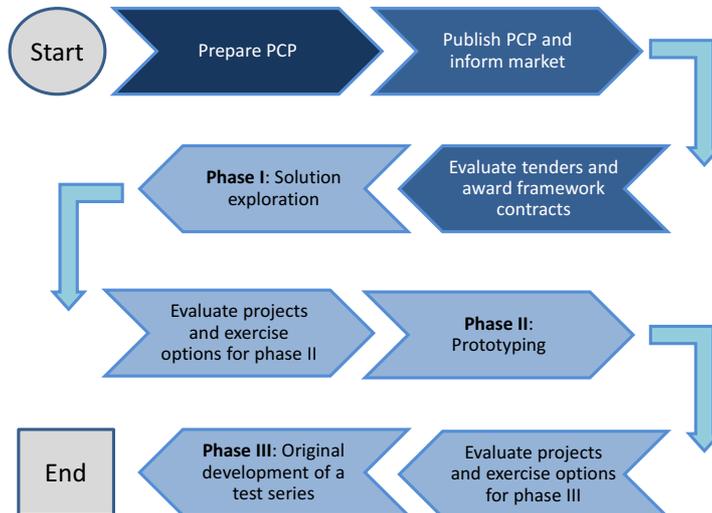
This process is best suited for a contracting authority that wishes to perform a PCP on behalf of itself, or on behalf of and in the name of a consortium of contracting authorities.

In Great Britain and in the Netherlands, and now emerging in some other EU member states, innovation agencies (or similar) promote the use of PCP. Different approaches are used. In the Netherlands, NL Agency both performs and finances PCPs; their aim is to bring benefits to other non-paying authorities by getting new solutions to the market. This is called catalytic procurement. In the UK, Innovate UK (formerly the Technology Strategy Board) aids contracting authorities to perform PCPs by helping them set up specific PCPs, providing templates, marketing upcoming PCP, or offering grants to the contracting authorities for PCP.

The point of view of innovation agencies is connected to the preceding stage of a PCP project, and is therefore out of scope for this description. That being said, the description should however be useful for innovation agencies and similar in their work to promote PCP and/ or perform catalytic PCPs.

Document structure - process steps

The document structure is based on PCP process steps, as shown below.



The steps are discussed in separate chapters:

- Prepare PCP
- Publish PCP and inform market
- Assess tenders and award framework contracts
- Phase 1, Phase 2 and Phase 3, including evaluations between phases

The generic PCP model presented here is based upon best practice, as well as upon the EU Commission's PCP model. Also, consideration has been given to the multiple country approach in the SILVER project. The model is verified against requirements in local legal frameworks within the countries participating in the SILVER project.

List of artefact documents

The table below lists fifteen generic artefact documents that accompany this PCP process description. There are three groups of generic artefacts: templates that comprise the invitation to tender package, market communication templates and assessment guidance templates. The three groups are colour coded in the table.

The package of artefact documents also includes ten actual examples of documents used in the SILVER project. (These are not described in the table below).

Phase 1

Name	No.	Target group	Use	Description
Invitation to Tender	1	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal document inviting suppliers to submit tenders in response to the challenge. Includes a formulated challenge and information on how to apply. Also includes assessment criteria and scoring model.
Challenge Brief	2	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Describes the specific challenge in the PCP as well as provides challenge back-ground. <i>Template only - needs to be written specifically for each challenge.</i>
Guidance (can be adapted to all phases)	3	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Guidance for filling in the tender form.
Tender Form	4	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal tender form.
Questions and Answers Document (can be adapted to all phases)	5	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Questions and Answers document about how a PCP works, eligibility to tender, tender/ bid information, cost calculations, IPR, confidentiality issues etc. <i>Template only - needs additional information about the challenge.</i>
Framework Agreement (example)	6	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal agreement to be used in the PCP: one single framework agreement, covering all phases in general and phase 1 in detail, and including subordinated

				detailed contracts for phases 2 and 3. [Contractual conditions are non-negotiable.]
End of Phase Report Form (can be adapted to all phases)	7	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal template through which the contractors report on results.
Invitation to Information Meeting	8	Firms/ legal entities that may tender in the PCP	Market communications	Example of an invitation to an information meeting about a PCP challenge
Guidance for Assessors (can be adapted to all phases)	9	Assessment panel	Assessment guidance	Details criteria and scoring model to be used in the assessment. Also includes guidelines for assessors.
Score Sheet (can be adapted to all phases)	10	Assessment panel	Assessment guidance	Keeps track of assessors' opinions on tenders, using the scoring model.
Decision Notice (phase 1)	11	Tenderers	Market communications	Decisions, information on how to accept and timelines etc.

Phase 2

Name	No.	Target group	Use	Description
Call for Bid Phase 2	12	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal document inviting suppliers to submit tenders for the challenge.
Bid Form (can be adapted to phase 2 and 3)	13	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal tender form.
Bid Decision Notice (can be adapted to phase 2 or 3)	14	Tenderers	Market communications	Decisions, information on how to accept and timelines etc.

Phase 3

Name	No.	Target group	Use	Description
Call for Bid Phase 3	15	Firms/ legal entities that may tender in the PCP	Part of the invitation to tender package	Formal document inviting suppliers to submit tenders for the challenge.

Prepare PCP

Preparing the PCP involves getting all the parts of the PCP ready for launch: for example construct a project plan, review legal matters, prepare needed documents, identify and recruit assessment committee members and plan market communication. It also involves taking decisions concerning matters such as how many contracts to aim for, what project specific criteria to use, payment plans etc.

If the PCP is a cooperation between several contracting authorities, a consortium agreement or similar should already be in place at this stage. The agreement should make clear whether all authorities will perform their own procurement using the same PCP set-up, or whether the partners will perform one PCP using a common pot. If a common pot is used, which is recommended as it gives a greater critical mass to the procurement, one authority alone should function as “lead” authority (the legal entity that runs the process). Also, the agreement should specify the size of the common pot (i.e. budget for the PCP contracts), how much each partner will pay and when payments should be made to the lead authority.

If the consortium is transnational, the procurement will fall at least under the national laws of the chosen lead authority. Therefore, analyse the legal context of participating countries when deciding which authority should take the lead in a transnational PCP. One point that can differ in each jurisdiction is whether legal remedies are available for anyone who is dissatisfied with the performance of a PCP.

Upcoming financial transactions between cooperating authorities should also be included in the consortium agreement, as well as assessment and decision rights for the other authorities, and conflict handling.

Below is a list of actions needed to prepare a PCP written from the perspective of a contracting authority, either acting on its own behalf, or a lead authority acting on the behalf of a consortium of several contracting authorities.

Challenge definition

Defining the challenge is fundamental for the success of a PCP. It should address the needs of intended users and end-users, and be formulated in a way that engages and interest the market in delivering solutions that can create the desired benefits.

Defining a challenge is an iterative process, where the challenge definition is tried and tested against the opinions and input of users and end-users, the market and other external expertise, as well as against the project’s budget, time frame etc.

Define the scope of the challenge for the PCP

- Strive to specify the challenge in terms of functionality, to allow potential contractors the freedom to be as innovative as possible.
 - Avoid specifying the type of innovations sought to solve the challenge: for example service innovations, tangible products, or specific technology solutions.

- Decide whether to use a broad or a narrow challenge. Both options have upsides and downsides depending on the specific PCP.
 - A broad challenge:
 - attracts more tenders (this can be both positive and negative, e.g. more bids to evaluate)
 - is likely to lead to ideas that are unconventional and truly innovative
 - is easier to prepare in terms of challenge and challenge background
 - can lead to less competition in the commercial stage, as an open challenge may produce complementary, rather than competing, solutions
 - may create the impression that the need is less likely to lead to commercial procurement/s after the PCP
 - Therefore, if a broad challenge is used, take care to strongly underline the intention to commercially procure finished solutions.
 - can increase the risk of illegal use of the R&D exemption, as a broad challenge may also be covered by solutions with no R&D
 - This risk can be handled by setting as a minimum requirement that services offered by the tenderer must be within the scope of R&D. If so, activities to control that the requirement is fulfilled are however needed.
 - A narrow challenge:
 - limits the number of tenders (this can be both positive and negative, e.g. less bids to evaluate)
 - is unlikely to generate out of scope ideas
 - makes it easier to analyse state-of-art on the market, which enables making a gap analysis between need and supply
 - Care must be taken to use terms of functionality as a base for the state-of-the art and gap analysis. Avoid technical specifications when defining the challenge.
 - can result in more competition in the commercial stage
 - is easier to assess because the ideas are likely to be more closely related and thus easier to compare.
 - is easier to formulate in such a well-defined and challenging way that only R&D services could be offered to fulfil it.

Two examples of challenges

Broad challenge: "Long term conditions from East of England" (Technology Strategy Board 2011)

Increasingly, more people are living with long-term health conditions and quite apart from the personal issues this creates; it poses a significant challenge to the local health service. We are therefore looking to fund the development of ideas that could help alleviate this problem.

The areas that proposals should focus on are:

1. Delivery of care closer to home and in the home
2. The empowerment of people to take greater control and responsibility of their health and care

Narrow challenge: "Challenge 1: Advanced Distributed Network Management" (The CHARM PCP project 2013)

To realise a module that provides automated support for management of large (nationwide) traffic networks. The module should be a multi-layered, self-learning engine that is able to manage large networks and balances between different types of goals.

- If the PCP is a cooperation between several contracting authorities, make sure that the challenge definition is relevant for all parties.
 - This is especially important in transnational PCPs, where there might be differences in context (e.g. differing business models for public services between countries).⁵

Gather in-depth information from external sources

As mentioned before, the challenge and set-up of a PCP should never be formulated only internally in a contracting authority or a consortium. It is important to engage potential tenderers, area experts and the intended end-users in this process.

The objective to get insight regarding: What needs does the challenge address? Who are the different users/ and end-users? What functionalities do they want? What is currently on the market (state of the art)? What are the latest developments? Is a certain challenge definition and scope feasible, given time frame and budget? If not, what could be changed to make it feasible? What does the market need to respond adequately to a challenge? Which market actors might respond to a challenge?

Therefore, make sure to gather input from external sources.

