



Sustainable Procurement Procurement of Innovation

under Public Procurement Directives 2014

European Haemophilia Consortium Round Table of Stakeholders

Tenders and Procurement of Coagulation Factor Concentrates:
A European Survey of 38 countries

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Internal Market
and Services



Contract award criteria

- Most Economically Advantageous Tender (MEAT)
- Price
- Cost
- Best Price Quality Ratio (BPQR)

Technical specifications & Labels

Innovation

- Pre-Commercial Procurement
- Innovation Partnership



Contract award criteria 1

- Art. 67 CD: "contracting authorities shall base the award of public contracts on the most economically advantageous tender"

- Most Economically Advantageous Tender (MEAT) becomes the sole award criterion to be assessed on the basis of
 - a) price, or
 - b) cost, using a cost-effectiveness approach such as life-cycle costing, or
 - c) the best price-quality ratio (BPQR) to be assessed on the basis of award criteria linked to the subject-matter of the contract.

- i.e., whichever criterion is used, always economic element

Contract award criteria 2 - Price

- Price:
 - change of name ("lowest price only" => "price") - change of substance?
 - Price = amount stipulated directly in contract (i.e. amount paid exclusively for acquisition, not use, ownership etc.)

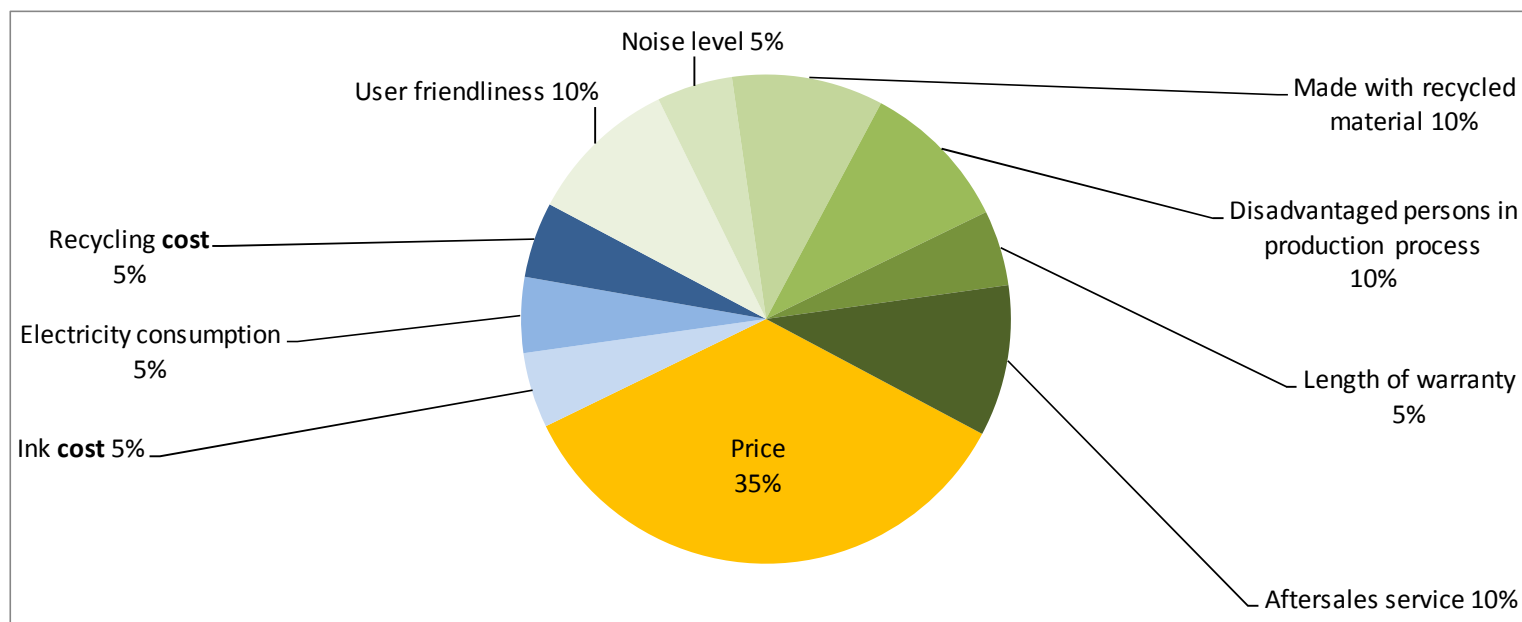
Contract award criteria 3 - cost

- Cost:
