European Commission

Sustainable Procurement
Procurement of Innovation
Public Procurement Directives 2014

2nd European Engineers Day

Mobile Engineers Build an Innovative Europe
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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.*
  - ➢ <u>*i.e.*, whichever criterion is used, always economic element</u>

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.)

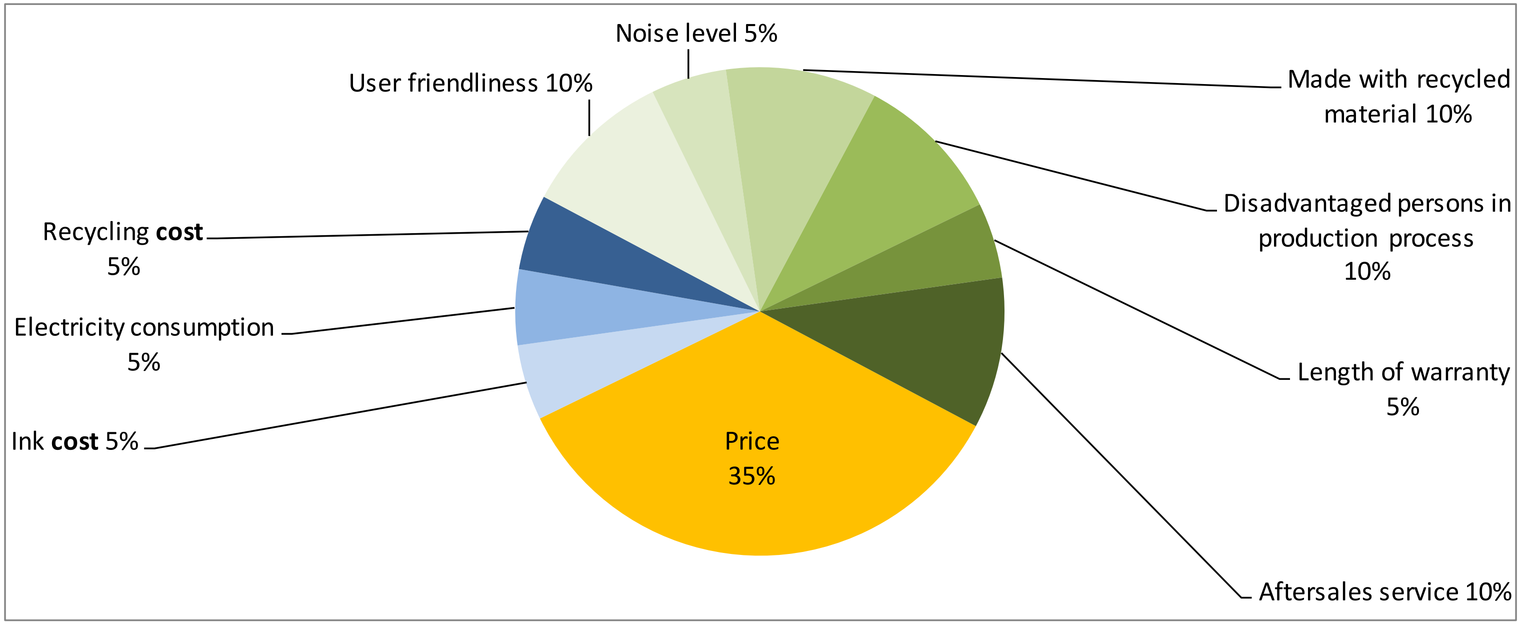
Contract award criteria 3 - cost

- **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

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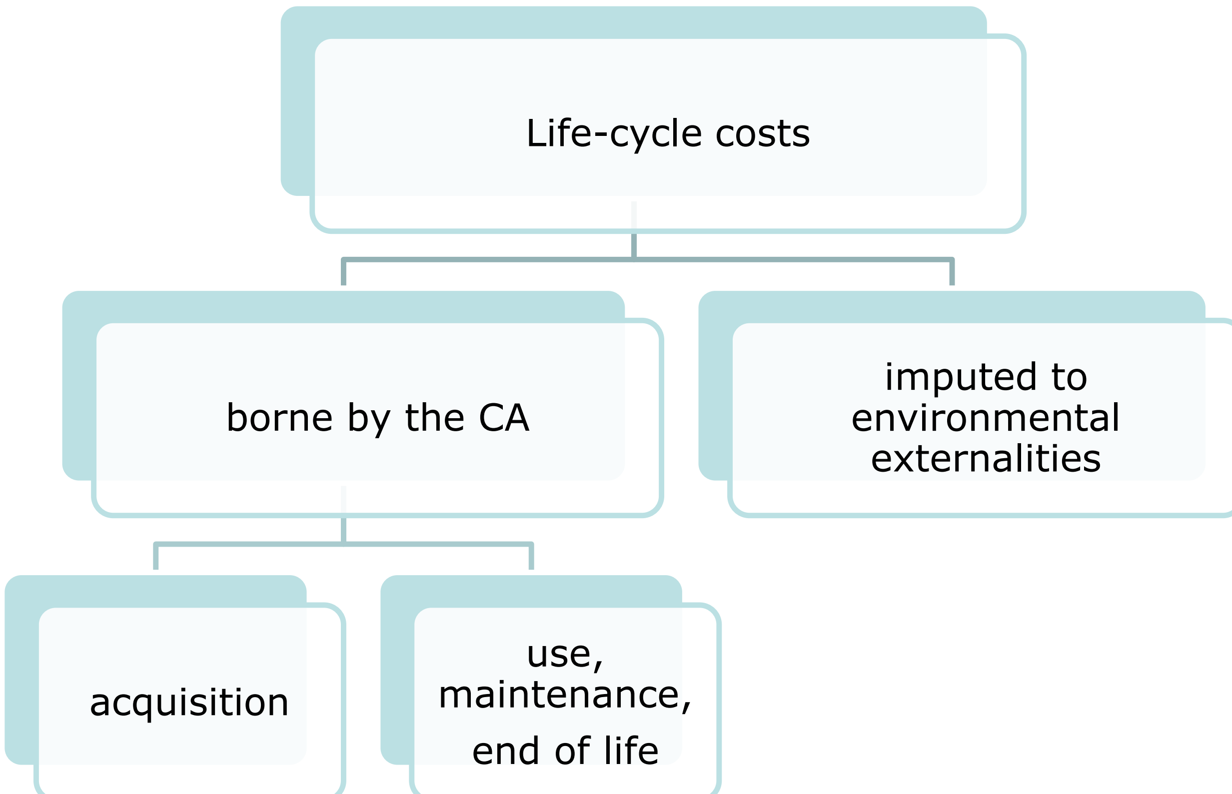
Life-cycle costing 1



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 km x 0,155 kg/km x 0,04 Eur/kg = ***31 000,04 €*** *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.