- Perform a needs assessment
 - Involve intended users and end-users of the new solutions in a needs assessment process. The design of this should be tailor-made to each specific PCP.

⁵ If contextual differences are too large, a common PCP might not be feasible at all. Examine the challenge closely to make sure that this is not the case.

- One universal feature of a needs assessment is an investigation into the business case of the planned commercial procurement.
 - Assess the benefits (financial and other) of the needs of contracting authority or consortia of authorities being met. Contrast with costs of performing PCP and a subsequent purchase of finished commercial solution(s).
 - As the project moves along and further information accumulates, update the business case regularly.
- Perform market consultation with external actors
 - Plan and execute an *open dialogue* with potential tenderers to broach the views of the market about the R&D scope of the PCP. This can be done in a meeting and/ or using a survey.
 - Organise the open dialogue in a way that does not preclude or distort competition. Thus, it should be announced widely and well in advance. This will enable potential tenderers, regardless of their geographic location, to participate to the dialogue.
 - Submit a PIN (Prior Information Notice) to the information system for European Procurement.
 - Document and publish all information given in answers to questions from participants in the dialogue.
 - Depending on the specific PCP, consider other methods for understanding state-of-art. When doing this, take care to avoid methods that rely on specifying what technologies the market should use. Allow the market room to define possible solutions itself.

Project management

Prepare project plan, including time-plan and resource allocation

- Plan in detail the length of the different parts of the PCP and detail deadline dates for each period end:
 - Preparation period (e.g. 2 - 4 months)
 - Tendering period (e.g. 3 months)
 - Assessment and decision period (e.g. 6 – 8 weeks)
 - Phase 1 (depends on specific PCP, but typically 3-6 months)
 - Assessment period between phase 1 and 2 (e.g. 4-6 weeks)
 - Phase 2 (depends on specific PCP, but around 1 year)
 - Assessment period between phase 2 and 3 (e.g. 4-6 weeks)
 - Phase 3 (depends on specific PCP, but around 1 year)

- If the PCP is operated under a jurisdiction that allows for legal remedies (for procurements exempted from the EU directives) when tenderers are dissatisfied, include a corresponding stand-still period between informing tenderers whether their projects have been awarded contracts or not, and the official start of the first phase (i.e. signing contracts, pre-payments etc.).
 - If no specific periods are stipulated by law, the stand-still period is recommended to be 10 days before signing the framework agreements with the contractors.
 - The stand-still period for awarding continued assignments under the agreement for phases 2 and 3 should in such case also be 10 days (this is regulated in the framework agreement).
 - Do not include a stand-still period if the jurisdiction does not contain explicit legal remedies for tenderers.
- Make sure that the assessment of all the tenders, and of subsequent bids for phase 2 and 3, takes place at the same time. This is important for the transparency of the PCP.
 - This means that phase 1 and 2 must be the same length for all projects, regardless of the time a specific project actually needs.
 - The length of phase 3 can differ between different projects, depending on the nature of the specific projects, though it is good to decide on a maximum length.
- Adapt lengths of phase 1, 2 and 3 to what is suitable to the specific PCP.

Note:

 - Generally speaking, a PCP should not take more than around 3 years from start to finish. If a project needs longer time, e.g. because new solutions are too far from market, it might be better suited as another type of project.
 - Time spans for the phases are: between 3 to 6 months for phase 1, and around a year each for phase 2 and 3.
 - Avoid planning a PCP especially for a certain type of product. It is up to the tenderers to decide what type of product to offer. Do however consider that tenderers may suggest different types of solutions – services, or goods, or a combination of the two - when constructing the time plan.
- As testing in phase 2 and 3 is paramount to the success of the PCP, reserve sufficient time for planning, carrying out and evaluating tests.
- Estimate resources for setting up and managing the PCP (types of expertise and needed man-hours), and gather a project team:
 - If the PCP is not carried out directly at a procuring department/ unit, make sure to include procurers in project team *from the start*, so that the road is paved for the planned commercial procurement. Procurers

should participate both in the preparation of the PCP, as well as in the execution of phase 1, 2 and 3.

- Include communication resources and preferably an IPR expert.
- Prepare an on-line project place for the team.
- Prepare PCP web pages on a suitable website.
- If the PCP is a cooperation between several contracting authorities, include representatives from the other authorities in the team assembled at the lead authority. Cooperation is especially important for communication and assessment activities.
- If the PCP is a transnational cooperation, allow extra time and other resources to handle for example cultural or language barriers. This is especially important in the beginning of the PCP.
 - Physical meetings can help overcome barriers and should be prioritised.
- Estimate needed monetary resources for the PCP and produce a detailed budget for planning and performing the PCP (the process costs):
 - If the PCP is a transnational cooperation, decide which currency to use for monetary resource planning (for example euro, or the home currency of the lead authority).

Prepare a communication strategy

- Decide on target groups
 - For the invitation to tender:
 - Aim at attracting tenders from broad and multiple sectors, and from companies of different size and age, so as to get the best possible solutions.⁶
 - Depending on the specific PCP, consider how to attract tenders from the entire EU, and possibly also globally.
 - For general information about the PCP:
 - Spread information to e.g. other contracting authorities nationally and internationally, policy agencies, politicians, citizens, related EU-networks etc.
- See step "[Publish PCP and inform market](#)" for list of activities that should be included in the communication strategy.

⁶ Small and medium sized companies can be good sources of innovation, but may also be harder to reach than larger firms. Make sure to include activities for how to reach and engage innovative legal entities of *all* sizes in the communication strategy.

Budget and cash-flow

Decide on economical frames for each phase of the PCP while planning how many contracts to aim for in each phase.

- Decide how much of the preliminary total contractual budget to allocate to each phase, and how many contractors to aim for per phase.⁷
 - For example:
 - 25% of the budget in phase 1, to be shared between 8-10 solutions
 - 40% of the budget in phase 2, to be shared between 4-5 solutions
 - 35% of the budget in phase 3, to be shared between 2-3 solutions

The number of projects is a goal figure. One may end up choosing to finance fewer solutions in order to include an expensive project with high potential.

- Plan how to keep to budget and choose price model:
 - Ask tenderers to offer a *fixed price*, binding for the duration of the framework agreement, at a fair market price.⁸
 - Decide upon price model. Below are two examples of price models that are consistent with a fair market price:
 - *Free pricing* (tenderers name their price freely)
 - Free pricing is a good way to achieve fair market prices, but bids can turn out to be excessive in relation to the total PCP budget.
 - To alleviate this, state in the invitation to tender that the PCP is subject to a maximized fixed budget which is available for so-and-so many projects in each phase. This will make it easier for tenderers to offer a suitable price, and grants the authority the right to cancel the PCP if bids are excessive in relation to the budget.
 - Also, give the price criterion sufficient weight to put competitive pressure on price.
 - *Ceiling price* (the contracting authority specifies a ceiling price, i.e. maximum sums for contracts or separate phases)
 - The advantage of a ceiling price is that tenders are more likely to be within the PCP budget frames. The

⁷ The total budget for the PCP contracts (the common pot) should already be in place at this stage - it is part of taking the strategic decision to do the PCP in the first place.

⁸ Fair market price: the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect.

disadvantage is that it may invite tenderers to design their projects to suit the maximum sum, whether it is appropriate or not for their concepts

- To prevent tender prices from tending towards the ceiling level, use a heavy weighting of the price criterion.
- It is possible to use different price models in different phases, as appropriate for the PCP in question.
- Avoid using a pre-defined price model (where tenderers compete by providing as much quality R&D services as possible for a sum pre-defined by the contracting authority):
 - Using this model may compromise the fair market price. It can *only* be used when the contracting authority is, and can prove that it is, truly knowledgeable about the fair market price, and can pre-define it at a fair and adequate level. Otherwise, the model may be in conflict with EU competition law.
- Decide how to handle remaining funds
 - If few (quality) tenders are received, the contractual budget allocated for the phases may be larger than needed. Remaining funds may be transferred to the next phase/s.
- Decide which currency to use for the PCP contracts.

Prepare payment plans to keep track of cash-flow.

- Set up a payment scheme that does not hinder smaller firms to tender due to lack of up-front financing. At the same time, do not take on too much risk. It is necessary to find a balance. One possible payment scheme is:
 - 50% upfront for phase 1, residue paid out at delivery of phase 1 results,
 - Where applicable: 20% upfront for phase 2, residue paid out at delivery of phase 2 results, and
 - Where applicable: 20% upfront for phase 3, residue paid out at delivery of phase 3 results.

Legal issues

This section covers various PCP-related legal matters that are relevant to the EU member states. However, special consideration must always be given to the specific regulations of the country in which a PCP is undertaken.

- Always get country specific legal advice when using the generic PCP process and artefacts (specially the legally binding documents).

- If the PCP is a transnational cooperation between several contracting authorities, consider the legal situation of all participating countries. For example, one point that can differ in each jurisdiction is whether legal remedies are available for tenderers that are dissatisfied.
- Remember that a PCP should be an open, fair and transparent process.⁹ This has been the aim of the generic process described in this report.

Ascertain that the PCP is compliant with EU rules

- Ensure that the format of the PCP ensures a free and open competition.
 - This will result in fair market pricing. A correct (best value for money) market price for the R&D services will be established, in which case the presence of State aid can in principle be excluded.
- Ask tenderers to offer a fixed price:
 - Tender price shall be exclusive of VAT, but include possible duties, custom fees, taxes or other charges that may occur. This is for ease of evaluation and to ensure non-discriminating terms.
 - Opening up the contracts to competition shall, if such procurement turns out to be successful, in itself result in a “fair market price”.
 - Demand a cost breakdown of the fixed price, in order to allow a follow-up on the costs actually spent, or planned to be spent by the tenderer/ supplier in each phase.
 - The cost breakdown should consist of quantity and unit price for e.g. personnel categories, material costs, sub contracts, equipment and other.
 - It will facilitate any audit or other verification process from the authority, during or after the project, in order to safeguard that (i) what was supplied actually qualify as R&D services, and – if applicable – (ii) the major part of the procured services were actually performed in a Member State or an associated country. The cost breakdown will form a basis for such audit or verification, that may nevertheless also involve other elements, not necessarily defined beforehand but that have a bearing on these issues.
 - The unit prices should in these cases be firm and fixed for the duration of the framework agreement.
 - The concern of the authority should be what is actually provided under the contract; the cost breakdown is not very useful if the authority does not monitor the supplier closely with regard to spending.

