



76th Plenary Session

8-9 October 2008

OPINION

of the

Committee of the Regions

**PRE-COMMERCIAL PROCUREMENT:
DRIVING INNOVATION TO ENSURE SUSTAINABLE HIGH
QUALITY PUBLIC SERVICES IN EUROPE**

THE COMMITTEE OF THE REGIONS

- welcomes Commission communication as a satisfactory first introduction to the basic concept of pre-commercial procurement and the way in which it can be organised, although there are certain oversights with regard to the actual implementation of the procedure proposed;
- emphasises that where local and regional authorities choose pre-commercial procurement in order to promote innovation as a way of addressing problems they are seeking to resolve through the effects of this instrument, they will have to face various challenges that are not adequately analysed in the communication;
- thinks that the European Commission should provide a clear and detailed guide, as well as training opportunities, to contracting local and regional authorities on how to use pre-commercial procurement of R&D services so that European law is not infringed;
- also considers the guidance and training that must be provided to be all the more urgent given that pre-commercial procurement raises serious questions of intellectual and industrial property rights, a legal issue to which even the legal services of central governments have not yet paid particular attention;

Rapporteur: Dimitrios Tsigkounis (EL/EPP), Mayor of Leonidio (Arcadia)

Reference document

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe
COM(2007) 799 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

General comments on the role of local and regional authorities

1. calls for consideration to be given in the forthcoming debate to the role played by local and regional authorities in addressing major social problems, e.g. ensuring high-quality affordable healthcare geared to an ageing population, responding to climate change, improving energy efficiency, ensuring higher quality education and better access to it, and more effective management of security threats;
2. since new, innovative solutions are likely to be called for in addressing the problems, since solutions either are not commercially viable owing to technological requirements or, where they exist, do not yet satisfy requirements – meaning that new R&D is imperative – proposes that local and regional authorities be actively involved in developing the new framework for pre-commercial public procurement and that their opportunities for effectively managing and implementing this new type of procurement be strengthened;
3. maintains that including R&D in public procurement with a view to promoting innovative solutions allows local and regional authorities to make a key contribution to the medium- and long-term profitability and effectiveness of the services they provide, and to promoting the competitiveness of European industry through innovation;
4. considers that since a significant proportion of such spending falls to local and regional authorities, those authorities must be fully prepared to play a major role in promoting R&D across Europe;
5. calls on the European Commission to take into account the political priorities of the Committee for the period 2008-2010, which include: implementing the Lisbon strategy for growth and employment; addressing the challenges of climate change; diversification and sustainable use of energy resources; improving citizens' quality of life, which includes cross-border cooperation on civil protection and access to better healthcare services; promotion by local and regional authorities of solidarity, and intercultural and interfaith dialogue, and promotion of all forms of local culture and traditions; taking part in dialogue on a common migration and asylum policy, especially in terms of exchanging best integration practice; prioritising the single market and strategically enhancing the quality of public services. These are matters relevant to local and regional authorities which are likely to be included as particularly promising within the sphere of public procurement in order to support R&D in information and communication technologies, these being the priority choice for pre-commercial procurement;

6. welcomes Commission communication COM(2007) 799 final as a satisfactory first introduction to the basic concept of pre-commercial procurement and the way in which it can be organised, although there are certain oversights with regard to the actual implementation of the procedure proposed;
7. emphasises that where local and regional authorities choose pre-commercial procurement in order to promote innovation as a way of addressing problems they are seeking to resolve through the effects of this instrument, they will have to face various challenges that are not adequately analysed in Commission communication COM(2007) 799 final;
8. believes that existing procurement legislation is already quite complicated, and that many local and regional authorities have particular problems implementing it correctly, so that they would be very hesitant to add another complicated mechanism, like this European Commission initiative, to their administrative system and procedures; therefore urges that the public procurement legislation not be applied to pre-commercial procurement;
9. proposes that the Commission look into the possibility of whether the procurement directive could be amended so that innovations might, for example, be generated within the framework of partnership projects. The rigid procurement process is a major obstacle to new innovations. The requirement of fair and non-discriminatory treatment derived from the Treaty establishing the European Community should not be interpreted in such a way that, in practice, precludes companies and procuring entities from benefiting from companies' R&D efforts;
10. believes that designing and drawing up very technical versions of public tenders to promote innovation calls for particular knowledge and skills which local and regional authorities do not generally have, considering that even in many national central governments such knowledge and skills are found in only a small number of departments;
11. thinks that the various selection stages of the pre-commercial procurement process for R&D services similarly require a level of technical knowledge and understanding of the issues concerned that cannot generally be provided by local and regional authorities;
12. notes that even if pre-commercial procurement of R&D services ultimately proves successful, it will still be difficult to mobilise and activate citizens politically at local and regional level. One factor that makes decision-making by local and regional authorities particularly problematic is that the public cost of organising pre-commercial procurement of R&D services is immediate and affects the ongoing management period, whereas the benefits are usually seen in the medium term and it may be some time before the general public becomes aware of them, usually longer than the time between two consecutive elections at local and regional level;