 - Price plus other economic costs connected to the purchase and ownership (the normal provisions on weighting apply, cf. Art. 67(5)).
 - e. g. printers:
 - 55% acquisition price,
 - 15% cost of consumables (ink),
 - 25% electricity consumption,
 - 5% cost connected to dismantling and recycling;

Contract award criteria 4 - BPQR

Best Price-Quality Ratio (BPQR):

- Price and/or cost
- plus other criteria, (including qualitative, environmental and/or social aspects, linked to the subject matter of the public contract in question).





Contract award criteria 5 – BPQR/Cost/LCC

- price or cost always included
- fixed price or cost (available budget): competition only on quality possible
- Cost can be set by "cost effectiveness approach, such as life cycle costing in accordance with Article 68 ..."
- Life cycle defined in Art. 2(20):
 - "research and development to be carried out": i.e. only includes the R&D that still needs to be carried out as part of the procurement concerned;
 - "trading and its conditions" = "fair-trade"; based on C-368/10 ("Max Havelaar")



Contract award criteria 6 - BPQR

- List of possible criteria is not exhaustive
 - Quality, technical merits, aesthetic and functional characteristics, accessibility, design for all
 - Organisation, qualification and experience of staff assigned
 - After-sales services and technical assistance
- MS can exclude or restrict the use of price or cost only as sole criterion.