⁹ For more information about PCP and the risk of not complying with EU competition rules, see reports listed under “[References and further reading](#)”.

- Decide approach to IPR:
 - A main feature of a PCP process is that most IPR generated by the project stays with the contractor, or is made into public domain.¹⁰ Whatever one decides in a specific PCP must be made clear up-front to potential tenders.
 - When signing away IPR, the contracting authority should retain:
 - Irrevocable, royalty-free, non-exclusive licence rights, including right to sublicense the IPR.
 - Another option is to retain the right to require licensing to third parties at market price.
 - If IPR resulting from the project is not exploited by the contractor within a certain time period (e.g. three years), the contracting authority should have the right to be assigned the IPR (a call-back provision).
 - Background IPR should remain the property of its original owner.
 - If the PCP is a cooperation, ensure that the usage rights of all the procurers, and not only of the lead authority, are clarified in the PCP tender documents.
- Use the pricing model described below to reduce risks that a planned PCP will constitute state aid due to IPR issues:
 - Remind tenderers that intellectual property will remain with them (although the contracting authority acquires certain rights).
 - Ask the tenderer to indicate two prices when calculating the fair market price:
 - *The price that would have been quoted*, if IPR would be fully retained by the contracting authority, and tenderers thus had no possibility to exploit developed knowledge.
 - *The price that is quoted*, considering that they retain IPR and can exploit developed project knowledge.
 - By quoting two prices, the tenderer thus puts an estimated market price on resulting IPR: the difference between the two prices. Thereby risk of noncompliance with EU competition rules are reduced.¹¹

¹⁰ PCP builds upon the R&D exemption in the procurement directives. To be able to cite the exemption, the benefits of the procured R&D services cannot accrue exclusively to the contracting authority for its use in the conduct of its own affairs. Such non-exclusivity can be achieved by leaving IPR with contractors or by bringing IPR into the public domain.

¹¹ This model is based on NL Agency's way of working. It reflects the fact that "[W]here IPR are not fully allocated to the public purchaser, the price paid by the public purchaser for the pre-commercial development must be lower than in the case of exclusive development in order to exclude a State aid element. The price reduction compared to exclusive development

Decide eligibility of tenderers and tenders

- Qualifying the tenderers (eligibility to be awarded contracts):
 - It is recommended to allow everyone interested in tendering, even pre-start-ups and private persons, to do so, but to only award contacts to legal entities.
 - Apart from companies there are other legal entities such as foundations, associations, universities etc. that could be awarded contracts.
 - To be eligible however, all legal entities must be able to show a good, trustworthy and **clear route to market**.
 - Be clear about the eligibility to tender and be awarded contacts when informing the market about the PCP.
 - Legal entities that will locate the majority of the R&D and operational activities relating to the PCP contact in question in an EU or associated county are always eligible to tender for contracts.
 - It is a matter of decision whether to also allow legal entities tender that will *not* locate the majority of the activities related to the PCP in an EU or associated country.
 - Allowing tenders from a wide geographical area can lead to more tenders and a wider selection of solutions.
 - Contracts can be awarded to individual organisations and to consortia of tenderers.
 - If several legal entities wish to cooperate in a consortium and are awarded a contract, all consortia member should sign the contract, which will thereby make them jointly and severally liable.
 - Allowing consortia to appoint one of its members as sole contracting partner on behalf of the consortia is not recommended:
 - The lead contractor might go bankrupt.
 - Also, it is preferable that all consortia partners are tied to the contract, especially the IPR clauses.
 - Sub-contracting is allowed, but:
 - Tenderers must retain enough skills to be able to take the result to market.

cost should reflect the market value of the benefits received and the risks assumed by the participating company". European Communities (2008), *Pre-commercial procurement: Driving Innovation to ensure sustainable high quality public services in Europe*.

- Tenderers must submit a commitment showing that resources of subcontractors, on whose capacities the tenderer relies on for qualification purposes (where such requirements apply), will be at their disposal during the timeline of the framework agreement.
 - If the PCP is limited to tenderers that will locate the majority of their activities related to the PCP in an EU or associated country, the estimation of this should take into account any subcontractors.
 - Any subcontractors must respect the rights assigned in PCP projects to the public purchaser/s.
- Qualifying the tenders:
 - Set the same exclusion criteria as in a normal procurement.
 - To be awarded a contract, legal entities (and representatives of the legal entity in some cases) and subcontractors on whose capacities they rely must not be subject to bankruptcy, guilt of professional misconduct, bribery, money laundering, fraud, tax debts etc.
 - Set minimum requirement regarding R&D services.
 - It is an absolute requirement that the services called for by the authority and offered by the tenderer are within the scope of the definition of R&D services, to be able to cite the R&D exemption.¹²
 - More than 50 per cent of the contract value must be attributable directly and exclusively to legitimate R&D services, not products/ supplies.
 - Avoid using other qualification criteria (minimum requirements). If such criteria are used in any way, these should allow participation from small and/ or new legal entities.
 - Qualification criteria such as size, previous experience of public contracts, triple rating etc. should be avoided.
 - Due diligence is still needed however.
 - Consider requesting environmental, ethical or social policies.
 - If environmental, ethical or social aspects are important to a specific PCP, set a special contractual condition that tenderers have an established policy (and routines) for handling such issues, either for their legal entity, or for the specific PCP project.

¹² See further explanation and definition of R&D services in the glossary on page 6-7.

Decide on the approach to confidentiality concerning business secrets

The *principle of public access to official documents* means that public documents and records (with a few exceptions) should be made available to whoever asks for them. The interpretation and extent of the principle differs across Europe.

The public access principle is balanced by the *obligation of professional secrecy*, that sets down that public authorities are obliged to protect 'business secrets' of others, if disclosure may seriously harm their interests.

- Establish a structured approach regarding confidentiality and business secrets (if such an approach is not already in place and used for the contracting authority/ lead authority):
 - Develop and implement a process for guaranteeing business confidentiality: that is, a process for how to remove sensitive information and business secrets before e.g. tenders are handed out to third parties that ask for them.
 - If possible, assign certain persons to handle secrecy, should it become necessary.
 - Clarify the definition of business secrets among the people chosen to handle secrecy in the PCP: e.g. company undertakings, its business relations, or cost components. (International agreements apply for the protection of IPR.)
 - Prepare information material for potential tenderers regarding confidentiality issues (insert into the invitation to tender document and questions and answers document).
 - Make clear how far, and under which circumstances, confidentiality can be protected. This is especially important for PCPs where service solutions are likely to be developed, since service innovations are less likely to be able to be IPR protected.
- If the PCP is a transnational cooperation, consider the differences between different national interpretations of the principle of publicity and confidentiality.

Decide on the approach to avoid ethical misconduct of contractors

- Ethical misconduct may be taken into consideration as a matter of possible "grave professional misconduct" within the exclusion criteria, and/ or breach of contractual obligations relating to national standards of ethical behaviour or by reference to the exclusion criteria.

Decide on other points that must be regulated in the contract/s

- Decide how to regulate certain events in the contract/s:

- Special conditions for:
 - Performance of the contract
 - Consequences of failure of delivery
 - Regulations of premature exit.
- Rules governing changes for on-going projects:
 - A contractor can change project specifications after discussions with and permission from the contracting authority, if the changes are still within the limits of the budget and the scope of the original contract. If not, the contract can be terminated.

Preparation of assessment process

Prepare the assessment process of tenders

- Decide on the criteria and scoring model for the assessment.
The following criteria are recommended (4 headlines, 9 questions):
 - 1. Impact on the challenge
 - I. The extent of how well the proposed idea/ solution/ technology meets the challenge as detailed in the Brief, and whether it will have the desired impact.
 - II. Potential of the proposal to address future/ wider challenges in the area in an innovative way (e.g. by developing or employing novel concepts, approaches, methodologies, tools, or technologies).
 - III. The extent to which the approach demonstrates commercial feasibility, and whether it is a realistic commercialisation plan / route to market.
 - For phase 2 and 3, add the following sub criteria:
The extent to which the solution is based on a realistic analysis of the economic and financial needs of the contracting authority/-ies.
 - (Any specific criteria for the PCP in question. Example: The amount of saving that will be realised, and user friendliness of the innovation. Also consider including ecological functional requirements.)
 - 2. Technical approach
 - IV. Validity of the technical approach that will be adopted.
 - 3. Quality of the tender
 - V. The extent to which the tender shows a clear plan for the development of a working solution, and whether it is a

reasonable plan allowing the company to finish phase 3 in time.

- VI. Effectiveness of the project management.
 - VII. The extent to which the tenderer and/or subcontractor appear to have dedicated the resources (e.g. human capital, equipment etc.) necessary to perform the scope of the tender.
 - VIII. The extent to which crucial risks (technical, commercial and other) to project success appear to be identified, and how effectively these will be managed.
- 4. Price
 - IX. [Insert price model, providing e.g. a graded linear scale, where X point is given a tender offering the applicable maximum price, and Y point is given to a defined lowest level.]
- Decide whether to use weighting of criteria
 - It is recommended to give the challenge a greater weight than other criteria.
 - Price should also be given a significant weight compared to other criteria.
 - Set up an assessment system solution that will be used to automatically calculate points in the assessment stage:
 - A website system is preferable.
 - If an electronic system is not a possibility, prepare an Excel document or similar for calculating scores
 - Plan the assessment process for tenders.
 - A recommendation is to use two assessment rounds:
 1. Assessments by individual, (preferably) external, experts.
 2. Assessment by a decision panel that awards contracts, made up partly by the contracting authority/-ies and partly by independent experts
 - See step “[Assess tenders and award contracts](#)” for list of activities that should be planned in the assessment process.
 - Decide under what conditions a tender will move forward to the decision panel assessment. It is recommended to set a threshold value for the number of points that a tender must score.
 - The threshold value is recommended to be 60% of the maximum number of points in the scoring model.

