Innovation: Selecting a Procurement Process

There are no absolute criteria for defining the best route to market for innovation as every project is different, however in making your decision there are two important factors you should consider:

- the complexity of your project (including the ability of your organisation to adopt the innovation), and
- the level of uncertainty, based on the nature and size of the research and development gap of the project

!! Stop and Think !!

Appetite and Management of Risk

Appetite for risk in the public sector is usually low. This means that staff, including budget holders and senior decision makers, will often choose a procurement procedure which offers the least risk. Unfortunately, this can lead to using procurement procedures that may not be optimal to deliver innovation.

Whatever procurement procedure is chosen, it is important to actively identify potential risks and create a mitigation and management plan from the outset. Risk should continue to be managed throughout the full procurement process. This should involve good risk management and strong governance of innovation projects.

Level of Uncertainty (or the Research and Development Gap)

There is uncertainty in all innovation projects, whether it’s related to the outcome of the project, or parts of the project that are unknown. However, as the project

develops, you may realise there are metrics that an be recorded and measured over time.

Unlike typical regulated procurement exercises, for innovation you may not have fully documented specific background information and/or a history of potential products or services. This is particularly the case when the innovation project involves creating new goods or services that do not yet exist.

You may not for example have:

- product or service costs (either new or those from existing goods and services)
- supply chain partners in place or
- definitive solutions to solve the problem

Even if some research has been carried out in the Discovery and Definition phase, it is normal that levels of uncertainty will remain. You may still be uncertain as to what the final solution will be, however you will have information gathered from your research to inform the decision for the most appropriate procurement procedure for your project.

The further away from the market the potential goods or service is from implementation, the larger the R&D gap will be for the project.

Understanding the current Technology Readiness Level (TRL) of the goods or services helps to assess the gap between the current status of a product/service and the desired outcome.

TRL's help those involved in R&D to make decisions concerning the development and transitioning of technology. There are a number of online tools available to assist users in defining the TRL level such as those for **Horizon Europe**

Having defined the gap, you need to detail the R&D steps and resources required to close this gap.

The greater the uncertainty in closing the gap, the more likely it is that specific R&D is required to reduce that level of uncertainty.

Complexity

Complexity refers to both organisational complexity and the technical complexity of the project.

It relates to areas such as the:

- project scope
- differences in users' needs
- organisational dynamics and structures
- policies and regulations affecting the project e.g. legal, data, systems integrations
- new technology complexities and
- skill sets of staff (both within the project and with entities outside of the project).

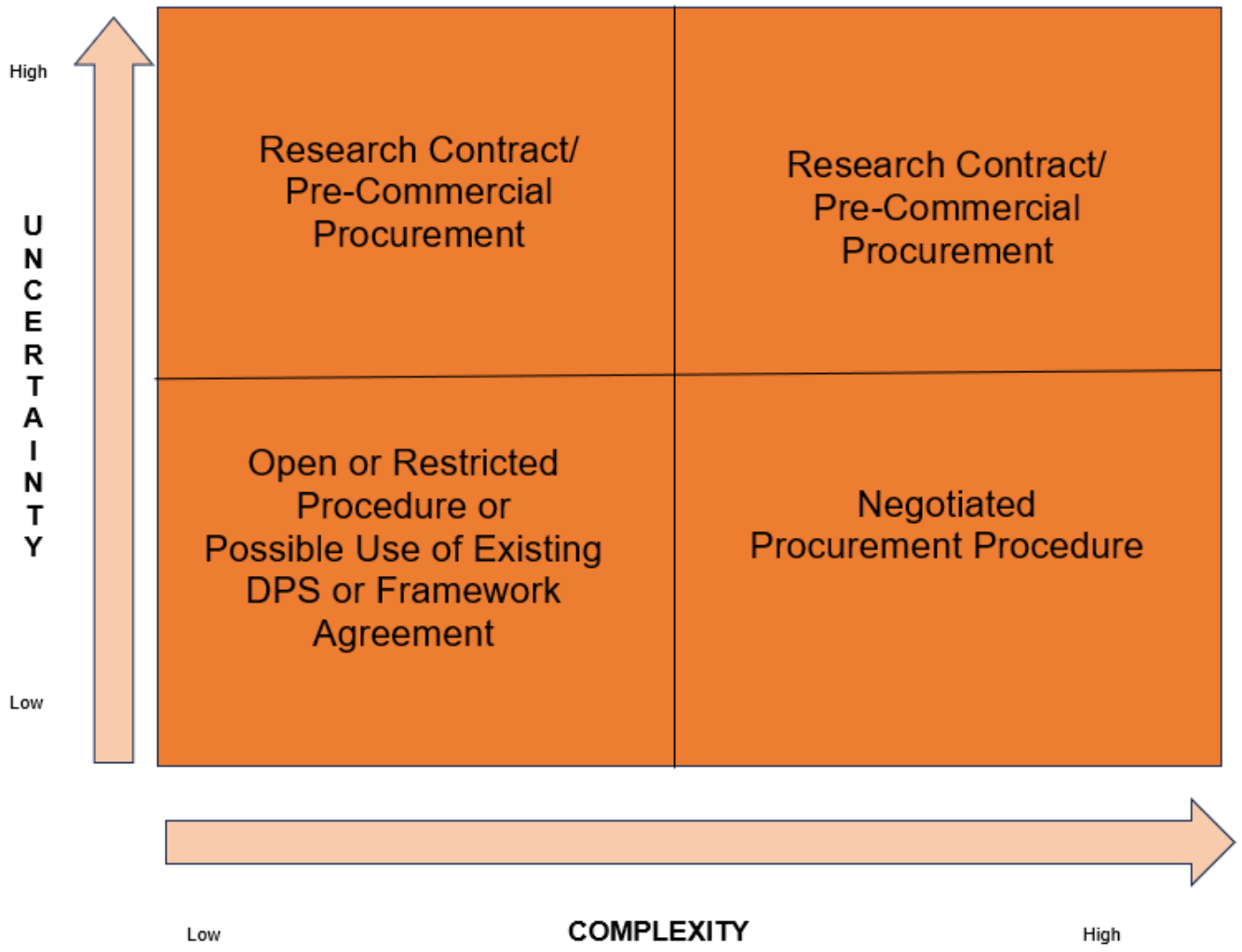
These factors will help you determine the type of process or procurement procedure that should be used. Please note the above is not a comprehensive list – every situation will have differing areas of complexity which need to be considered.