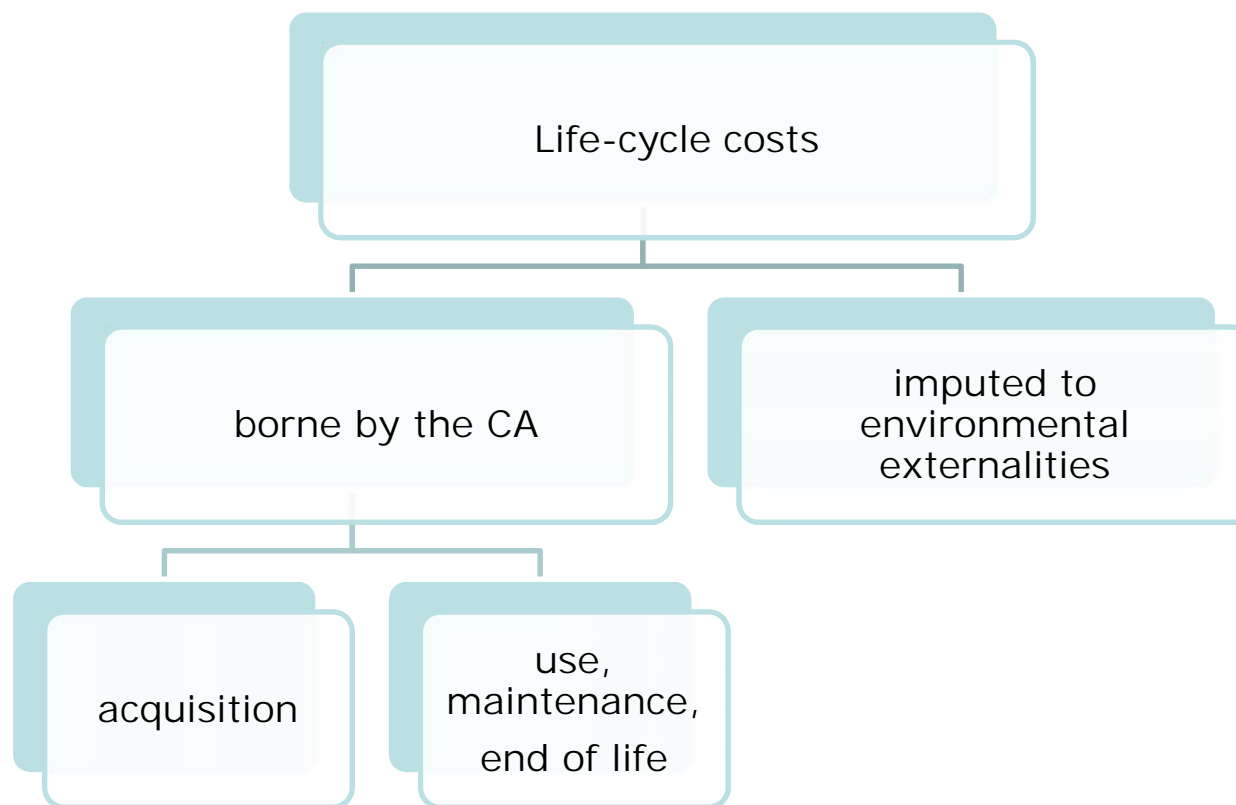


Contract award criteria 7 – Link to subject

Criteria relate to the works/supplies/services to be provided

- in any respect and at any stage of their life cycle, including:
 - the specific process of production, provision or trading of those works, supplies or services; or
 - a specific process for another stage of their life cycle.
- even where such factors do not form part of their material substance.
 - Green: manufacturing of the purchased products did not involve toxic chemicals, or that the purchased services are provided using energy efficient machines
 - Social: social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract

Life-cycle costing 1



Life-cycle costing 2

- If common methodology » obligatory (Clean Vehicles Directive)
 - E.g.: Operational lifetime cost CO2 emission of passenger car (Alfa Romeo 147 – CO2 emission 155g/km):
 $200\ 000\ \text{km} \times 0,155\ \text{kg/km} \times 0,04\ \text{Eur/kg} = 31\ 000,04\ \text{€}$ imputed operational lifetime cost for CO2
- Method to be used must:
 - Be based on objectively verifiable and non-discriminatory criteria (no disadvantage to certain operators);
 - Be accessible to all interested parties;
 - the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.