- Identify suitable experts to partake in the expert assessments. Experts should be:
 - experts in the field of the challenge (could be users) and/ or
 - technical experts, and/ or
 - general business experts
- All fields and skills should be covered by the expert group, so that all perspectives are represented in the assessment of each tender.
- Experts are identified e.g. by asking other stakeholders for recommendations and using appropriate networks. An innovation agency or similar can be helpful in identifying suitable experts.
- The number of experts needed depends on the number of tenders that are expected:
 - E.g. if each tender is assessed by 3 experts, and 1 expert can assess 10 tenders, 15 experts are needed for 50 tenders.
- If the PCP is a transnational cooperation, make sure to identify experts for all participating countries.
- If relevant, consider also using end-users in the assessment process.
- Set up remuneration scheme for experts.
- Recruit and appoint experts
 - Book them in advance for the assessment period set up in the project plan.
- Take steps to protect business confidentiality and fairness:
 - Make experts sign a personal non-disclosure agreement.
 - Experts already bound to a high level of confidentiality through their employment, e.g. at a government agency or similar, can be excused from signing the non-disclosure agreement.
 - Try to assure as best as possible that no conflict of interest is likely to arise. Make experts sign a promise to report conflicts of interest.
 - If the PCP is a transnational cooperation, make sure to recruit experts for all participating countries.
- Decide upon and commit resources to the decision panel:
 - Use resources from the contracting authority/ authorities (or their chosen representatives and possibly also other stakeholders), as well as independent external assessors.

- If the PCP is a cooperation, all PCP partners should be included and given equal votes in the decision panel.
- Decide how the decision panel will award contracts: by unanimous decision or by majority voting.
 - Unanimous decisions: at least 2 members of the panel must be independent assessors.
 - Majority voting: at least 50% of the decision panel should be made up of external assessors.

Invitation to tender package

Decide upon which language to use

- Decide upon which language to use in the invitation to tender package etc.
 - Consider publishing the package in both a national language and a generally known language, e.g. English.
 - This opens the PCP to more companies and adds competition that can help getting the best possible solution to the contracting authority. Bear in mind the added complexity of answering questions in multiple languages and the translation issues.
 - If the PCP is a transnational cooperation, the package should, if necessary, be translated into the languages of all the partners.
 - If more than one language is used, choose one to be official one in a legal sense – the “master”.
 - Be clear to state which one is the “master” language version to potential tenderers, in case legal discussions regarding the different versions should arise.
- Decide upon which language that should be used in the tenders
 - Tenders should be written in the language used in the “master” version of the invitation to tender package.
 - It is up to tenderers to write their tender in the correct language. They are allowed to engage third party help, but contracting authorities/ innovation agencies involved in a PCP should not aid tenderers in this.

Avoid mentioning financing organisations in the invitation to tender package

- If a PCP is in any part financed by the European Union, a national innovation agency or similar, it is recommended not to mention this in the tender documents in order to avoid confusion about such financing organisation/s being involved as contracting authority/-ies.

Prepare the documents for the invitation to tender package

PCP is a new or little known method in many countries, and potential tenderers may need more information than in a conventional procurement. For example, a PCP challenge typically needs elaboration. Also, as much as possible of phase 2 and 3 should be known beforehand by potential tenderers.

Therefore, an invitation to tender package should consist of all information potential tenderers need in order to prepare good tenders. This includes background to the challenge, tender form and guidance for filling it in. The package should also include the set framework agreement that will be used, as well as information about scoring criteria, exclusion criteria, assessment model, bids for subsequent phases, and administrative provisions (deadlines, how Q&A will be handled, how to formally submit tenders etc.).

Such information is usually divided into several documents to help potential contractors to easily find what they are looking for. On the other hand, having too many separate documents can be confusing. A balance needs to be found. In the generic PCP process described in this document, seven documents make up the invitation to tender package:

The invitation to tender package:

1. Invitation to Tender
 2. Challenge Brief
 3. Guidance
 4. Tender Form
 5. Questions and Answers Document
 6. Set Framework Agreement for relevant phases, including subordinated contracts for subsequent phases
 7. End of Phase Report Form
- “Invitation to Tender”
 - The formal invitation to potential contractors to submit tenders in the PCP. Should contain:
 - PCP challenge (usually expressed briefly: a few sentences)
 - The premises for the PCP (what is decided about timelines and key dates, budget and costs for all phases etc.)
 - Explanation of the PCP process.
 - Include information that is already known about phase 2 and 3 (e.g. deadlines, number of contracts aimed for, assessment information etc.)
 - Inform about how and when more information about phase 2 and 3 will be forthcoming.

- Information that will help tenderers to assess potential market, i.e. information about the contracting authority and/or consortium members, including the relationship between consortium members in regards to usage rights.
 - If the PCP is a transnational cooperation, add information about different market conditions.
- Information on how to submit tenders.
- The assessment process.
 - It is recommended that interviews are a part of this process before phase 2 and 3. If so, include a general description of how the interviews will be managed.
- The assessment criteria and scoring model that will be used to assess tenders.
 - Clearly state under which conditions a tender will move forward if a two-step assessment procedure with threshold value is used.
 - See step “[Assess tenders and award contracts](#)” for a discussion about what criteria to use.
- List of all documents in the Invitation to Tender document, to give potential tenderers an easy way to keep track of all relevant information needed to prepare a tender.
 - Contact information Template: [artefact document 1](#).
- “Challenge Brief”
 - An accompanying document to the Invitation to Tender, explaining more about the background and the underlying need, to help tenderers to better understand the challenge.
 - Needs to be written specially for every specific challenge.
 - Should be a separate document. Then it can be used to market the PCP while also functioning as a brief.
 - Template: [artefact document 2](#).
- “Guidance”
 - Explanation of the Tender Form and guidelines for how to fill it in and submit it.
 - Template: [artefact document 3](#).

- “Tender Form”
 - The formal form through which tenderers fill in their application. Should contain fields for:
 - Price.
 - Details of tenderer (name, contact information, VAT registration number/ organisational number or similar, type of legal entity)
 - Project idea and IPR issues
 - Project plan, methodology and team
 - Whether the tenderer is relying on the capacities of sub-contractors for qualification purposes or otherwise (where such requirements apply)
 - Authorised signature
 - The tender form can also include a field where tenderers can enter a brief abstract of their project that can be used for "marketing" purposes, e.g. between 50 to 150 public-facing form of words.
 - Template: [artefact document 4](#).

- “Questions and Answers Document”
 - Answers to questions, such as:
 - Eligibility
 - Sub-contracting
 - How to tender and deadlines
 - How IPR will be handled
 - Confidentiality issues
 - Questions related to the specific challenge
 - Update the Questions and Answers document during the tendering period, when potential contractors will ask and receive answers to new questions.
 - Mention in the Questions and Answers document that it will be regularly updated and that the current version will be available on the PCP web pages.
 - It is recommended to keep the Questions and Answers in a separate document, as that way it is easier to update.
 - Template: [artefact document 5](#).

- “Framework Agreement”
 - The set framework agreement (including subordinated contracts for subsequent phases) that will be used in the PCP.
 - Using a set framework agreement covering all three potential phases eliminates negotiations later in the PCP, consequently enhancing transparency and saving time.
 - The framework agreement should contain, among other things,
 - Clarification on contracting authority/-ies
 - Places of applicable law
 - Specific IPR provisions (such as call-back provision details, necessity for contractors to inform about background IPR/ new IPR etc.)
 - Sub-contractor provisions
 - Contracts for phase 2 and 3
 - The framework agreement should contain provisions for a scenario where there is only one successful proposal/ contractor in Phase 3.
 - Template: It is not possible to construct an entirely valid template contract for all European countries, but [artefact document 6](#) contains an example framework agreement for the UK, written for the use of one contracting authority. It needs to be adjusted for other uses, e.g. by a consortium or cross-border.

- “End of Phase Report Form”
 - Formal form in which the contractors will report results.
 - This form will be used for reporting results in phase 1, 2 and 3.
 - Template: [artefact document 7](#).

If a lead authority is used, it is recommended that it should “own” the development of the invitation to tender documents. This is to ensure consistency with the process that is set up regarding contacts, assessments and monitoring of subcontractors later in the PCP.

Publish PCP and inform market

Pre-publication information

Inform about the upcoming PCP

- Distribute advance notice of upcoming PCP:
 - Make first announcement on PCP web pages and in a press release.
 - If the PCP is a transnational cooperation, distribute advance notice in all participating countries. This is easiest done by the national partners in each country.
 - Submit PIN (Prior Information Notice) to the information system for European Procurement.¹³ Since templates only exist for traditional procurements, state clearly that the PIN concerns a PCP.
 - Use all available channels that can reach interesting potential tenderers (e-mail lists, incubator networks, university cooperation networks etc.). Make sure to reach SMEs.
 - Use partners to get the information out, such as other contracting authorities, innovation agencies, SME-agencies etc.
 - If a wider offer of tenders is desired, perform activities to inform outside of the EU, for example by using partner organisations.
- Prepare and perform an information meeting about the upcoming PCP
 - Pre-publication information meetings are a good opportunity to better explain the PCP to the market. Issues raised at the meeting also provide valuable information for enhancing the quality of the Invitation to Tender document, Questions and Answers document etc.
 - Template: [artefact document 8](#).
 - Use information channels to announce information meeting/s. Also include information about information meetings in the PIN.
 - Make sure that the same information is available to all potential tenderers, so no tenderer is given an unfair advantage.
 - Take official notes of meeting(s), and/ or videos, and publish them on the PCP website.
 - If the PCP is a transnational cooperation, consider hosting meetings in all participating countries.
 - It is vital that the format is the same and that no information advantage is given to potential tenderers from a certain country. If there are any doubts that the fairness of the

¹³ http://simap.europa.eu/index_en.htm.

information meetings would be hard to demonstrate in a court of law, avoid meetings altogether.

