Pre-Competitive Procurement (PCP)

If you need something that does not exist yet, you can engage businesses to develop a prototype. This gives you greater freedom than in the case of a usual tender. PCP is a method to take advantage of such freedom, the basis of which is: you award several parties a contract to develop an innovative solution in competition with each other. There are various rounds which each involve the elimination of parties. After the final phase at least two prototypes are developed and tested.

Further information about PCP.

1. Special opportunities in tendering of R&D

European tendering legislation specifically allows special scope for awarding contracts for research & development (R&D). This applies also to Dutch procurement law: except under certain conditions, this does not apply to services for R&D.

Various methods have been developed for utilising this scope. In general terms, they are the same:

- A market survey and need analysis are first carried out, often together with a market consultation.
- A call for proposals then challenges businesses to submit potential solutions to your problem.
- In respect of the businesses with the best ideas, you conduct a feasibility study.
- The businesses with the best feasibility studies are invited to develop and test a prototype.

You can choose from the following procedures:

- The European Commission has developed 'pre-commercial procurement' (PCP). It encourages governments from various EU Member States to work together to solve problems. The European Commission regularly makes funds available to finance a part of the costs.
- Anyone can set up their own procedure to make use of the exceptional position of R&D services.

After deciding on one of these procedures, you can issue an open tendering process which gives the entire market the opportunity to submit a tender. You will then obtain one of the products developed, or another product that was created outside the PCP in the interim.

2. When should you use PCP?

PCP is an innovation instrument used to solve government problems by relying on the creativity of the market. The process is led by what the government needs, not where the businesses strengths lie. This distinguishes PCP from government instruments that have the main objective of encouraging innovation (such as innovation subsidies, innovation credit or the Dutch Promotion of Research and Development Act (Wet Bevordering Speur- en Ontwikkelingswerk).

The encouragement of innovation is the product mostly of strategic considerations. You have a large problem for which there is no solution on the market. You have the money (from a few hundred thousand to a few million euros) and you have the time (from one to several years). PCP is often a

part of a larger project or of a strategic agenda. The method is then used to solve a specific problem within such a project or to get ideas from parties other than the 'usual suspects'.

PCP is usually employed by government bodies that play a leading role in their field. For example, the role of Rijkswaterstaat and dike protection, or Defence and the protection of personnel. By working together and sharing costs other government bodies can also use PCP.

3. Step-by-step plan

There are two options for making use of the exceptional position of the tendering of R&D services:

- PCP
- Do-it-yourself procedure

Before you have a prototype developed, you will in any event need to perform a need analysis, a market survey and often also a market consultation. Obviously, the market survey should clearly demonstrate that there is no solution available anywhere in the world, because otherwise there would be no need for a prototype.

PCP is a procedure developed by the European Commission. This procedure is interesting where joint efforts across various countries are involved. It is a way of sharing costs and can offer a bigger and thus more interesting market for commercial players. But it is only possible if government bodies from various countries have comparable problems and objectives. Step-by-step plan for PCP.

If PCP cannot offer what you are looking for, but you nevertheless wish to tender R&D services, you can draw up your own procedure. This requires as a minimum:

- a professional procurement organisation
- a well-organised project management
- an affinity with innovation
- the support of internal legal and financial departments for a way of working that is not the usual way

3.1 Step-by-step plan PCP

Step 1: seek partners or sources of finance

There is a good chance that you are not the only party struggling with the same problem. Perhaps some of the finance can be obtained from the European Commission or another government. The European Commission provides regular finance for PCP.

Finding the right international partners is often time-consuming. One way of finding other government bodies is via the procurement forum (international). To obtain finance from the EU it is a frequent requirement that government bodies from at least three countries apply together. There are lot of conditions to be satisfied. The Expert Centre for International Research and Innovation (EiOI) of the Netherlands Enterprise Agency will be glad to help you on the way. You can ask questions by telephone or e-mail.

Two general points to note:

- Working for the European Commission requires very careful administration. You must provide a detailed justification of your activities. Consultations must be documented and you should keep timesheets.
- Ensure that the allocation of the budget (for hours worked and for other expenses) is in line with the allocation of tasks and responsibilities.
- If you are participating in a European collaboration for the first time, ensure that you are a participant, and not the coordinator of the project.

Step 2: draw up a plan

How much time do you have? When do you want/need to see results? Is it feasible to conduct a phased innovation design contest and develop a new product before then? The PCPs that have so far been organised have been for terms of four years. However, according to the subject, a shorter period is possible. Take account of the decision-making process in Brussels. There is usually a period of between nine to twelve months between submitting a proposal and the award of a contract.

Step 3: ensure the internal funds are available

It costs a lot of money to carry out research and development. Businesses will also make their own investment, given the value that the project has for them and the value that a first customer has for them. But the costs are still significant. The following steps are only possible if the finance is organised.

Step 4: describe the challenge

The partners to the PCP will together draw up a description of the challenge. The European Commission sets requirements for the content of the challenge. They will check that this has been sufficiently concretely worded and that the content lends itself to an open, fair and transparent tendering process.

