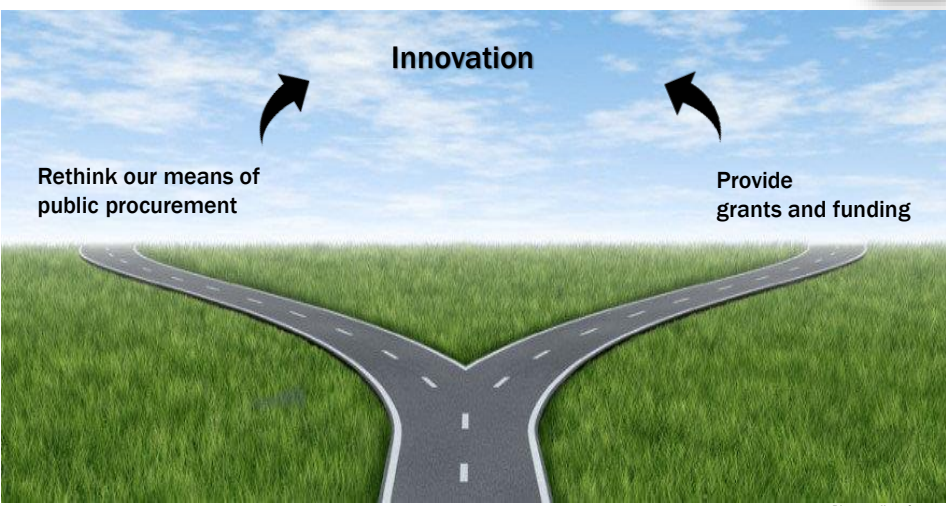




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**Reflections on
Pre-commercial / Innovation Procurement**

Roman P Willweber, LL.M.
2 March 2017



Routes to innovation

Innovation

Rethink our means of public procurement

Provide grants and funding

Picture: clipartfox.com

Successful R&I in Europe 2017 Page 2



Innovation and Public Procurement

'Innovation' means the **implementation of a new or significantly improved product, service or process**, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, inter alia with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth.

**Public procurement can play
a key role in innovation.
(Route 1)**




Innovation and Public Procurement

Total General Government Expenditures
on works, goods, and services' (TGGPPE), excluding utilities and defence,
constitutes an estimated

13.1%

of the EU GDP in 2015 = **2,015,300,000,000 EUR**
(EC in Public Procurement Indicators 2015)




Innovation and Public Procurement

Value of tenders
published in TED, including utilities and defence,
represents an estimated

3.32%

of the EU GDP in 2015 = **450,210,000,000 EUR**
(EC in Public Procurement Indicators 2015 also COM(2017) 28 final)

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Innovation and Public Procurement

0,1 € / 100 €

spent for innovation

would lead to an innovation budget
within the total government expenditures of = **2,015,300,000 EUR per year**

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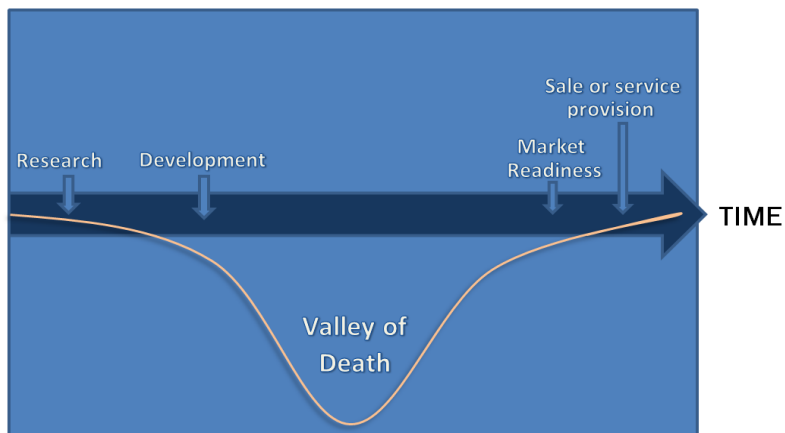
Innovation and Public Procurement

The approach to public procurement is critical to the level of innovation in the respective sector.