- Form a helpdesk team and establish a formal questions and answers process
 - Set up guidelines for how to answer different questions at the helpdesk, so that the information given is the same for all that ask. There should also be a process set up for how to incorporate “new” answers into the Questions and Answers document and similar.
 - If the PCP is a cooperation, it is preferable to use only one helpdesk (at the lead authority), rather than having a helpdesk at each partner. It is however possible to man the helpdesk team with resources from all participating authorities - this is easier if the partners are geographically close and/ or have the same language skills.
 - If the PCP is a transnational cooperation, decide on the language/ languages for the helpdesk. If several languages are used, inform about which one is the “master” language.
- Set-up a system for receiving tenders:
 - An electronic system is preferable (such as an extranet-based competition management support service).
 - Tenderers can be notified by the system if they fill in the tender form incorrectly.
 - If possible, information from the tender form should go straight into a tender database.

If it is impossible to use an electronic system, collect tender forms by e-mail/ regular mail and set up a database that is filled in manually.

 - Ensure that the system for receiving tenders has a high security level. If tenders are sent by email, ascertain that they are encrypted.
 - If the PCP is a cooperation, only one system should be used to receive tenders (the lead authority’s).

Tendering period

Publish invitation to tender in the PCP

- Publish the “[Invitation to tender package](#)” on the PCP website
 - Consider asking interested parties to register their interest before downloading the tender documents.
 - If the PCP is a transnational cooperation, publish invitation to tender in all participating countries.
- Make sure that all important deadlines dates are easy to find in the PCP web pages and are included in the press release.

- Publish a contract notice in a publicly accessible electronic database, and also in TED (Tenders Electronic Daily: the EU procurement notices database) to aid transparency and competition.¹⁴
- Perform activities to inform outside of the EU if a wider offer of tenders is desired, for example by using partner organisations.
- Publish a press release. Use all available channels that can reach interesting potential tenderers (e-mail lists, incubator networks, university cooperation networks etc.).
- Use partners to get the information out, such as other contracting authorities, innovation agencies, SME-agencies etc. Note that SMEs can be hard to reach via official procurement websites.

Manage tendering period

- Instruct parties responsible for handling tenders (e.g. website managers, mailroom etc.).
- Run helpdesk for those interested in tendering.
 - Update the Questions and Answers document as new questions and issues appear, so that all tenderers are privy to the same information.
 - Close the helpdesk a certain period before the closing date for tenders (approximately one week). If questions are answered right up until the closing date, there is a risk that some companies receive important information exclusively. Stop updating the Questions and Answers document when the helpdesk closes.
- Ascertain that the most current Questions and Answers document is available on-line at all times.
 - Publish the above mentioned fact clearly on the PCP website, so potential tenderers know where to look for the fullest information. Also publish clearly when the helpdesk/ Questions and Answers document will close.
 - If the PCP is a transnational cooperation, make sure to adhere to the language policy chosen for the PCP when updating.
- Close possibility to tender at the deadline:
 - Update web pages about close of tendering.
 - If tenders have not been submitted via an electronic system that automatically transforms the tenders into a database: submit tenders to database.
 - Check for completeness in tenders.
 - Acknowledgment of receipt of tenders to tenderers.

¹⁴ <http://ted.europa.eu/TED/main/HomePage.do>

Evaluate tenders and award contracts

After the tenderers and the tender have been qualified, you will need to evaluate the tenders and award the contracts. The evaluation and award model described below is built on two rounds:

- Assessments by individual assessors, preferably external experts
 - If the PCP is a transnational cooperation, use experts from all participating countries.
- Decision panel meeting to award contracts. Panel is made up of contracting authority/ authorities (or their chosen representatives and/ or stakeholders).
 - If the PCP is a cooperation, all PCP partners should be included and given equal votes in the decision panel.

Before phase 2 and 3, it is recommended that the evaluation process of bids includes contractor interviews.

- If so, the Invitation to Tender document should include a general description of how the interview process will be managed. The “Call for bids” document should describe the interview process in detail.

Qualification of tenderers and tenders

Qualify the tenderers and tenders

- Check that tenderers are legal entities
- Check that the declarations in the tender form are filled in correctly
- If an environmental, ethical or social policy has been requested, check that this has been submitted
- If Letters of Intent from any sub-contractors have been requested, check that these have been submitted

Preparation of tender assessment

Prepare the work of the individual experts

- Distribute a “Guidance for assessors” document to the experts.
 - The “Guidance for assessors” document lists the criteria and explains the scoring model for the assessments.
 - The criteria and scoring system must tie in with what was communicated in the invitation to tender.
 - Templates: [artefact document 9](#)

- Distribute a “Score Sheet” to the experts, based on the criteria and scoring model.
 - Template: [artefact document 10](#).
- Distribute digital copies of tenders to the experts.

Prepare the work of the decision panel

- Reserve meeting venue for the decision panel.
- Distribute the following documents to the decision panel:
 - “Guidance for assessors” document
 - “Score sheet” document.
 - Digital copies of tenders that passed the threshold/ were chosen to be assessed in the second round, and tenders where the scoring varied **dramatically** between its assessors and, as a consequence, did not pass the threshold or were not chosen to proceed.
 - Results from the expert’s assessment.
- Hold preparatory meeting with the chairman of the committee.

Tender assessment

Manage the expert assessments

- Ask experts to score the tenders using the score sheet.
 - Each expert assesses a number of tenders, for example 10-20 tenders per expert.
 - Distribute tenders randomly/ according to specialist knowledge.
 - The assessors’ guidelines help experts to determine how many points to set for each criterion. Each tender is assessed by several experts (preferably not less than 3 experts per tender).
 - Experts do not meet or communicate – experts work alone and score their assigned tenders individually.
 - Scores are noted on the score sheets, which are sent in to the contracting authority.
 - Experts also need to comment upon each tenderer’s score per criterion (just one or a few sentences), which will be used as feedback to tenderers.
- Calculate total points for each tender
 - Gather the finished score sheets from the experts.

- If possible, use an electronic system such as a web form, which allows experts to upload their score sheets directly into a system for calculating total points per tender. An alternative is to manually enter scores into an Excel sheet or a similar document in order to calculate total points.
 - The scoring system or Excel document should automatically calculate the total number of points for each tender, based on the opinion of the experts.
- Move certain tenders on to the decision panel, based on their scores.
 - The number of points received will qualify or disqualify a tender to move on to the next step: to be evaluated by the decision panel.
 - A recommended threshold value allowing tenders to move on to the second assessment round is 60% of the maximum score.
 - Another option is to choose tenders with the best scores whose combined contractual values represent around twice the size of the phase 1 budget.
 - Where a tender has received dramatically different points from different experts, it shall be submitted before the decision panel for additional review even if the number of points awarded *per se* does not result in its progression to the decision panel.

Awarding contracts

No interviews with tenderers are performed in phase 1. The sole basis for assessment is the tenders.

Decide which tenders to award: decision panel meeting/s

- Hold decision panel meeting/s to decide which tenders to award with contracts
 - Preferably “in real time”, although meeting/s can be carried out virtually.
 - Use expert’s scores and the subsequent first ranking as a basis for the discussion:
 - Look at the short list produced by the expert’s assessments.
 - Approve the best tenders
 - Check if the best tenders have a low scoring spread from the expert assessors. Low spread will indicate agreement amongst the assessors.
 - The decision panel should unanimously confirm that the selected projects are not fundamental research

projects, but aim to use R&D to bring concrete solutions to the market in a short to medium term.

- Discuss the margin tenders (that scored close to the threshold limit) according to the criteria:
 - Was the expert's assessment good?
 - Will the suggested solution work in all countries (in a transnational PCP)?
 - Give special attention to tenders where the expert assessors' score has a large scoring spread.
 - Tenders that have not met the minimum score should be reviewed. Exclude any scoring outliers and review the comments to ensure consistency in the scoring.
 - The decision panel can override the numeric outcome from the individual experts regarding the margin tenders, but if it does, it has to provide substituting scores and substituting verbal reasons.
- Make sure to write formal meeting notes from the decision panel meeting/s, with rationales for the decisions on which tenders to award with contracts.

Inform tenderers and the public

- Provide feedback to tenderers:
 - Formal feedback: "[Decision Notice](#)"
 - It is important to provide constructive feedback to tenderers. It aids building market relations for future procurements. Therefore, formal feedback should include motivations both to successful and unsuccessful tenderers.
 - A decision notice is sent to each tenderer, highlighting whether they have been successful or not. The experts' comments per criterion for each tender are included as feedback.
 - Information is given about how a successful tenderer accepts:
 - State the deadline for acceptance: e.g. 10 days.
 - If a tenderer is unsuccessful, it may be necessary to include information on how to seek legal remedy, depending on national legislation.
 - Only do this in cases where the concerned national legislation has indicated procedures for such appeal

or similar action – and the deadlines for doing so (the stand-still period).

- If appeals are not allowed, do not mention legal remedies.
- An alternative is to describe a structured way for tenderers to complain directly to the contracting authority.
 - Template: [artefact document 11](#).
- Inform the public:
 - Write a press release on winners of the contracts. Publish:
 - Names of contract winners
 - Abstracts of their projects
 - Value of each contract.
 - Publish project summaries on the PCP website.
 - It is recommended (not compulsory) to publish a contract award notice in publicly accessible electronic databases, if the contract value is above the EU procurement thresholds.¹⁵ If so, clearly state that the awarded contract falls outside of the EU directives.
 - Organise an event to congratulate and motivate winners:
 - Consider also inviting innovation agencies in charge of commercialisation grants and private risk capitalists

Get contracts signed

- If a stand-still period is used, await appeals to the award decisions. If none of the unsuccessful tenderers appeal within the stand-still period, send out contracts and get these signed.
- Pay out the specified cash advance, e.g. 50%.