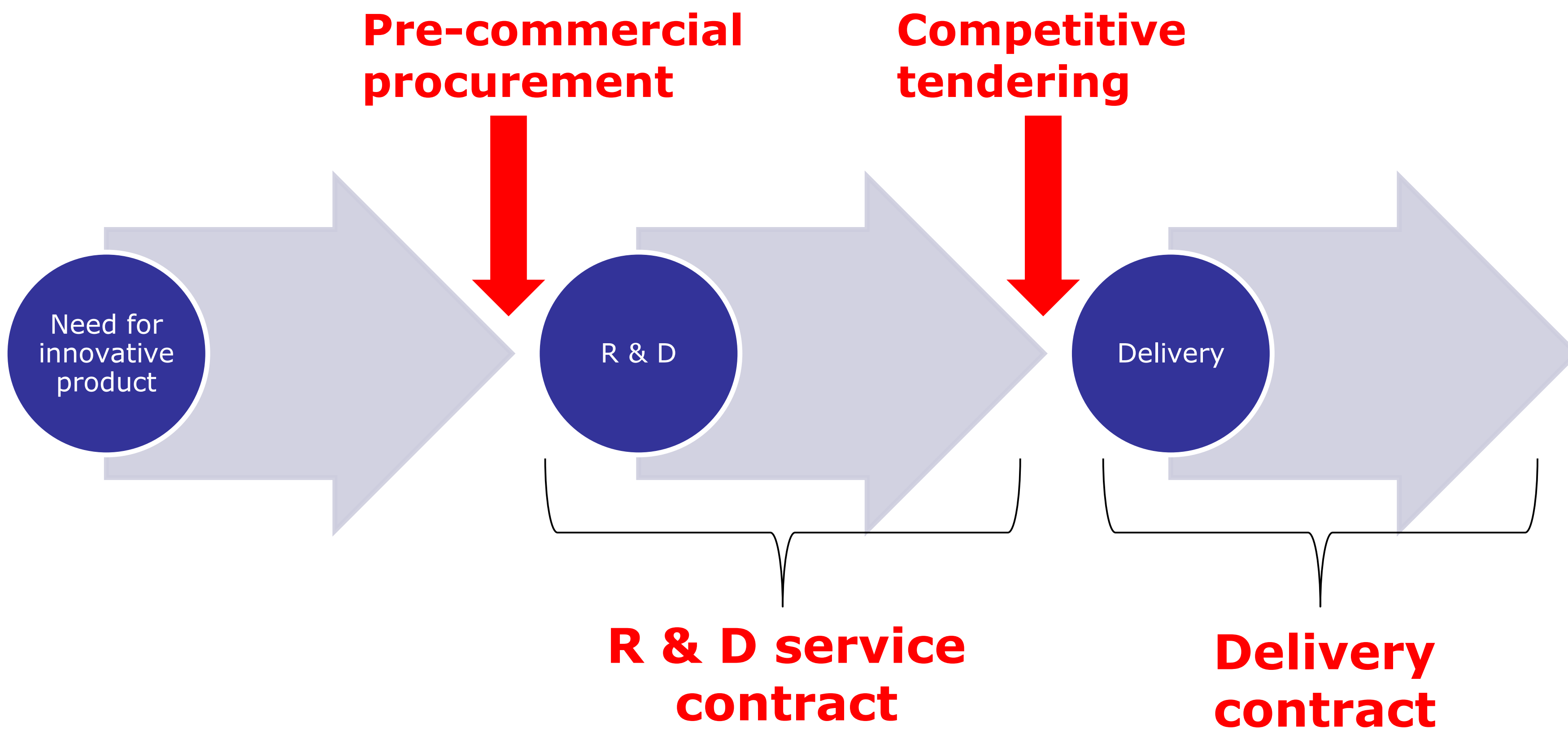
Technical specifications & labels

- **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