13. is concerned that should the advisability of publishing a pre-commercial procurement tender for R&D services have been politically controversial, it is likely that following an election that produces a new local and regional authority consisting of parties that have expressed such objections, they will raise doubts about whether the procurement procedure will continue for a product that is already on the market, ultimately obscuring the real benefits that were sought by the contracting authority with the original pre-commercial procurement tender for R&D services;
14. believes that a major political problem would arise for local and regional authorities if the successful bidders in a pre-commercial procurement procedure for R&D services were not based in the area where the contracting local or regional authority had its seat, or if they were even based in another Member State;
15. suspects that if a pre-commercialisation tender for R&D services is unsuccessful, an eventuality which cannot be ruled out, especially in certain areas of R&D where the success rate is still quite low, local and regional authorities will find it very difficult to justify their action and convince the general public that even with this outcome it was better to issue the tender than to invest in existing, commercially proven technology;
16. in view of the above-mentioned problems which local and regional authorities may face in relation to pre-commercial procurement of R&D services, proposes that the European Commission and the Member States should design and implement a series of measures that it considers essential to ensure that pre-commercial procurement of R&D fulfils its purpose at local and regional level, which will have a major impact on the wider R&D performance of the European Union compared with its competitors in the global market;
17. notes that it should be borne in mind that if the introduction of pre-commercial procurement procedures for R&D services at local and regional level is not smooth and efficient, which seems likely, then R&D may be deprived of funding at European Union level;
18. thinks that the European Commission should provide a clear and detailed guide, as well as training opportunities, to contracting local and regional authorities on how to use pre-commercial procurement of R&D services so that European law is not infringed;
19. also considers the guidance and training that must be provided to be all the more urgent given that pre-commercial procurement raises serious questions of intellectual and industrial property rights, a legal issue to which even the legal services of central governments have not yet paid particular attention;
20. urges the Member States and the European Commission to develop support structures which local and regional authorities can use whenever they decide to practise pre-commercial procurement of R&D services, to obtain clear and practical information and real assistance,

especially regarding the most appropriate distribution of risks and benefits between the contracting authority and the successful candidates;

21. given that pre-commercial procurement of R&D services entails clearly identifiable short-term risks at the local and regional level of the contracting authority, whereas the long-term benefits are difficult to identify and often vague, which causes understandable concern for local and regional authorities, emphasises that the Member States and the European Commission must provide clear support at various levels so as to ensure that all those concerned understand that occasional failures are a necessary part of such a procedure which involves seeking innovative solutions to chronic or more recent problems faced by European societies;
22. notes that because pre-commercial procurement tenders for R&D services are open to candidates from all the Member States, they may unavoidably lead to at least partial transfer of resources for R&D funding from one region of a Member State to that of another Member State. At European Union level obviously this is not a problem, but at local or regional level it is a factor that may significantly hamper the funding of pre-commercial procurement of R&D services;
23. urges the European Commission to demonstrate that pre-commercial procurement can be useful for the regional authority managing the tender procedure, even where candidates are not based in the region;
24. urges the European Commission to encourage and strengthen large groupings of local and regional authorities which agree to conduct a pre-commercial procurement procedure jointly so as to reduce the risks that would be faced by a single local or regional authority organising the same procedure in a Member State;
25. recognises that creating intra-European networks and establishing regular contacts between local and regional authorities with similar needs in the different Member States represent the only binding elements in inter-governmental/interregional cooperation and coordination relating to pre-commercial procurement of R&D services;
26. supports funding of measures to develop and consolidate pre-commercial procurement of R&D services at local and regional level by re-allocating European Union budget resources that may be provided by the revision of the Common Agricultural Policy;
27. believes that the single European R&D area (European Research Area, or ERA) could potentially be transformed and strengthened if pre-commercial procurement of R&D services was incorporated into the existing public procurement process;
28. believes that the strategy of promoting pre-commercial procurement of R&D services would be substantially facilitated by utilising knowledge-intensive and technologically innovative

local and regional universities, research centres and above all small and medium-sized enterprises (SMEs) as part of a new framework of cooperation with local and regional authorities in the Member State where they are located and networking through them with local and regional authorities in other Member States and counterpart universities, research centres and small and medium-sized companies;

29. emphasises that the creation in the various local and regional authorities of information/database points on the local and regional problems that need to be urgently addressed with innovative solutions, and providing information on local R&D capacity, can bring closer together regions facing the same problems, as well as research centres and companies with complementary or supplementary potential for finding innovative solutions through cooperation;
30. proposes that funding through the European Regional Development Fund, the Cohesion Fund and the European Social Fund should be targeted at measures relating to R&D via pre-commercial procurement in areas covered by the funds.

Brussels, 8 October 2008.

The President
of the Committee of the Regions

Luc Van den Brande

The Secretary-General
of the Committee of the Regions

Gerhard Stahl

II. PROCEDURE

Title	Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe
Reference(s)	COM(2007) 799 final
Legal basis	ECT Article 265(1)
Procedural basis	-
Date of Commission referral	14 December 2007
President's decision	23 January 2008
Commission responsible	Commission for Economic and Social Policy (ECOS)
Rapporteur	Dimitrios Tsigkounis (EL/EPP)
Analysis	8 May 2008
Discussed in commission	3 July 2008
Date adopted by commission	3 July 2008
Result of the vote in commission	Adopted by majority
Date adopted in plenary	8 October 2008
Previous Committee opinions	