¹⁵ Such publication is not necessary but will enhance the transparency of the PCP. More information about the EU procurement thresholds can be found at <http://europa.eu/youreurope/business/profitting-from-eu-market/benefiting-from-public-contracts/>

Phase 1, 2 and 3

General for all phases

Manage the different projects and the contractors

- Put together detailed contractor information packs that clarify how progress will be monitored and assessed, how changes can be managed and how suppliers can be supported during each step of each phase. The information packs should preferably be ready at the signature of the Framework Agreement, and updated at the start of each PCP stage.
- Designate a project contact officer to be the primary contact point between the projects and the contracting authority or consortium.
 - This is important as cooperation and dialogue between procurers and contractors during the development process is one of the most important factors for successful innovation.
 - The project contact officer can belong to the contracting organisation/s, or an external coordinator can be used. The last alternative can ensure that the flow of information becomes protected and standardised.
 - Having a project contact officer assists in aligning expectations and requirements between the contracting authority or consortium and the contractors. Also, it makes the flow of information and contact more protected and standardised.
 - The project contact officer should: make regular visits to the contractors (answering questions, explaining rules and the steps of PCP to contractors (e.g. how to get from phase 1 to phase 2, and from phase 2 to phase 3), checking progress/ milestones and assist in evaluating end of phase reports. It is also valuable to collect feed-back from the contractors about the PCP process and also the plans for testing in Phase 2 and 3. This can be done through general meetings, interviews or questionnaires.
- Ascertain that contractor contacts are performed according to a process that ensures equal treatment and transparency.
 - If the PCP is a cooperation, all PCP partners should be involved in setting up the process, e.g. so as to be able to mutually agree on answers provided to the contractors.

Plan and implement activities to keep the development dialogue transparent and fair

- Differentiate on how information is treated depending on whether it comes from, or is about, the contracting authority, or whether it is from or about contractors.

- When/ if the contracting authority has new information, this should be shared with all contractors in an objective and transparent way, so that the EU treaty principles are upheld.
- Contractor information should never be divulged to third parties, as it might harm business confidentiality, infringe on a contractor's IPR or damage the contractors' possibility to later protect IPR. Keep dialogue and cooperation on an individual basis with each of the contractors and do not share information between different projects.

Plan and perform communication and dissemination activities

- Put together communication events during the phases where contractors participate to create good PR for both the project and the contractors.
- Consider building or using partnerships with third parties such as innovation agencies or risk capital associations
 - This gives contractors the chance to make contacts that can aid their commercialisation activities.

Especially if the PCP is a cooperation, ensure that the process for the assessments and the decision panel will run smoothly

- Take precautions to reduce the time of the discussions in the decision panel.
 - For example, arrange a pre-meeting between procurers before the decision panel meeting to form an idea of the procurers' scores and "level of feeling" regarding the solutions.

Phase 1 specific

- Manage projects.
 - If the PCP is a cooperation, make sure to involve all consortium members, and to clarify their involvement and commitment for the phase.
 - Encourage contractors to involve end-users in their projects in different ways in phase 1, for example in co-creation sessions.
- Gather and approve phase 1 results.
 - Ask contractors to fill in and submit the "End of Phase Report" at a specified time.
 - The purpose of the end of phase report is to ensure that contractors have performed the procured R&D services as specified in the framework agreement.
 - Answer any questions that the contractors may have about the phase report.

- Approve phase reports and pay out residual amounts of the fixed price for phase 1.
- Optional: control the contractors' compliance with minimum requirements and/ or special contractual conditions.
- Prepare and issue a “[Call for Bid Phase 2](#)” among the framework agreement contractors.
 - When setting up the timeline for the bid, make sure that the contractors have sufficient time to deliver the required information.
 - Plan testing for phase 2, so that the necessary information can be included in the formal invitation. The more detailed the description, the better.
 - If the PCP is a cooperation, it is important to start planning early so there is sufficient time to plan and agree upon testing issues. Such issues might include purpose, strategy, approach, scope, criteria, timeline, test users, risk schedule, insurance, ethics, data privacy and confidentiality.
 - This formal invitation to submit bids for phase 2 should contain:
 - The premises for phase 2 (timelines, key dates, budget etc.)
 - A definition of prototype/ prototyping in the context of the PCP
 - A description of how testing will be performed in phase 2 and 3
 - Information on how to submit bids
 - A description of the assessment process
 - It is recommended that interviews be part of this process. If following this recommendation, include a detailed description of how the interviews will be managed.
 - The assessment criteria and scoring model that will be used to assess bids.
 - Clearly state under which conditions a bid will move forward if a two-step assessment procedure with threshold value is used.
 - See step “[Assess tenders and award contracts](#)” for a discussion about what criteria to use.
 - List of all documents in the bid package.
 - Contact information
 - Template: [artefact document 12](#).
 - The call for bid package should also include:

- “Bid Form”
 - Template: [artefact document 13](#).
 - Updated version of Section 3 of the [Framework Agreement](#)
 - Contract for Phase 2 (Section 7 of the [Framework Agreement](#))
 - Challenge Brief (same as before)
 - End of Phase Report (same as before, or updated for phase 2, depending on the specific PCP)
- Ask contractors to fill in and submit “Bid Form” at a specified time.
 - The bid form should contain fields for:
 - Price
 - Project idea and IPR issues
 - Project plan, methodology and team
 - Whether the contractor is relying on the capacities of sub-contractors for qualification purposes or otherwise (where such requirements apply)
 - Authorised signature
 - Prepare assessment for phase 2:
 - No rule about using the same experts as before or involve new ones. If new experts are desired, identify/ commit them as described before.
 - Write and distribute instructions on assessment for experts.
 - Decide/ agree dates for expert assessments, contractor interviews and meeting of the decision panel.
 - Invite contractors to an interview with the decision panel.
 - Distribute bid form for Phase 2 to experts.
 - Decide whether to allow contractors, if asked by experts or the decision committee, to submit additional information. It is recommended to allow this, to aid an informed judgement.
 - Manage the experts’ assessments:
 - Ask experts to assess and score bid forms individually, and to motivate their scores per criterion.
 - Collect experts’ assessments and calculate the scores per bid form.
 - Move certain bids on to the decision panel, based on the principles used for the corresponding procedure with regard to tender assessment (see above).

- Take decisions:
 - Perform interviews with contractors in the decision panel (live, or possibly via video link).
 - Discuss which bids to move on to phase 2, based on:
 - Bids for phase 2 and interviews with contractors.
 - Base discussion on whether it is judged likely that a project will lead to the required outcome (aid in solving the challenge).
 - Write formal meeting notes from decision panel meeting/s – state rationales for deciding which bidders to award contracts to for phase 2.
- Inform about decisions:
 - Provide written feedback to all contractors, both successful and unsuccessful, using experts' and decision panels' motivations.
 - Send out “[Bid Decision Notice](#)”
 - Template: [artefact document 14](#).
 - Perform a due diligence on the contractors that have been awarded contracts for phase 2, to identify any undisclosed problems, omissions or issues that might affect the project negatively.
 - Sign contract for Phase 2 under the Framework Agreement.
 - Example: [artefact document 6, section 7](#).
 - Inform the public. Publish names of contractors, contract value and short abstract of the projects.
- Pay out the specified cash advance.

Phase 2 specific

- Manage projects.
 - If the PCP is a cooperation, make sure to involve all consortium members. Clarify their involvement and commitment for the phase.
- Ensure that testing takes place in an appropriate setting/ settings, such as test beds or similar.
 - End-users should be involved in phase 2 testing. Note that it is probable that there are several kinds of end-users, so make sure that all relevant parties are involved.
 - If the PCP is a cooperation, agree in the partner group on how many locations to use for phase 2 testing. One (or two) may be enough. In a transnational PCP, testing may take place outside of the country of the

lead authority. In that case, it is important to make sure that this still is executed under the correct law.

- Prepare and manage testing
 - It is important to reserve enough time for preparations for the prototype tests in regards to for example ethics, safety and risk mitigation, test environment, insurance and confidentiality/ non-disclosure agreements (NDA)
 - Any ethical or data safety issues relevant to testing must be thoroughly analysed and managed. Such issues may for example include personal data protection, ethics regarding end user and care givers participation, privacy etc.
 - It may be valuable to visit contractors before performing the prototype tests, to facilitate preparations and to give the contractors a detailed description of the test set-up.
 - Contractors should be encouraged to carry out sufficient tests beforehand, as technical problems at the official testing means that there is less time to test usability.
 - Make sure that the test team appointed by the contracting authority/ -ies have received training on how to use the prototypes before tests begin.
 - Decide on a format of the test report before the tests begins. However, be open to changing the format if needed. Remember that the reports must be confidential in compliance with the IP rights of the contractors.
- Gather and approve phase 2 results in the “[End of Phase Report](#)”.
 - Ask contractors to fill in and submit the “[End of Phase Report](#)” at a specified time.
 - Answer any questions that the contractors may have about the phase report.
 - Approve phase reports and pay out residual amounts of the fixed price for phase 2.
 - Optional: include presentations of the solutions in the evaluation of the contractors’ work in phase 3.
 - Optional: control the contractors’ compliance with minimum requirements and/ or special contractual conditions.
- Prepare and issue a “[Call for Bid](#)” among the framework agreement contractors.
 - When setting up the timeline for the bid, make sure that the contractors have sufficient time to deliver the required information.

- Plan testing for phase 3, so that the necessary information can be included in the formal invitation. The more detailed the description, the better.
 - If the PCP is a cooperation, it is important to start planning early so there is sufficient time to plan and agree upon testing issues. Such issues might include purpose, strategy, approach, scope, criteria, timeline, test users, risk schedule, insurance, ethics, data privacy and confidentiality.
- This formal invitation to submit bids for phase 3 should contain:
 - The premises for phase 3 (timelines, key dates, budget etc.)
 - A definition of the limited test series in the context of the PCP
 - A description of how testing will be performed in phase 3
 - Information on how to submit bids
 - A description of the assessment process
 - It is recommended that interviews be part of this process. If following this recommendation, include a detailed description of how the interviews will be managed.
 - The assessment criteria and scoring model that will be used to assess bids.
 - Clearly state under which conditions a bid will move forward if a two-step assessment procedure with threshold value is used.
 - See step “[Assess tenders and award contracts](#)” for a discussion about what criteria to use.
 - List of all documents in the bid package.
 - Contact information
 - Template: [artefact document 15](#)
- The call for bid package should also include:
 - Bid Form (same as before, or updated for phase 3, depending on the specific PCP)
 - Updated version of Section 3 of the [Framework Agreement](#)
 - Contract for Phase 3 (Section 8 of the [Framework Agreement](#))
 - Challenge Brief (same as before)
 - End of Phase Report (same as before, or updated for phase 3, depending on the specific PCP)

- Ask contractors to fill in and submit “Bid Form” at a specified time.
 - The bid form should contain fields for:
 - Price
 - Project idea and IPR issues
 - Project plan, methodology and team
 - Whether the tenderer is relying on the capacities of sub-contractors for qualification purposes or otherwise (where such requirements apply)
 - Authorised signature
- Prepare assessment for phase 3:
 - No rule about using the same experts as before or involve new ones. If new experts are desired, identify/ commit them as described before.
 - Write and distribute instructions on assessment for experts.
 - Decide/ agree dates for expert assessments, contractor interviews and meeting of the decision panel.
 - Invite contractors to an interview with the decision panel.
 - Distribute bid form for Phase 3 to experts.
 - Decide whether to allow contractors, if asked by experts or the decision committee, to submit additional information. It is recommended to allow this, to aid an informed judgement.
- Manage the experts’ assessments:
 - Ask experts to assess and score bid forms individually, and to motivate their scores per criterion.
 - Collect expert’s assessments and calculate the scores per bid form.
 - Move certain bids on to the decision panel, based on the principles used for the corresponding procedure with regard to tender assessment (see above).
- Take decisions:
 - Perform interviews with contractors in the decision panel (live, or possibly via video link).
 - Discuss which bids to move on to phase 3, based on:
 - Bids for phase 3 and interviews with contractors.
 - Base discussion on whether it is judged likely that a project will lead to the required outcome (aid in solving the challenge).

