Basic information

2008/2139(INI) INI - Own-initiative procedure	Procedure completed
Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe **Subject** 2.10.02 Public procurement 2.40.02 Public services, of general interest, universal service 3.50.04 Innovation 4.60 Consumers' protection in general	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	HARBOUR Malcolm (PPE-DE)	06/05/2008

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	PODIMATA Anni (PSE)	03/06/2008
JURI Legal Affairs	SAKALAS Aloyzas (PSE)	25/06/2008

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2871	2008-05-29

European Commission

Commission DG	Commissioner
Research and Innovation	POTOČNIK Janez

Key events

Date	Event	Reference	Summary
14/12/2007	Non-legislative basic document published	COM(2007)0799	Summary
22/05/2008	Committee referral announced in Parliament		
29/05/2008	Resolution/conclusions adopted by Council		
22/01/2009	Vote in committee		Summary

27/01/2009	Committee report tabled for plenary	A6-0018/2009	
02/02/2009	Debate in Parliament		
03/02/2009	Decision by Parliament	T6-0037/2009	Summary
03/02/2009	Results of vote in Parliament		
03/02/2009	End of procedure in Parliament		

Technical information	
Procedure reference	2008/2139(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55-p4 Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/6/62935

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE414.361	17/10/2008	
Committee opinion	ITRE	PE409.653	05/11/2008	
Committee opinion	JURI	PE412.288	05/11/2008	
Amendments tabled in committee		PE416.382	04/12/2008	
Committee report tabled for plenary, single reading		A6-0018/2009	27/01/2009	
Text adopted by Parliament, single reading		T6-0037/2009	03/02/2009	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2007)0799	14/12/2007	Summary
Document attached to the procedure	SEC(2007)1668	14/12/2007	
Commission response to text adopted in plenary	SP(2009)1843	18/06/2009	

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

2008/2139(INI) - 14/12/2007 - Non-legislative basic document

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 guideon 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 the 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 shortcoming 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.

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

2008/2139(INI) - 03/02/2009 - Text adopted by Parliament, single reading

The European Parliament adopted by 587 votes to 12, with 6 abstentions, a resolution welcoming the Commission communication on pre-commercial procurement and promoting the establishment of EU instruments and measures to encourage this practice.

The resolution recalls that the Lisbon Strategy calls for Member States to raise research and development investment to 3% of GDP, a key commitment to drive innovation and the knowledge economy. It therefore supports the proposed risk/benefit sharing pre-commercial procurement model as one of the drivers of innovation.

An under-exploited driver: MEPs note the attention already given to pre-commercial procurement, in particular in the USA, China and Japan, who are actively exploiting the potential through a range of public policy instruments. They consider that, in the EU, pre-commercial procurement constitutes an under-exploited driver of innovation-led growth, which has significant potential to achieve high-quality and readily accessible public services, for example healthcare and transport, as well as to address the social challenges of climate change, sustainable energy and an ageing population.

Using the existing legal framework: the resolution notes that pre-commercial procurement can be deployed within the existing legal framework of Directives 2004/17/EC and 2004/18/EC, which exempt research and development services from their scope unless the services procured are fully paid for by, and the benefits accrue solely to, the contracting authority. In this context, MEPs urge Member States to screen national legislation to ensure that public authorities are not limited in pre-commercial procurement through inexistent, incorrect, or unnecessarily complex transposition of the relevant exemptions and unnecessarily elaborate national tendering requirements and procurement models.

Engaging all stakeholders: MEPs note that strengthening pre-commercial procurement remains one way among many for Member States to raise their game in innovation and research. They call therefore on Member States to promote innovation by engaging all stakeholders, including universities, research institutes and other bodies involved in the promotion of economic development, so as to better engage public authorities with innovative enterprise. MEPs stress that this engagement should be included in a consistent strategy for research, innovation and development.

Improving information and training: as far as local and regional authorities are concerned, MEPs note that there is still not enough information about the continuing obstacles preventing them from implementing pre-commercial procurement. They therefore urge the Commission and the Member States to provide local and regional contracting authorities with training guidelines and tools showing how pre-commercial procurement might be used in research and development.

MEPs call on the competent Commission Directorates-General to cooperate with each other in producing a **comprehensive, easy-to-understand but legally watertight handbook** in all the official languages with practical examples of risk-benefit sharing according to market conditions. This handbook should be designed for use by small and medium-sized enterprises (SMEs) and contracting authorities.

Financial incentives: in order to encourage public authorities to tap into research and development markets and suppliers to become involved in government projects, MEPs propose that, within the scope of Community programs to stimulate innovation, financial incentives should encourage public authorities across the EU to jointly undertake pre-commercial procurement of innovative technology in lead markets and other areas of common European interest.

Pilot project: the Parliament stresses the need for a European pilot project in the context of pre-commercial procurement in order to show by example an implementation approach that ensures maximum legal certainty and protection for businesses, **in particular for SMEs**, which, by definition, are the weaker parties compared with contracting authorities and the large undertakings generally involved in public procurement. With the aim of encouraging competition, MEPs recommend to the Commission and the Member States that the use of electronic procurement systems and dynamic procedures be promoted in order to facilitate the process of pre-commercial procurement.