

Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe

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PURPOSE: to propose the use of pre-commercial procurement with a view to driving innovation to ensure sustainable high quality public services in Europe.

BACKGROUND: the [Communication](#) on a "broad based innovation strategy for the EU" highlighted the importance of public procurement in reinforcing the innovation capabilities of the Union whilst improving the quality and efficiency of public services. In its conclusions on the above Communication, Council invited the Commission to provide guidance on how EU rules on public procurement can be used to stimulate innovation. The European Parliament's [resolution](#) of June 2007 on the transposition and implementation of public procurement legislation encouraged the wider use of pre-commercial procurement in the EU. The recently published guide on the uptake of commercially available innovative products, works and services in the public sector identifies ten elements of good practice to promote the potential of public procurement for stimulating innovation.

CONTENT: the European Commission has prepared this Communication in order to address the concept of "pre-commercial procurement", which deals specifically with the R&D phase prior to the commercialisation of a product. The aim of the Communication is to draw Member States' attention to existing, though underutilised opportunities, in the pre-commercial procurement sector. The Commission is interested in exploiting the extent to which pre-commercial procurement can contribute to R&D innovation within the EU. Given that there is, as yet, little experience in the EU on the matter of pre-commercial procurement, this report specifically seeks to assess to what extent pre-commercial procurement can contribute to R&D innovation in the EU and, hence, bring tangible benefits to both society and the economy.

Pre-commercial procurement relates to public services in, for example, health care, climate change, improved energy efficiency, education and security threats. Public services require new equipment in order to perform cutting-edge medical research, reducing energy consumption in public buildings as well as protecting their citizens from security threats without having to intrude upon their privacy. Some of the required improvements are so technologically demanding that either no commercially stable solution exists as yet or existing solutions exhibit shortcomings which require new R&D solutions.

Examples of life-changing innovative solutions that emerged from R&D procurements include: the Internet Protocol technology, the Global Positioning System and key innovations in semiconductor technology. In the US R&D public procurement has enabled the public authorities to create new markets for biotechnology and nanotechnology applications. The US public sector is spending \$ 50 billion per year on R&D procurement – an amount which is 20 times higher than in Europe and an amount that represents approximately half of the overall R&D investment gap between the US and Europe.

The Communication gives guidance on how EU rules can be used to stimulate public procurement innovation in Europe within the R&D sector. It considers, for example, how new provisions can be drafted that promote a competitive R&D procurement policy but that exclude State aid; how the principle of "exclusive development" on IPRs can best benefit pre-commercial procurement; and how procuring R&D services, involving risk-sharing, can best be utilised.

Take, for example, the case of exclusive development. Exclusive development has been designed to allow the public purchaser to reserve all results and benefits from the development of a product for their exclusive use. Thus, companies that have developed a product of service for a public body are unable to reuse their finding for other potential customers. Exclusive development can hamper innovation given that exclusive assignments take away an incentive for companies to invest in further commercialisation. This can lead to: market fragmentation; financial barriers to procuring competing developments and missed opportunities for innovative solution. The advantage of adopting a “pre-commercial procurement” policy, on the other hand, is that it allows for an R&D procurement approach that involves risk-benefits sharing, without necessarily being defined as State aid. Further it allows for the cost-effective development of innovative solutions.

Pre-commercial procurement differs from, and complements other innovation instruments, such as grants, tax incentives, access to finance and joint technology initiatives. It could shorten time to market and encourage market acceptance of new technologies when seen as part of a coordinated policy framework including standardisation, regulation and procurement of other innovative goods and services.

Based on the findings of this report, the Commission pledges that in the **second half of 2008** it will propose a set of actions relating to pre-commercial procurement.