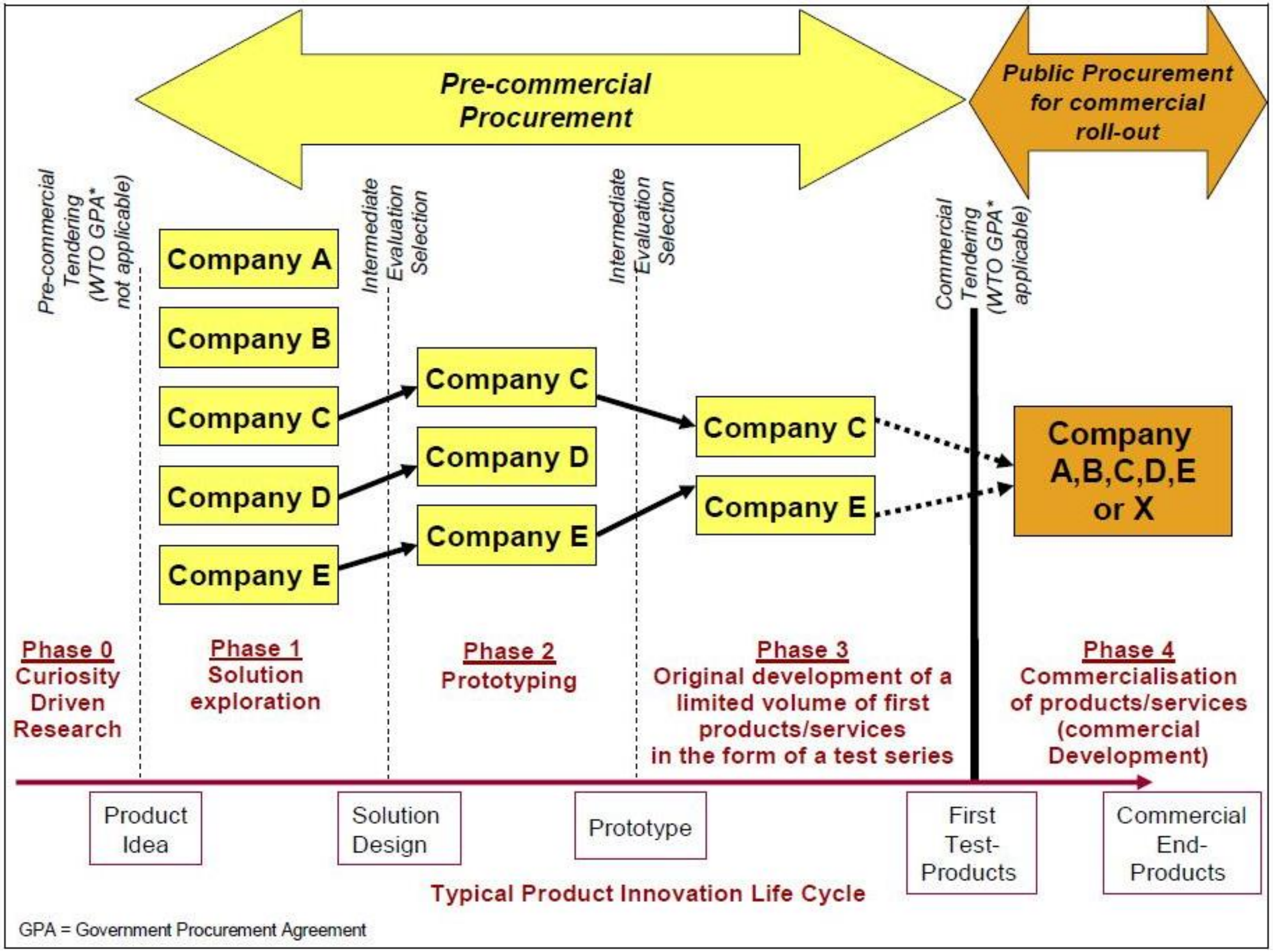
- *Art. 14 (UT: Art. 32): Excluded R & D Services*

