

Title

Why Pre-Commercial Procurement is not Innovation Procurement

Title

Charles Edquist, CIRCLE (Centre for Innovation, Research and Competence in the Learning Economy), Lund University, CIRCLE, Lund University, Solvegatan 16, PO Box 117, SE-22100, Lund, Sweden.

Jon Mikel Zabala-Iturriagoitia, CIRCLE (Centre for Innovation, Research and Competence in the Learning Economy), CIRCLE, Lund University, Solvegatan 16, PO Box 117, SE-22100, Lund, Sweden.

Deusto Business School, Deusto University, Camino de Mundaiz 50, 20012 San Sebastián, Spain.

E-mail: jmzabala@deusto.es

Keywords

Pre-Commercial procurement; Public Procurement for Innovation; R&D; Innovation; Innovation policy.

Extended Abstract

A new European-level interest has recently emerged with regard to demand-side approaches to innovation policy and, more specifically, in the use of public demand as an engine for the development and diffusion of innovations (Edquist and Hommen, 1999). Edler and Georghiou (2007, p. 953) consider regulation, standardization and public procurement to be the main demand-side instruments. In 2004 the French, German and British governments issued a position paper to the European Council calling for the use of public procurement across Europe to spur innovation (French/German/UK Governments, 2004). This move continued and was manifested in various reports, including the Aho Group Report (Aho et al., 2006) which identified several application areas where demand-side policies could be used to a larger extent: e-Health, pharmaceuticals, energy, environment, transport and logistics, security and digital content.

Clearly, these application areas are very much related to the grand challenges specified in the Lund Declaration (2009). We believe that public innovation procurement policies can play a prominent role in the mitigation of grand challenges (e.g. global warming, tightening supplies of energy, water and food, ageing societies, public health, pandemics or security) (Edquist and Zabala-Iturriagoitia, 2012). Needless to say, grand challenges may also be mitigated through other means and instruments, alone or in combination with procurement policies (Flanagan et al., 2011).

“Public technology procurement” had been practiced and discussed for a long time, as indicated in Edquist et al. (2000). Later, the language changed and the term “technology” was replaced by the concept of “innovation”, reflecting a widening in the content of the notion. Edquist and Zabala-Iturriagoitia (2012) use the term Public Procurement for Innovation (PPI) to denote public demand when it is used to trigger innovation. They consider that PPI occurs when a public organization places an order for the fulfillment of certain functions within a reasonable period of time (through a new good, service or system). The objective of PPI is to target functions that satisfy human needs or solve societal problems (Edquist and Zabala-Iturriagoitia, 2012).

In 2006 the European Commission introduced the concept of "Pre-Commercial Procurement" as an instrument to promote innovation and to mitigate grand challenges (European Commission, 2006a, 2006b). One of the main motivations for the support of Pre-Commercial Procurement schemes was to use public needs as a driver for innovation. This concept was also introduced as a response to the need to reinforce the innovation capabilities of the EU, while improving the quality and efficiency of public services. However, there is still a certain degree of confusion as to what is meant by Pre-Commercial Procurement and what rationales are behind it.

Pre-Commercial Procurement (PCP) is an EU-specific method for procuring Research and Development (R&D) services. The EU public procurement directives do not apply to PCP schemes (European Commission, 2008). PCP relies on using the R&D exemption in the EU procurement directives so as to adhere to the principles in the EU

treaty as well as to EU state aid rules.¹ Accordingly, PCP schemes do not conflict with current regulations, provided the processes are based on the guiding principles of public procurement, that is, open and free competition, transparency and equal treatment of operators and tenders. PCP concerns the R&D phase before commercialization (European Commission, 2008, p. 2), and as an approach to procuring R&D services, involves risk-benefit sharing but excludes State aid (European Commission, 2006b; European Commission, 2008, p. 6).² This implies that the private supplier will share the risk of the R&D, and that the public authority will not be required to purchase the good, service or system that may (or may not) result from the R&D (Sloth, 2011).

In PCP, the public purchaser does not reserve the R&D results exclusively for its own use (European Commission, 2008). In contrast, it is the supplier that solely owns the Intellectual Property Rights (IPR) or shares them (after negotiation) with the corresponding public agency.³ Public authorities and industry thus share the risks and benefits of the R&D needed to develop new R&D-based knowledge, which may later lead to innovative solutions that will outperform those already available in the market (European Commission, 2008, p. 3). In this way, both parties have an incentive to pursue wide commercialization and take up innovative solutions.

The very term Pre-Commercial Procurement leads our thoughts in the direction of procurement of actual goods and services. PCP has sometimes been presented as a demand-side innovation policy instrument (Berman and Squire, 2011; DG Connect; 2012). Due to this demand-side assumption, PCP is often mixed up with another policy instrument, namely PPI. For example, Vinnova (the Swedish Governmental Agency for Innovation Systems), in a recent communication (where they build upon EU documents), refers to PCP as “procurement of innovations” (Vinnova, 2007, p. 45). Edler and Georghiou (2007, p. 954) also mix the two terms when stating that “the basic idea behind public pre-commercial procurement is that it targets innovative products and services for which further R&D needs to be done”. Similarly, in June 2011 the European Commission organized a conference on innovation procurement in Torino

¹ Article 16f, included in the directive for public authorities (2004/18/EC), and Article 24e of the public procurement directive for utilities (2004/17/EC) state that these directives do not apply to “research and development services other than those where the benefits accrue exclusively to the contracting authority/entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority/entity.” In December 2011, the European Commission launched a proposal for a new directive to the European Parliament on public procurement (European Commission, 2011). This is the outcome of discussions on the regulations for public procurement in the EU (Martin et al., 1997; Bovis, 1998; Morand, 2003; Gelderman et al., 2006).