The challenge is a text that sets out:

- The problem. By beginning with the problem (and not with a solution) you can benefit the most from the creativity within the market.
- What the preconditions or problem-solving approaches are. You need to provide some kind of framework so that the solutions will be appropriate to your needs. The skill is in making the challenge sufficiently open to innovative ideas, but at the same time pointing the market in the right direction. The preconditions include the planning, budgets and also the problem-solving approaches that you are *not* interested in because, for example, a lot of research has already been carried out in a particular field.
- Examples of the sort of thing you are looking for. Try as far as possible to paint a picture of what you have in mind

Step 5: describe the procedure

The procedure you will follow must be drawn up in advance. Various international PCPs have supplied sample documents. One of these is SILVER. A standard set of contract documents was supplied for this PCP project and approved by the European Commission. The European Commission monitors the guidelines for PCP procedures.

Step 6: communications

How do you reach the right parties? There are a number of options:

- Publish information on 'Tenders Electronic Daily'. This is not merely useful, it is essential, because the process must be open, fair and transparent.
- Contact, of course, the parties that have already shown interest (for example, during the market consultation).
- Use your own organisation's network. Experts from your own organisation will perhaps have contacts that are interested in getting involved:
- Approach relevant organisations, such as sector organisations.
- Organise a meeting, online or otherwise, to pass information to businesses. It is probably not immediately clear to them what your motives are.

Step 7: the assessment

The assessment will be made by an independent jury. In this sense, the innovation challenge is very much like a design contest. The jury makes its assessment on the basis of predetermined assessment criteria. The assessment criteria must provide sufficient support for an open, fair and transparent assessment. At the same time, you would wish to give the assessment committee enough leeway to be able to select the best proposals. The criteria are thus usually less detailed than in the case of a standard tendering process. The SILVER project's 'Invitation to Tender' provides an overview. Essentially, the assessment criteria can be summarised as follows:

- Does the innovation actually solve your problem?
- Is the idea innovative? To what extent is it distinguishable from what is currently available?
- Is this the right party to carry out this development?
- Is this the right party to also offer this product in the future? Will the business have the motivation to really make this prototype market ready?
- Does the proposal offer value for money?

Step 8: the feasibility study

The parties with the best proposals will be given a contract to perform a feasibility study. Usually they will be given a couple of months and a few tens of thousands of euros for such purpose. The amount of time and money that you need to invest will depend, of course, on the type of problem that you wish to solve.

In general: the more concrete the feasibility study, the better. It certainly needn't be a paper study. Approximately one quarter of the budget will be invested in the feasibility study.

Step 9: assess the feasibility studies

Which feasibility studies show promise? Is there at least sufficient potential to proceed? If so, ask the tenderers whose ideas have proved feasible to present a proposal for phase 2: the development of a prototype. Let the jury choose the best proposals.

Step 10: development of the prototype

The tenderers of the best feasibility studies will be offered a contract for the development phase. Participants often have a period of between half a year and two years and between one hundred thousand and several hundred thousand euros to develop their product.

Step 11: the test phase

PCP requires a specific distinction between the 'development' and 'test' phases. The developers of the best prototypes will be awarded a contract for the test phase. Ideally, the test phase should be conducted in an operational setting.

Step 12: procurement

After a PCP the product can be procured in the normal way. Even tenderers that were not involved in the PCP can compete. Accordingly, a PCP gives no participating businesses any guarantee that their product will actually be procured. At least two businesses must participate in this phase.

3.2. Step-by-step plan 'Do-it-yourself'

Any party is free, within the scope of the law, to draw up its own procedure for the procurement of R&D services. PCP is a detailed procedure, but other methods are possible. You should bear in mind the following:

- The procedure must be open, fair and transparent.
    - 'Open' means that any party within the EU may participate. You cannot discriminate based on the size of the organisation (e.g. restrict entry to SMEs) or on location (e.g. only business based in the Netherlands). You can, of course, seek solutions for a local problem, communicate in Dutch and bring the request to the attention of specific parties. It is strongly advisable to publish the challenge on TenderNed (or comparable site), so that the challenge is made public.
    - 'Fair' means that the assessment is not pre-judged and that no market party is put at an advantage. A party would be put at an advantage if, for example, it was given more information, or given information at an earlier point in time. It is therefore wise to make sure that all information that is supplied is supplied to every party. By using a tendering portal, such as Tenders Electronic Daily you ensure that everyone has had the opportunity to learn of the tendering process. You can then draw the challenge to the attention of specific parties.
    - 'Transparent' means that the procedure is made clear from the start.
- Let the market keep the intellectual property rights. That way businesses will be willing to participate at competitive prices. Ensure that you will be granted a licence to use the knowledge.
- Treat information received from businesses with care. Ensure that the confidentiality of all parties involved is protected.

4. Legal framework

Tenders for research and development services are exempted from normal tendering legislation.

Article 2 section 24g states:
"As exemption to Article 2 sections 1 to 6, the provisions of or under part 2 of this Act do not apply to government contracts for services relating to research and development, except for contracts the results of which are entirely intended for the contracting authority for use in the performance of its own work, provided that the service is paid for entirely by the contracting authority."

These tenders must, however, comply with legislation at a European level: they must be open, fair and transparent. The various national and European approaches are therefore focused on these requirements. What exactly is acceptable and what not is open to debate: there is little case law in this area. The approach adopted by the EU itself is somewhat stricter than the interpretation given by national programmes.

5. Further information

Various approaches have been developed for the European Commission into sample projects. For example, a manual has been developed for PCP. The focus of this is on 'Intelligent Transport Systems', but it is also applicable in other fields.
The European SILVER project has developed a standard set of documents.

6. Source

This information was taken from the "Innovation Procurement for Contracting Authorities" document that was prepared by PIANOo in 2017.