If purchasers remain conservative, industry will not be encouraged or even allowed to innovate.

WHY?

The Valley of Death



Bridging the valley – PCP/PPI and IP



Following the two different routes to innovation pre-commercial public procurement (PCP) and Innovation Partnerships (IP) are **two alternative approaches, corresponding to different needs and/or situations.**

Pre-Commercial Procurement (PCP) – Definition



Providing Grants and Funding

- “Procurement” of **research and development** of new innovative solutions, before they are commercially available, provided there are **no near-to-the-market solutions yet** and **further R&D is needed.**
- PCP can compare the pros and cons of alternative competing solutions approaches (**multi-phase development**). Reduction of the number of suppliers participating in the PCP procedure enable to **de-risk the most promising innovations step-by-step via solution design, prototyping, development and first product testing.**
- To foster **innovation** the “purchaser” **does not reserve all the results and benefits of the contract exclusively for itself.** IPRs are shared **with the suppliers under market conditions.**
- Subsequent purchase in commercial volumes requires a competitive procedure. **Public Procurement of Innovative Solutions (PPI).**

Means to procure innovation – Innovation Partnership



Spending Budgetary Resources

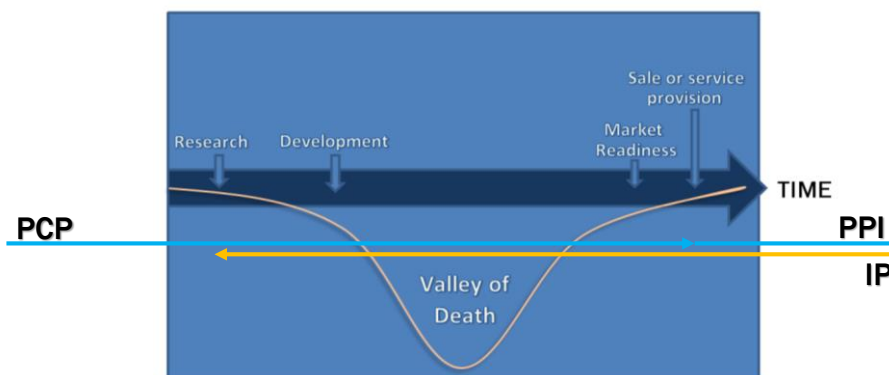
- The innovation partnership requires the **development of an innovative product**, service or **innovative works** and the **subsequent purchase** of the resulting works, supplies or services, provided that they correspond to the **performance levels** and **maximum costs** agreed between the contracting authorities and the partners (**Innovation Partnership**).
- Governed by public procurement law: **Competitive procurement procedure** to satisfy needs of a contracting authority.
- The innovation partnership has to be structured in **successive phases**:
 - **Public Procurement-phase**: Finding **one or more innovation partners**.
 - **R&D-phase**: Development of the innovation concludes this phase.
 - **Purchasing-phase**: Mandatory subsequent purchasing of the result, provided that they correspond to performance levels and maximum costs agreed.
- Little experience. Only **38** IP have so far been advertised on **TED**.

Bridging the Valley



Long story short:

PCP and subsequent PPI try to close the Valley of Death from the R&D side, while IP tries to close it from the Procurement side.





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- German technology law firm with strong EU focus
- Support to more than 150 EU FP Projects
- Support to national R&D projects
- Preparation and negotiation of Consortium Agreements
- Advice on special instruments such as PCP, PPI, PPPs
- Advice on special IPR issues
- Legal project management
- Project participation for legal work packages
- Advice to public procurers on innovation procurement
- Legal or interdisciplinary studies for EU and national authorities
- Training and workshop organisation



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