² The following activities fall within the definition of R&D: basic research, industrial research, experimental development, and the production of a limited 0-series (see EC - 2006/C 323/01 and COM/2007/799). R&D does not include commercial development activities such as production, supply to establish commercial viability or to recover R&D costs, integration, customization, incremental adaptations and improvements to existing products or processes (European Commission, 2008, p. 2-3).

³ The public agency can also share the R&D results with other public authorities and industry through publication and standardization, as well as through their commercialization (European Commission, 2008, p. 7). The public purchaser can also demand a free license to use the R&D results for internal use (ibid).

(Italy),⁴ with several hundred participants – mainly policy-makers, which reflects the increasing attention this topic is receiving in Europe. It was explicitly labeled a conference on “Public Procurement of Innovation” but mainly addressed issues related to PCP. One rationale for writing this article is based on the existing confusion between the two policy instruments, namely PCP and PPI.

This paper intends to be a contribution to the so far non-existent scientific literature on PCP. We will try to advance the theoretical understanding of an area that has remained under-conceptualised up to now. This includes answering the question whether PCP can be regarded a demand-oriented innovation policy instrument. Further, we aim to identify similarities and differences between PCP and PPI. We will also analyse the relations between them and reflect on if and how they can complement each other as policy instruments, i.e. in an innovation policy instrument mix.

The analysis is based on three cases, one from the Netherlands, one from the UK and one from Australia. While PPI is a demand-side policy instrument, these cases provide evidence of the supply-side nature of Pre-Commercial Procurement in relation to innovation. The paper claims that PCP is a matter of R&D funding of a specific kind, geared towards very specific goals and in a focused way. Thus, we would like to raise a flag for going back to the origins of the PCP program, and calling it a pre-competitive R&D program rather than talking about procurement.

References

Aho, E., Cornu, J., Georghiou, L. and Subira, A. (2006) Creating an Innovative Europe. Report of the Independent Expert Group on R&D and Innovation appointed following the Hampton Court Summit and chaired by Mr. Esko Aho. European Communities, Brussels, January 2006.

Berman, T. and Squire, M. (2011) Demand-side innovation policies in Australia, in: OECD (2011), *Demand-side Innovation Policies*. OECD Publishing, pp. 95-113.

Bovis, C. (1998) The Regulation of Public Procurement as a Key Element of European Economic Law. *European Law Journal*, **4**, 2, 220-242.

DG Connect (2012) FP7 ICT WP2013. Objective 8.2 Technology-enhanced learning. Unit G4 "Skills, Youth and Inclusion", European Commission (Luxembourg). Available: http://ec.europa.eu/information_society/events/ (last access October 2012).

Edler, J. and Georghiou, L. (2007) Public procurement and innovation – Resurrecting the demand side. *Research Policy*, **36**, 949-963.

Edquist, C. and Hommen, L. (1999) Systems of Innovation: theory and policy from the demand side. *Technology in Society*, **21**, 63–79.

⁴ <http://www.comune.torino.it/relint/PPI/> (last access October 2012).

Edquist, C. and Zabala-Iturriagoitia, J.M. (2012) Public Procurement for Innovation as mission-oriented innovation policy. *Research Policy*, in press.

Edquist, C., Hommen, L., Tsipouri, L. (eds) (2000) *Public Technology Procurement and Innovation*. Boston/Dordrecht/London: Kluwer Academic Publishers.

European Commission (2006a) Pre-commercial Procurement. A missing link in the European innovation cycle. European Commission, March 2006

European Commission (2006b) Pre-commercial Procurement. Public sector needs as a driver of innovation. European Commission, September 2006.

European Commission (2008) Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe. SEC(2007) 1668. Brussels, December 2007.

Flanagan, K., Uyarra, E. and Laranja, M. (2011) Reconceptualising the 'policy mix' for innovation. *Research Policy*, **40**, 5, 702-713.

French, German and UK Governments (2004) Towards and innovative Europe. A Paper by the French, German and UK Governments. 20th February 2004.

Gelderman, C.J., Ghijsen, P.W.T. and Brugman, M.J. (2006) Public procurement and EU tendering directives – explaining non-compliance. *International Journal of Public Sector Management*, **19**, 7, 702-714.

Lund declaration (2009). Europe must focus on the grand challenges of our time. Lund declaration, July 2009.

Martin, S., Hartley, K. and Cox, A. (1997) Public purchasing in the European Union: some evidence from contract awards. *International Journal of Public Sector Management*, **10**, 4, 279-293.

Morand, P-H. (2003) SMEs and public procurement policy. *Review of Economic Design*, **8**, 301-318.

Sloth, M. (2011) WP 2 - Analysis of public Pre-Commercial Procurement models and mechanisms. P3ITS – Pre-Commercial Public Procurement for Intelligent Transport Systems and Services innovation and deployment. Project financially supported by the 7th FP. Project number 248659.

Vinnova (2007) Public procurement as a driver for innovation and change. Report on government commission to Nutek and VINNOVA. VP 2007:03.