- Write formal meeting notes from decision panel meeting/s – state rationales for deciding which bidders to award contract for phase 3.
- Inform about decisions:
 - Provide written feedback to all contractors, both successful and unsuccessful ones, using experts' and decision panels' motivations.
 - Send out “[Bid Decision Notice](#)” (same as before, or updated for phase 3, depending on the specific PCP)
 - Perform a due diligence on contractors that have been chosen to be awarded contract for phase 3, to identify any undisclosed problems, omissions or issues that might affect the project negatively.
 - Sign subcontract under the Framework Agreement.
 - Example: [artefact document 6, section 7](#).
- Pay out the specified cash advance.
- Inform the public. Publish names of contractors, contract value and short abstract of the projects.

Phase 3 specific

- Manage projects.
 - If the PCP is a cooperation, make sure to involve all consortium members, and to clarify their involvement and commitment for the phase.
- Give contractors test opportunities in real life settings.
 - If the PCP is a cooperation, testing should preferably be undertaken in the location of all PCP partners. In a transnational PCP, testing will thus take place both inside and outside of the country of the lead authority. In that case, it is important to make sure that this is executed under the correct law.
- Prepare and manage testing
 - It is important to reserve enough time for preparation of real life setting tests in regards to for example ethics, safety and risk mitigation, test environment, insurance and confidentiality/ non-disclosure agreements (NDA).
 - Any ethical or data safety issues relevant to testing must be thoroughly analysed and managed. Such issues may for example include personal data protection, ethics regarding end user and care givers participation, privacy etc.

- It may be valuable to visit contractors before performing the real life setting tests, to facilitate preparations and to give the contractors a detailed description of the test set-up.
- Contractors should be encouraged to carry out sufficient tests beforehand, as technical problems at the official testing means that there is less time to test usability.
- Make sure that the test team appointed by the contracting authority/ies have received training on how to use the prototypes before tests begin.
- Decide on the format of the test report before the tests begin. However, be open to changing the format if needed. Remember that the reports must be confidential in compliance with the IP rights of the contractors.
- Gather and approve phase 3 results.
 - Ask contractors to fill in and submit the “End of Phase Report” at a specified time.
 - Answer any questions that the contractors may have about the phase report.
 - Optional: include presentations of the solutions in the evaluation of the contractors’ work in phase 3.
 - Approve phase reports and pay out residual amounts of the fixed price for phase 3.
 - Optional: control the contractors’ compliance with minimum requirements and/ or special contractual conditions.
- Arrange and communicate end of PCP.
 - Inform about results, e.g. press release, conference, workshop with other potential buyers, meetings with venture capitalists etc.

The next step

The next, and most important, step in a PCP is for the contracting authority/ authorities to decide whether to move on to a commercial procurement. This is however out of scope for this generic process.

Appendix A: Background to pre-commercial procurement

Pre-commercial procurement (PCP) is a method for procuring research and development (R&D) services, or of the result of R&D services, with the purpose of developing a new product or solution. It is conducted in several phases to manage risk.

In a PCP, contracting authorities use development contracts at market price to procure R&D services from innovative suppliers. Suppliers are invited to compete for contracts in an open tender process. The aim is to solve a specific problem or address a given challenge by developing new products and services.

Apart from giving contracting authorities access to new solutions that help them address their challenges, PCP offers an invaluable opportunity for suppliers (especially early stage companies). Suppliers are not only paid for developing and demonstrating new products, but also achieve a first reference.

A method for public procurement of innovation

The development of a new product (goods and/or service) or solution involves risks of several kinds. An organisation that wishes to buy such an innovation, and the suppliers that want a contract to develop it, need to divide risks in a manner that is as beneficial as possible for all parties. PCP is an example of such a method for public procurement of innovation.

Development projects are usually divided into several phases: e.g. development of an initial concept or idea, development of a prototype, developing test series, and finally producing the finished product or service. These phases can be procured one at a time, or in packages. A procurement of a finished innovation in an EU membership state needs to be done according to the EU procurement directives. The *development phases* however, can be procured outside the directives, using the so called *R&D exemption*.¹⁶ Operating outside of the procurement directives allows for a simplified procurement process, making it easier for small- and medium sized firms to tender for contracts.¹⁷ This is one advantage with dividing a procurement process of a new product or solution into phases.

¹⁶ Directive 2004/18/EC Article 16 f and 2004/17/EC Article 24 e. To be able to cite the R&D exemption, a public procurement cannot include “commercial development activities such as quantity production, supply to establish commercial viability or to recover R&D costs, integration, customisation, incremental adaptations and improvements to existing products or processes”. European Communities (2008), *Pre-commercial procurement: Driving Innovation to ensure sustainable high quality public services in Europe*. Page 2-3.

¹⁷ The procurement however still has to observe the principles of the Treaty on European Union, ensuring tenderers: equality of treatment (non-discrimination/ fairness), transparency (openness), proportionality, mutual recognition and confidentiality. Primarily articles 18 (formerly 12), 49 (formerly 43) and article 56 (formerly 49), Treaty on European Union.

Another advantage with phases is that it makes it easier to end development early if a project does not look promising. This lessens the risk both for the procuring organisation and for suppliers, which are compensated for their development work up until the project's end.

To use the R&D exemption, the benefits of the R&D services cannot accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.¹⁸ This can be ensured by letting supplying companies obtain most of the intellectual property rights (IPR).¹⁹ That means that benefits of the R&D services ends up both at the contracting authority and at the companies.²⁰

Procurements based on the R&D exemption provide good opportunities for firms to finance development of new solutions, and to develop these solutions in cooperation with an important reference customer. The contracting authority, on the other hand, receives access to innovations in response to its specific problems - innovations that the market previously could not deliver.

PCP is thus a method for using the R&D exemption in a structured manner to handle risk and deliver benefits to both contracting authority and suppliers. The method is built around dividing the procurement into phases, leaving IPR with suppliers, ensuring the principles in the EU Treaty and making sure that the procurement is compliant with EU competition rules.

The EU Commission has defined the PCP method in a Communication from the Commission.²¹ The model is depicted below.

¹⁸ Directive 2004/18/EC Article 16 f and 2004/17/EC Article 24 e.

¹⁹ The contracting authority usually contains licensing or user rights.

²⁰ Leaving IPR with suppliers ensures that the R&D exemption can be used, but the procurement needs to be constructed so that it complies with EU competition rules. Therefore, it is important to procure the R&D at market price (and not above) and to ensure that the principles of the Treaty are fulfilled. Also, the future market value of the IPR that the companies receive must be considered.

²¹ Communication from the Commission, *Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe*, COM (2007) 799 final, Brussels, 2007-12-14.

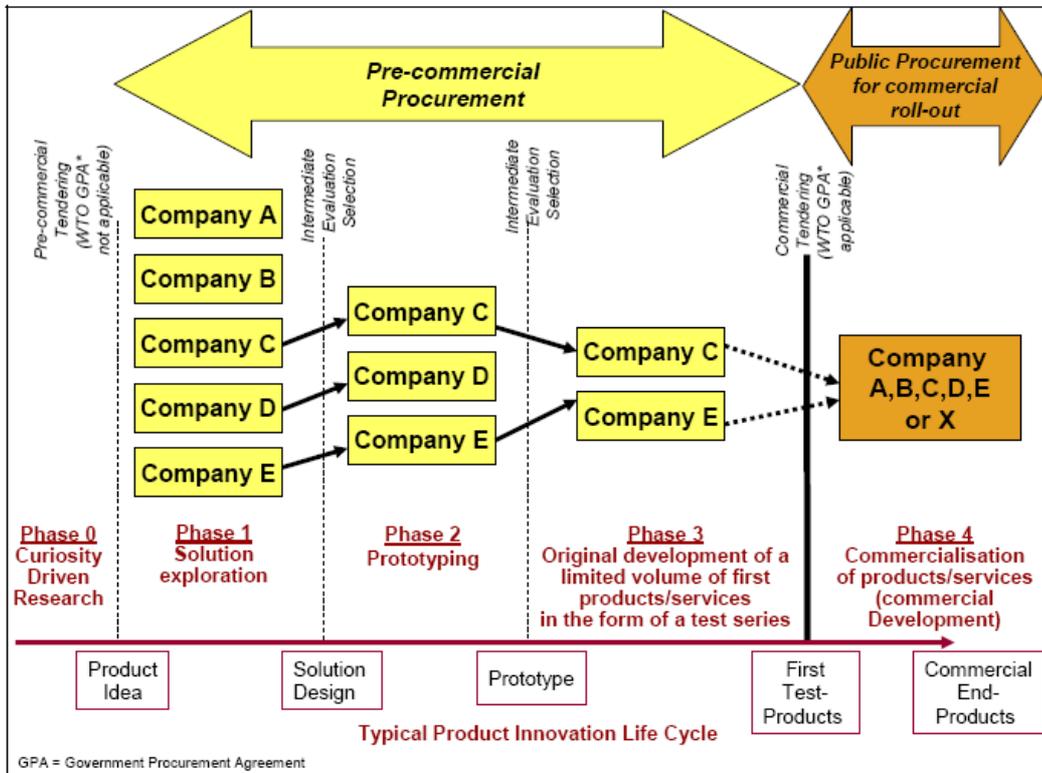


Figure: The EU Commission PCP model²²

Some membership states have PCP-like initiatives running, for example the Netherlands and the UK. There are many similarities between these methods, but also some differences.