An example of differing complexity:

An innovation project within a single organisation is required to develop a new automated technology to receive payment for a visitor attraction. This offers little complexity.

Whereas a project to create and codevelop highly specialised zero emissions vehicles, based on data from 3 pilot areas, for all public sector organisations, each with differing requirements, may present both technical and organisational complexities that require different consideration from a procurement procedure.

The below diagram shows how the level of complexity and uncertainty influences the procurement procedure chosen:



The above diagram is a matrix with two axis. The x axis shows increasing complexity and the y axis shows increasing uncertainty due to an increasing research and development gap.

A combination of the complexity and uncertainty axis result in four possible outcomes in terms of which procurement procedure to use. These possible outcomes are:

Outcome 1: Low complexity and low R&D gap. This can result in using either an open or restricted procurement procedure or the possible use of an existing Dynamic Purchasing System (DPS) or existing Framework Agreement. The use of an existing DPS or Framework Agreement are subject to the applicability of the original terms of the Contract Notice.

Outcome 2: High complexity and low R&D gap. This can result in using a procurement procedure involving negotiation where the highly complex aspects of the project would benefit from a process of negotiation working in partnership with contractors.

As a result there are a number of negotiated procurement procedure options that can be used. These include -

- **Competitive Dialogue**. To use this procurement procedure the buyer may not have a precise understanding of the requirement and will use the competitive dialogue procedure to describe: the need and clarify/negotiate the solution. However the buyer must set out the minimum requirements, award criteria and their weightings in the Contract Notices and procurement documents. These cannot be changed during the negotiation process. Competitive Dialogue allows bidders to submit initial solutions after being successful at the selection stage. It allows buyers to negotiate proposed solutions with bidders. Here the specification requirements concentrate on the buyer's needs without having to detail the nature, characteristics or solutions to be offered.
- **Competitive Procedure with Negotiation** This procedure lets you clarify bids with bidders after their submission of fully formed initial tenders. You should use this procedure if you are unable to define how to meet your needs technically and/or you cannot specify the legal or financial requirements of your contract.
- **Negotiated Procedure without Prior Publication**. This procedure should only be used in very exceptional circumstances where approval is given before any purchase is made. The approver must not have been involved in the award of the contract. Obligations under procurement legislation have been considered and the justification and approval must be formally recorded (along with robust supporting evidence) for audit purposes.
- **Innovation Partnership**. This will be used in complex cases where there is no current solution available on the market to meet the need of the buyer. Buyers can proceed with one or more partners undertaking separate R&D activities. Innovation partnerships are structured in successive phases, based on the R&D steps undertaken e.g. design, manufacturing, etc., and you (as the buyer) may set intermediate targets that need to be met.

Outcome 3: Low complexity and high R&D gap. This is where there is a large gap between what the market can supply and your needs. In such cases a research and development only phase may be used to determine whether and how the need can be met. This research and development only phase (a Pre Procurement Process) can produce the necessary data to allow you to then carry out a further procurement exercise for implementation. To aid your research, you should consider undertaking market analysis through a preliminary market consultation.

And finally **Outcome 4:** high complexity and high R&D gap. This is is where a possible innovation project would benefit from trials or pilots, research and/or development to gauge its possible success or scalability. In such situations it is usually thought that the project has potential and, as a result, other funding methods are sometimes used. For example to conduct trials or a pilot you may have sourced finance via grants, endowment funds, charity funds, etc. Where a pilot or trial has been carried out, for example via a pre-commercial procurement, a further procurement exercise is likely to be required to scale up the project.

The next page includes information on the Pre-Commercial Procurement Notice and Award Notice.

Exemption to the Public Contracts (Scotland) Regulations 2015

Open or close

Regulation 13(8) of the Public Contracts (Scotland) Regulations 2015 states when a procurement exercise is exempt from the Public Contracts (Scotland) Regulations 2015 i.e. when the person and/or organisations involved in the procurement exercise are "controlled". You can find out more information about this by reading Regulation 13(8).

For the exemption to apply to a procurement exercise there must be genuine co-operation between the parties involved to achieve common objectives. The exemption cannot be used where one organisation commissions another to carry out services solely in return for consideration.

As a result an exemption is unlikely for contracts between organisations and suppliers where Higher/Further education institutions assess/test innovative goods and services.

- There are alternative options to compliantly procure assessment/testing services, such as the Crown Commercial Services Research & Insights DPS. (Dynamic Purchasing System). If using this agreement, you should ensure that the terms of the DPS align with the work to be

undertaken

- relevant organisations are on the DPS. If not, and if appropriate, you may direct potential bidders to the DPS. They may request to participate if they meet the published selection criteria.

This DPS agreement is live until December 2027. Please note: other contracts may be more suitable for your work.

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Please note before selecting any procurement procedure:

- **an open innovation must exist, and**
- **work will need to have been carried out to assess the market.**

Please note that other procurement procedures can be used for innovation. Examples are direct awards, the light touch regime and Voluntary Ex-Ante Transparency Notices (also known as VEAT). However these other processes can be used only where appropriate conditions apply and where regulations permit.