Technical specifications & labels

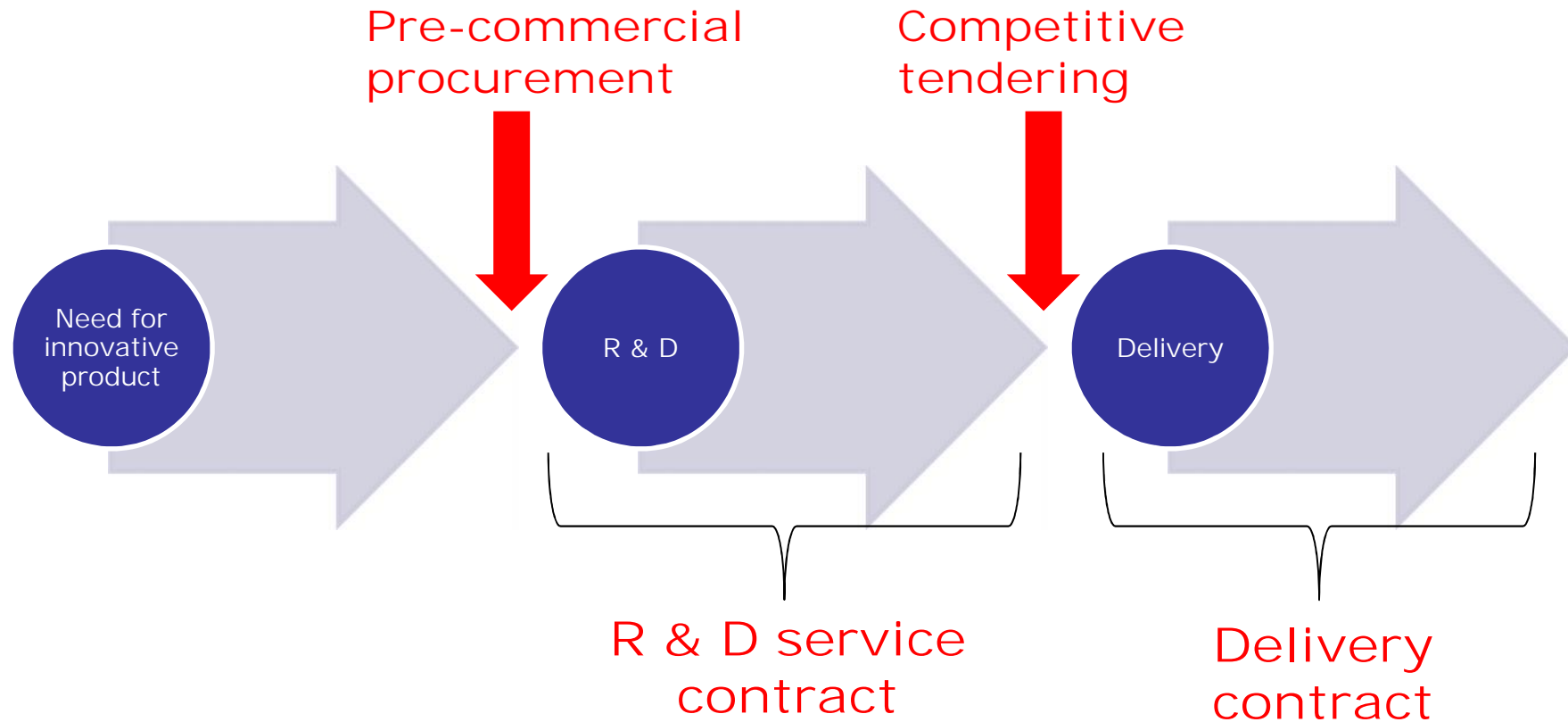
- Technical specifications: Mainly unchanged, but clarified (OK for production process or other stage of life cycle if linked);
- Labels:
 - may be required, if defined in transparent, objective manner and all its requirements are suitable;
 - recognition equivalent labels and other means of proof where no access;
 - where all requirements are not suitable: as now, i.e. underlying requirements.
- Third party certification
 - may be required (tech. spec, award criteria and/or contract perf.);
 - mutual recognition re equivalent certificates;
 - Other means where no access



Innovation

- Key policy objective: Europe 2020 Strategy
- Driving innovation through PP → best value for money + promoting sustainable growth
- Horizon 2020: Commission support for joint pre-commercial procurement
- Choice of instruments left to contracting authorities
 - Separate procedures
 - New combined procedure

