

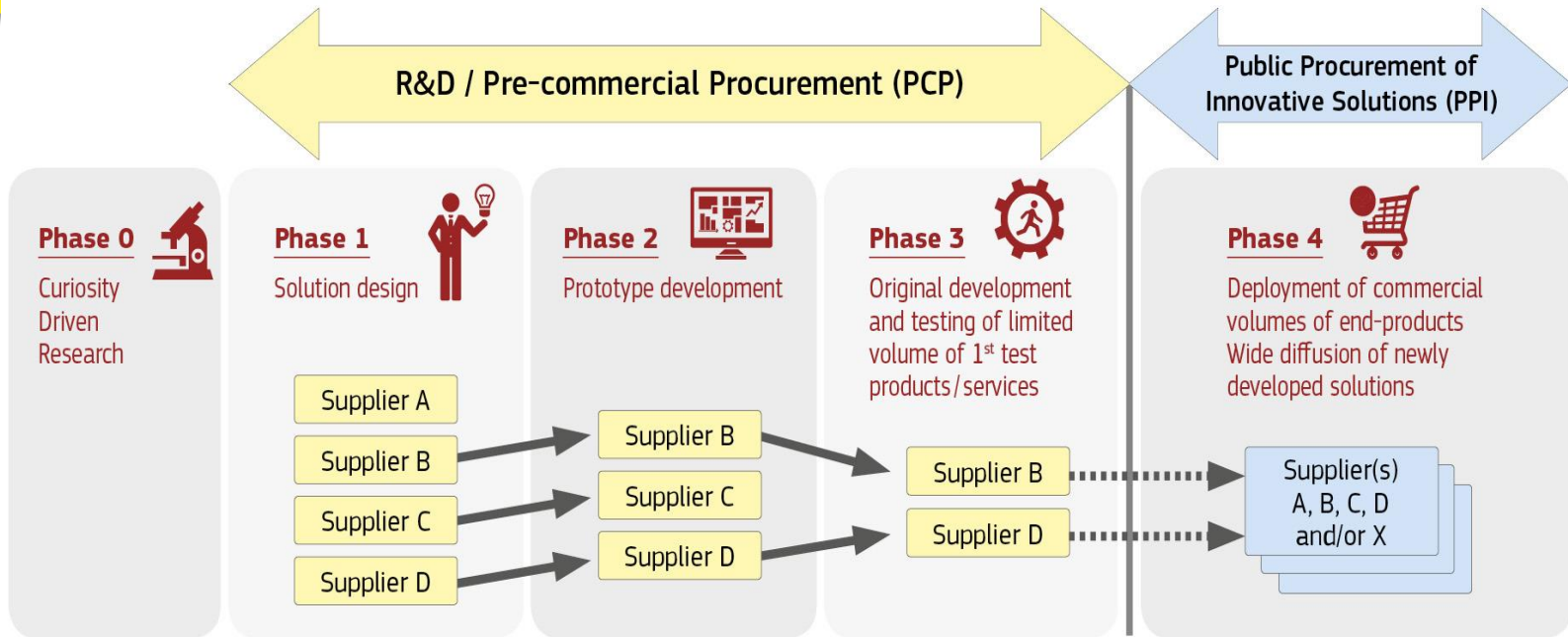


Hands-on guidance

Steps during and after PCP

Prague, 14th of November 2017

Innovation procurement – PCP & PPI



Conducting an Innovation Procurement



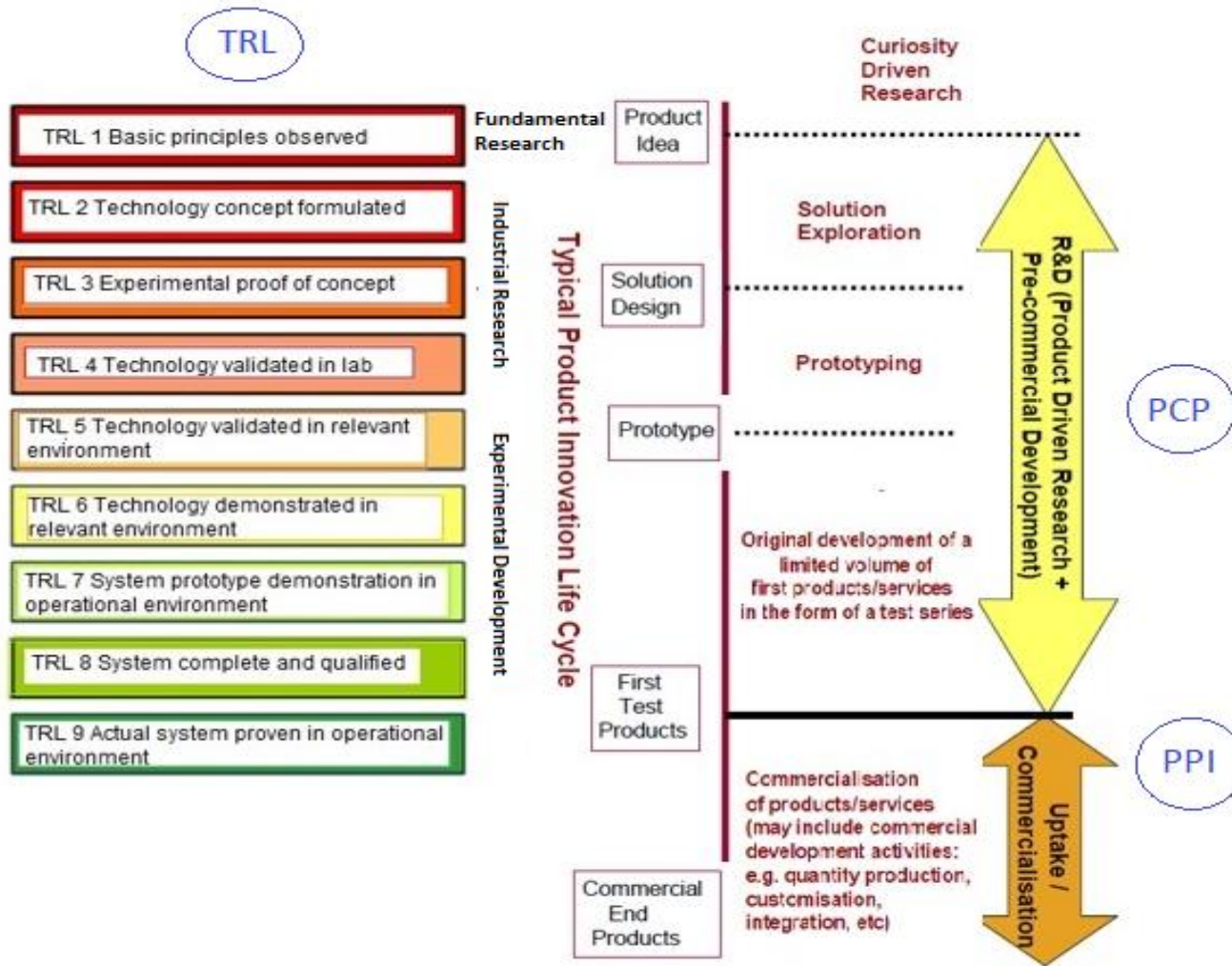
PCP

- PCP Communication; TFEU; State Aid Framework
 - competitive development in phases
 - risk-benefit sharing under market conditions
 - a clear separation between the procurement of the R&D from the deployment of commercial volumes of end-products
- 

PPI

- Procurement Directives; TFEU; State Aid Framework
- One competitive phase
- Could have two stages (e.g., competitive dialogue or negotiated procedure)
- (Large) deployment of commercial volumes of end-products

Technology readiness levels



Understanding PCP



PCP is a public procurement of
Research and Development (**R&D**)
services

Understanding PCP

PCP is characterized by:

- **competitive** development in phases
- **risk-benefit sharing** under market conditions
- **a clear separation** between the procurement of the R&D from the deployment of commercial volumes of end-products

Competitive development in phases

- competitive approach to buy R&D from ***several competing R&D providers*** in parallel to compare and identify the best value for money solutions on the market to address the PCP challenge
- ***R&D split in phases***: solution design, prototyping, original development and validation / testing of the first products
- the ***number of competing R&D providers is reduced*** after each PCP phase subsequent to intermediate evaluations.

Risk-benefit sharing

- ❖ **Risk-benefit sharing under market conditions** refers to the approach in PCP where procurers share with suppliers, at market price, the benefits and risks related to the IPRs resulting from the R&D.

Separation from deployment

- ❖ **Separation from the deployment of commercial volumes of end-products** refers to the complementarity of PCP, which focuses on the R&D phase before commercialization, and PPI, which does not focus on R&D but on the commercialization/diffusion of solutions.

When to use PCP

- *R&D is needed to identify an innovative solution* to satisfy public procurers' needs.
- *No solution exist yet on the market* to meet public procurers' needs and, based on a search conducted by the procurers, it does not seem that such a solution will be available on a short term notice.

Legal basis

- TFEU
- 2007 PCP Communication
- 2007 Staff Working Document
- 2014 Framework for state aid for R&D&I

PCP falls outside the public procurement directives:

-> art. 14 PSD and art. 32 UD:

“this Directive shall only apply to public service contracts for research and development services [...] provided that both of the following conditions are fulfilled: (i) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and (ii) the service provided is wholly remunerated by the contracting authority”.