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*



Pre-commercial Procurement
Public Procurement for commercial roll-out
Pre-commercial Tendering (WTO GPA* not applicable)
Intermediate Evaluation Selection
Intermediate Evaluation Selection
Commercial Tendering (WTO GPA* applicable)
Company A
Company B
Company C
Company D
Company E
Company C
Company D
Company E
Company C
Company E
Company A,B,C,D,E or X
Phase 0 Curiosity Driven Research
Phase 1 Solution exploration
Phase 2 Prototyping
Phase 3 Original development of a limited volume of first products/services in the form of a test series
Phase 4 Commercialisation of products/services (commercial Development)
Product Idea
Solution Design
Prototype
First Test-Products
Commercial End-Products
Typical Product Innovation Life Cycle
GPA = Government Procurement Agreement

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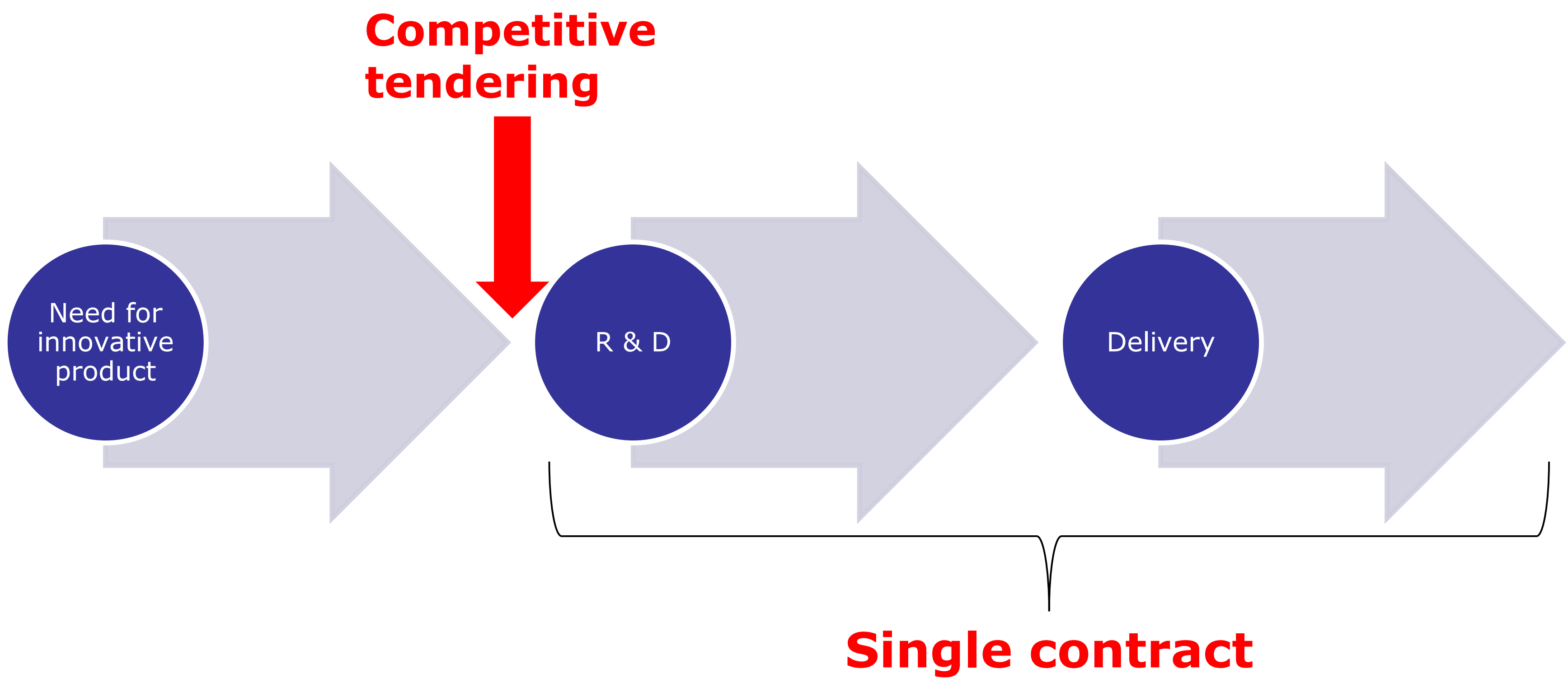
Follow-up procurement: Acquire end products

- *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

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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

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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.

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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*

Contact
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