In the UK, the initiative is based on cooperation between a contracting authorities and an innovation agency or similar that wish to promote the use of PCP. The innovation agency aids contracting authorities that want to perform a PCP in different manners, such as helping to set up specific PCPs, providing templates for invitation to tender documents and contracts, spreading information about upcoming PCPs, or offering grants to contracting authorities to perform PCPs.

In the Netherlands, NL Agency performs PCPs on behalf of various ministries. The aim is to get new products and solutions developed that other contracting authorities can procure, which can help to solve social problems. In this way, NL Agency ensures that new solutions reach the market, ready to be procured commercially by other customers. This is an example of so called catalytic procurement.²³

²² Ibid.

²³ Catalytic procurement: when a public agency or authority acts as a buyer to procure innovation of behalf of other eventual end-users. Hommen, L. and Rolfstam, M, "Public Procurement and Innovation – Towards a Taxonomy", *Journal of Public Procurement*, Vol. 9 Issue 1, January 2009.

The figure below show how the relationship can look between a contracting authority, a lead body and contractors engaged in a PCP.

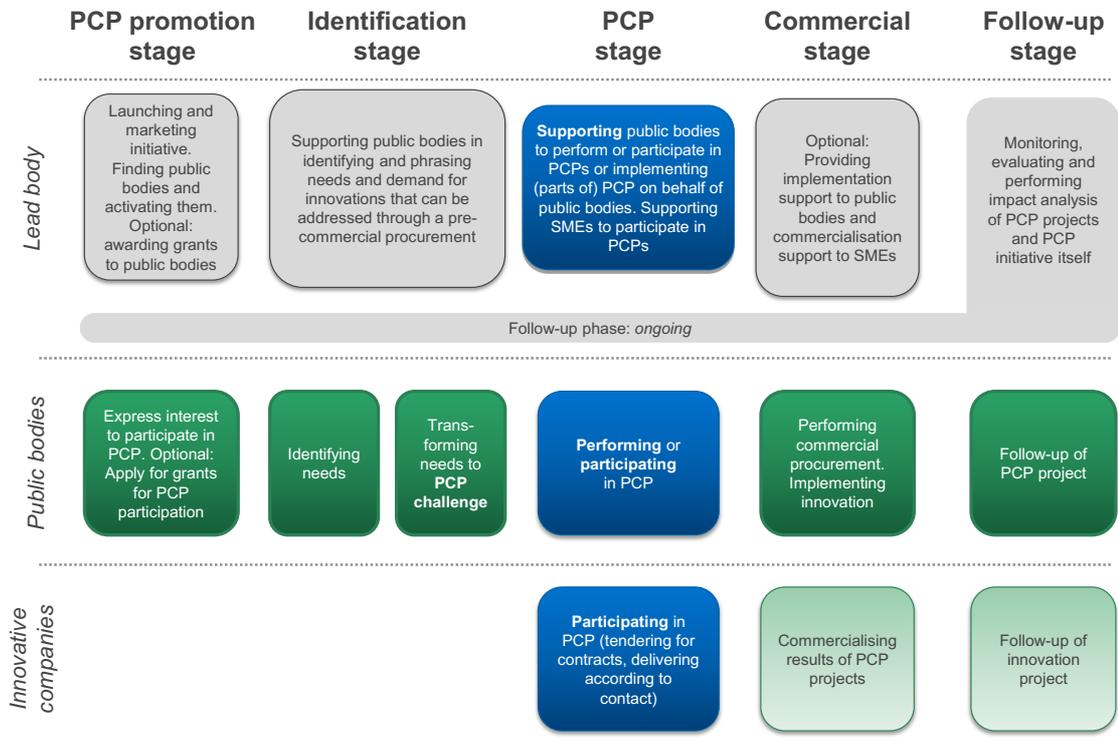
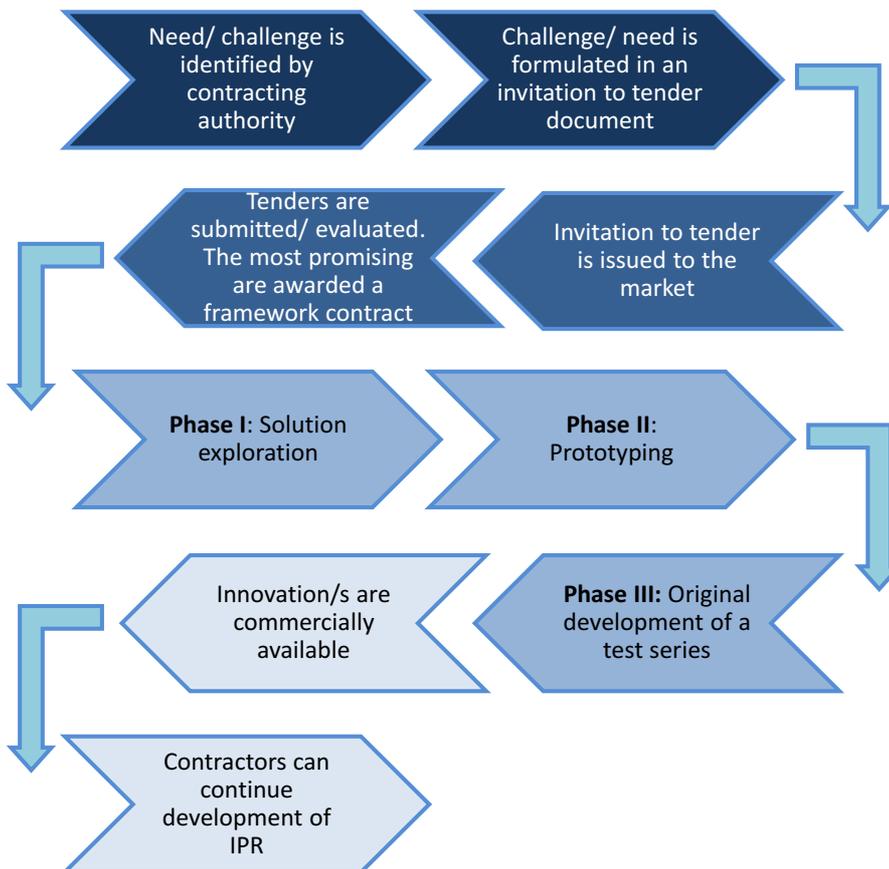


Figure: Stylized relationship between contracting authority, companies and lead body in PCP initiatives ²⁴

²⁴ Adapted from InnoPartnering Forum report (2011), *Design Options Paper, Pre-commercial Procurement of Innovation (PCP)*.

Generic PCP model

The PCP framework allows for some variations of PCP projects. Below is one generic model.



When a contracting authority has identified a need that the market cannot fulfil/ not fulfil in a satisfying manner, or have a challenge for which it is interested in developing fresh solutions, it can opt for performing a PCP. First however, the need or challenge must be discussed, prioritized, and given a budget.

After that, the contracting authority can start working on preparing the PCP. This involves formulating an invitation to tender document, preparing market communication, preparing a challenge brief and the contracts that will be used etc.

When the PCP has been prepared, the invitation to tender is issued to the market in an open procurement, usually accompanied by some marketing effort to engage as many potential tenderers as possible that might come up with innovative solutions. The challenge in the call for tender is specified to fit the scope of an R&D service, with at least 50% of the contract value relating to services and not goods.

Tenderers will propose their ideas, using specially prepared tender forms. It is good if an on-line system can be used, as one goal of a PCP is to make the process short and easy to manage for the tenderers. The tenders should describe the broad

concepts of their proposal and a top level plan for completing the three phases in a PCP. All tenders are then assessed, using clear criteria to evaluate against, by (independent) experts in the field, in business and other competences of interest. Assessment is made of technical excellence, delivery plan and market introduction plan. The experts deliver its opinion to the contracting authority, which ultimately decides to which tenderers to award contracts. Several tenders are chosen. Contracts are not awarded according to the lowest price, but based on value for money.

When the contracts have been signed, phase 1 begins: solution design/ feasibility study. It usually takes between 3-6 months, but this might vary depending on the challenge. It means that the contractors develop their concept and verify its technical, economic and organisational feasibility. This might entitle both quantitative and qualitative analysis. Being clear on the route to market is important. Expected output from phase 1 is a report with conclusions for the next phase.

Between phase 1 and 2, contractors bid for contracts to develop their concepts from phase 1 into prototypes in phase 2. In phase 2, single prototypes are developed and verified, usually in lab environments. This phase should not take more than 1 year. Phase 2 results are usually a prototype specification and lab demonstration. Also, the estimation of cost and benefits needs to be updated.

Phase 3 consists of original development of a limited volume of first solutions and field testing. As before, contractors bid for contracts for phase 3. The length of phase 3 is around 1 year. In this phase, test series are developed and tested in real-life environments for performance. Results from phase 3 should enable contractors to offer the innovative solution on the commercial market: e.g. include specification of the final solution and other related technical documentation, and an updated cost/ benefit evaluation.

At the end of phase 3, the PCP is finished. It is now up to the contractors to get their new solutions on the market and to further develop the IPR that was generated in the development project.

By performing the PCP, the contracting authority has tried to ensure that there now exist market solutions corresponding to its challenges. It then needs to decide to commercially procure one or several of the new solutions, using the normal procurement directives.

In the EU, PCP has mainly been used for procuring the development of tangible products, but it can also be used for procuring services.

Appendix B: References and further reading

General

The CHARM-PCP Project (2013), *CHARM-PCP Challenge brief*, <http://www.rijkswaterstaat.nl/english/about-us/doing-business-with-rijkswaterstaat/charm-pcp/index.aspx>

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