Conducting a PCP




a) Drafting the PCP tender documentation

- ❖ PCP Contract Notice – PIN (published in TED)
- ❖ PCP Request for tenders (ITT / Tender Regulation)
- ❖ PCP Framework Agreement
- ❖ PCP Phase 1 Specific Contract

Conducting a PCP



b) Conducting the procurement procedure

- ❖ Publication of the contract notice
 - ❖ Selecting R&D suppliers and awarding the FA & PC
 - ❖ The phased approach (from one phase to the other)
- 

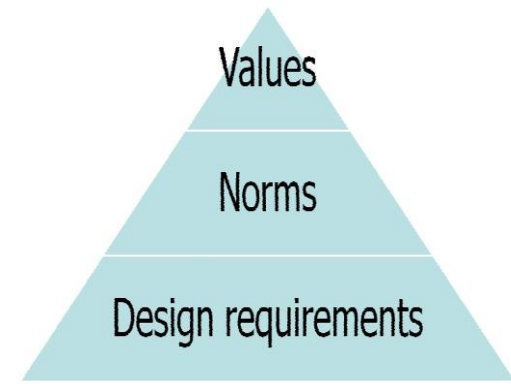
Drafting the PCP tender docs

- ❖ **Description of the challenge and of the context of the procurement**
 - Technical specifications described in terms of outcome-based requirements'/ functional specifications
- ❖ **Description of the procurement process**
 - ✓ Number of phases & resource allocation
 - ✓ Moving from one phase to the other
 - ✓ Distribution of rights and obligations regarding IPR

Example of specifications

❖ Value sensitive design

- Design of technology that accounts for human values in a principled and comprehensive manner
- Designs are developed using a tripartite investigation consisting of three phases: conceptual, empirical and technological



Drafting the PCP tender docs

- ❖ **Description of the legal, economic, financial and technical information** (e.g., monetary k value, payment info, language of proposals etc.)
- ❖ **The terms of presentation of the tenderers' offers and tendering requirements**
 - ✓ Exclusion, selection and award criteria
 - ✓ Allocation of the weightings based on the importance of the criteria

Drafting the PCP tender docs

- ❖ **Exclusion criteria (concerning the bidders)**
 - Could be based on the provisions in the EU procurement directives
- ❖ **Selection criteria (concerning the bidders)**
 - Suitability to perform the professional activity
 - Economic and financial standing of the bidder
 - Technical and professional ability

Helps procurers assess whether the bidders:

- ✓ experience on the type of contract tendered (R&D)
- ✓ qualified personnel to perform the contract
- ✓ access to required technical equipment

Drafting the PCP tender docs

- ❖ **Award criteria (concerning the bid) – based on MEAT**
 - in addition to **price**, the award criteria could include, for example, quality, implementation and impact :
 - ❖ **implementation** could refer to the quality and effectiveness / appropriateness of the proposed R&D work plan and resource allocation;
 - ❖ **impact** could refer to the added value for society/economy, the soundness of the commercialization plan etc.



Drafting the PCP tender docs

❖ Award criteria (concerning the bid) – based on MEAT

➤ **quality** could refer to:

- the ability to address the challenge raised in the tender;
- the novelty/innovativeness of the proposed solution approach (progress beyond-state-of-the-art);
- the technological soundness of the solution concept


PCP Framework agreement

- ✓ Concluded with each successful bidder whose offer has been accepted against the selection and award criteria
- ✓ covers the terms and conditions that remain valid during all PCP phases and will not be renegotiated (Specific phase contracts will be issued for each phase of the PCP)

PCP Framework agreement

- ✓ establishes the rights and obligations of the parties thereto (the public procurer and the winning bidders) in relation to the R&D services procured via the PCP
- ✓ shall contain information about the procurer(s), applicable law, IPR provisions, the future procedure for implementing the different phases (including the format of the intermediate evaluations after the solution design and prototype development phases), etc.

Conducting the PCP procedure

- 
- ❖ Publication of the contract notice
 - ❖ Selection of R&D providers and awarding the framework agreement and Phase 1 contracts
 - ❖ Conducting the phased approach
 - ❖ Monitoring implementation of the FA & PC

Conducting a PCP

Key issues to consider

- Allocate resources
- Open-like procedure
- TFEU principles and state aid
- Encourage competition and innovation
- Specify the phased approach
- Evaluation method

Conducting a PCP

Key issues to consider

- Explain criteria
- IPR and risk/benefit sharing
- Involve users
- Monitor performance
- Test sites
- Manage after-the-contract issues

Conducting a PCP

Key issues to consider

<https://www.youtube.com/watch?v=axYBM9K2JAI>



After the PCP – link to PPI


- ❖ Completion of the Phase 3 R&D services marks the end of the PCP procedure.
- ❖ Commercialization of solutions developed during the PCP by companies/consortia follows after the end of Phase 3 of the PCP and is strictly outside the scope of the PCP.

After the PCP – link to PPI

- ❖ The public procurer may decide after the PCP procedure to start a PPI procedure to purchase a commercial solution for the same challenge that was addressed through the PCP.
- ❖ PCP is also clearly separated from any potential subsequent purchases of commercial volumes of end-products by the procurer.

After the PCP – Link to PPI

- ❖ The PPI must be conducted in full compliance with the applicable public procurement legal framework (EU and/or WTO GPA if applicable), to preserve international competition .
- ❖ A separate PPI allows procurers to receive proposals from companies that have developed products through other means than a PCP (e.g., through SME funding instruments, other R&D grants, own company R&D resources).
- ❖ The separate PPI prevent issues of foreclosing of competition and crowding out of private R&D investments.



Thank you for your attention!

Stephan Corvers

s.corvers@corvers.com

Ramona Apostol

r.apostol@corvers.com

Ana Lucia Jaramillo

a.jaramillo@corvers.com

Corvers Procurement Services b.v.