Time-line: Separate procedures



Pre-commercial procurement

Award without competition

- Art. 14 (UT: Art. 32):
Excluded R & D
Services

Award with competition

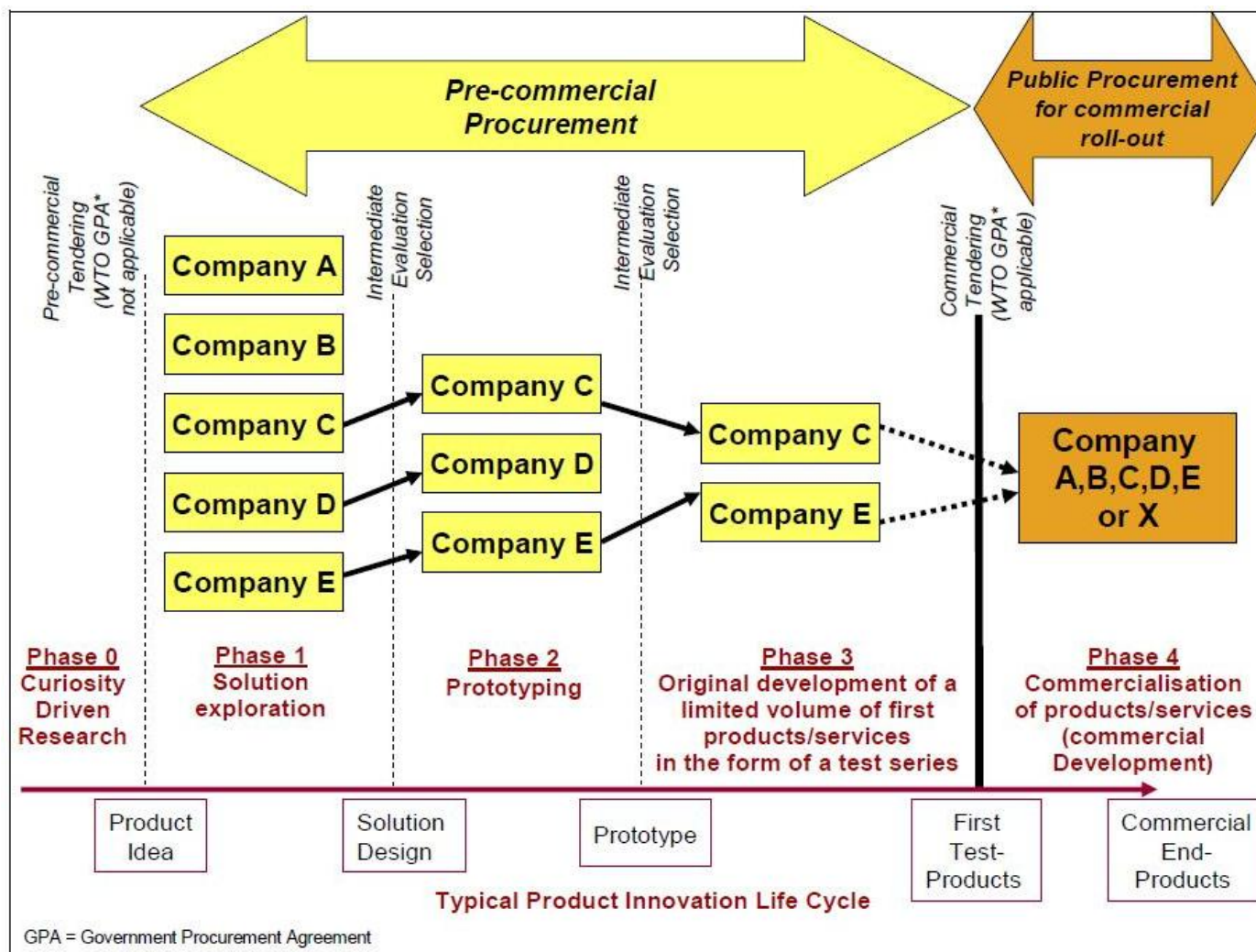
- Open procedure
- Restricted procedure
- Competitive procedure
with negotiations

Features of pre-commercial R & D contract

- Competitive development in phases
 - several companies develop alternative solutions
 - intermediate evaluations → reduction of solutions
- Risk-benefit sharing according to market conditions
 - appropriate risk-sharing creates incentives
 - assignment of IPR ownership rights
 - compensation at market prices
- Strictly limited to R & D phase



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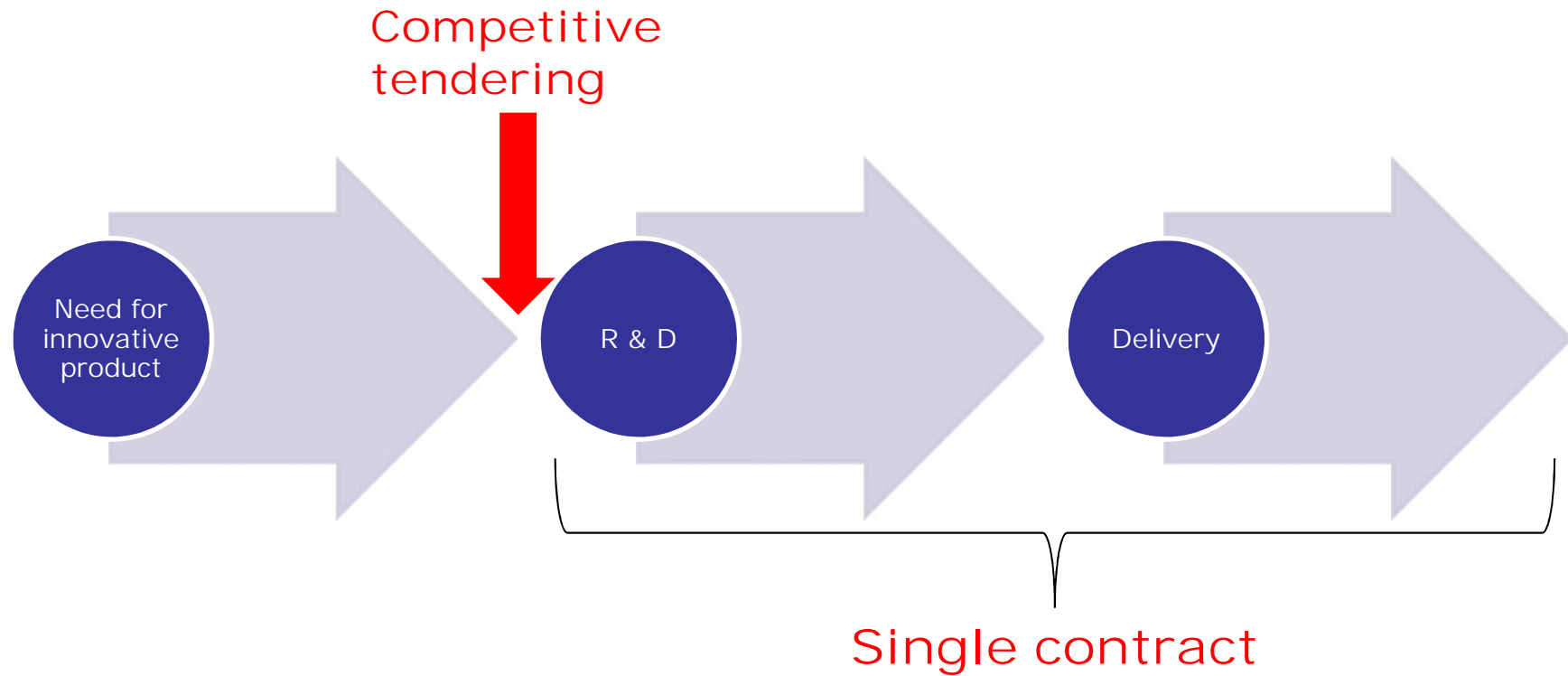
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Follow-up procurement: Acquire end products

- Fully competitive procedure under Directives
 - Open procedure
 - Restricted procedure
 - Competitive procedure with negotiation
- Equal access for participants in R&D phase and third companies

Time-line: Innovation Partnership





Innovation partnership: Award principles

- Call for competition only by contract notice
- Need for innovative product, service or works
 - cannot be satisfied by solutions available on the market
 - nature and scope of required solution
- Key decision: one or more development partners
- Basic procedural rules follow largely competitive procedure with negotiation
- Main selection criterion: capacity in R&D

Innovation partnership: Basic structure

Development of an innovative product, service or works

+

Purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authority and the participants



Innovation partnership: R & D phase

- Structured in successive phases following the sequence of steps in the R&D process
- Intermediate targets
- Option to terminate after each phase
- Remuneration to be paid in appropriate instalments
- In the case of multiple partners:
Competitive development with reduction of number of solutions

Innovation partnership: Delivery phase

- No new competition: Innovation partnership includes already a conditional public supply, works or service contract
- Condition: R&D results meet agreed performance levels and costs
- In the case of multiple partners: Final assessment and identification of the solution that meets best the relevant parameters (rules have to be fixed in the contract)



Innovation partnership: Safeguard clause

The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.



Pre-commercial or innovation partnership?

Key criteria for choice by contracting authorities:

- size of the market
- number of possible R&D service providers/solutions
- degree of innovation
- investment required/risk
- characteristics of the required product/solution
 - unique/specialised or widely marketable
- value of IP rights



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European Commission

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Directorate G: Unit G4, Innovative and e-procurement

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