

From Idea to Product with the Help of Public Authorities - Public Procurement Issues

18 April 2024

Initial thoughts - be proactive and prepare

- ❑ TRLs/MRL/organisation may impact how and in what ways you can/will cooperate with the Public Authority
- ❑ When you are invited to participate in procurement procedures –note what is required from you and what is in it for you
- ❑ Work on your ”contract readiness level”

Legislation on public procurement and procurement within the utilities sector

- Legislation based on EU directives, implemented in all EU Member states
- All acquisitions of goods, services and works
- Made by
 - State, regional or local authorities
 - Entities governed by such public authorities (e.g. *kommunala bolag*)
 - Associations formed by such public authorities
 - Certain private utility owners for the purpose of the utility service
- The law is addressed to the public authorities

Threshold Values 2024

	Public sector	Procurement utilities sector
Public works	EUR 5 382 000	EUR 5 382 000
Goods and services	EUR 143 000	EUR 143 000
Public service contracts, social services etc.	EUR 750 000	EUR 750 000

Procurement procedures above thresholds

- Open procedure
 - Restricted procedure
 - Negotiated procedure
 - Competitive dialogue
 - Innovation partnership
 - (Negotiated procedure without prior publication of a call)
- Publication on EU level
(and national) of call for
competition

Procurement procedures below thresholds

- National rules
- Often simplified procedures
- The fundamental procurement principles are still relevant (acc. the Treaty of the functioning of the EU)
- Competitive process
- Often requirement of publication of calls on a national level
- Direct purchasing – no competitive process – only contracts of a very low value

Non-compliance with the rules

- The public authority:
 - Correction of procedure or retake of the whole procedure
 - Risk having to pay damages to economic operators and/or penalties to supervising authorities
- Signed contracts could be declared void
 - Repayment of amounts
- Limited possibilities to amend or vary procured contracts

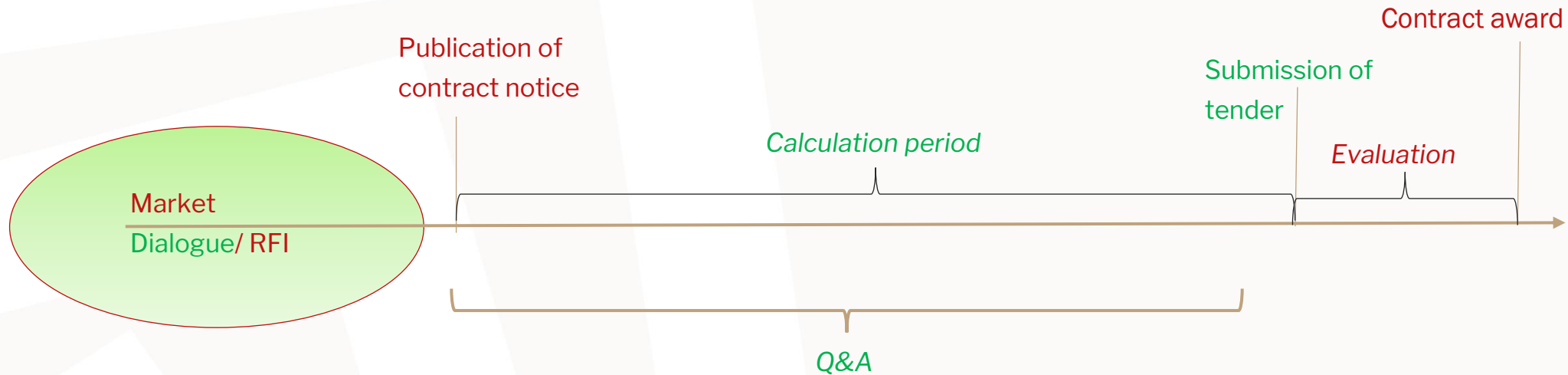
Procuring innovations

- Procurement based on functional requirements
- Innovation Partnership
- Competitive dialogue
- Procurement of a pilot

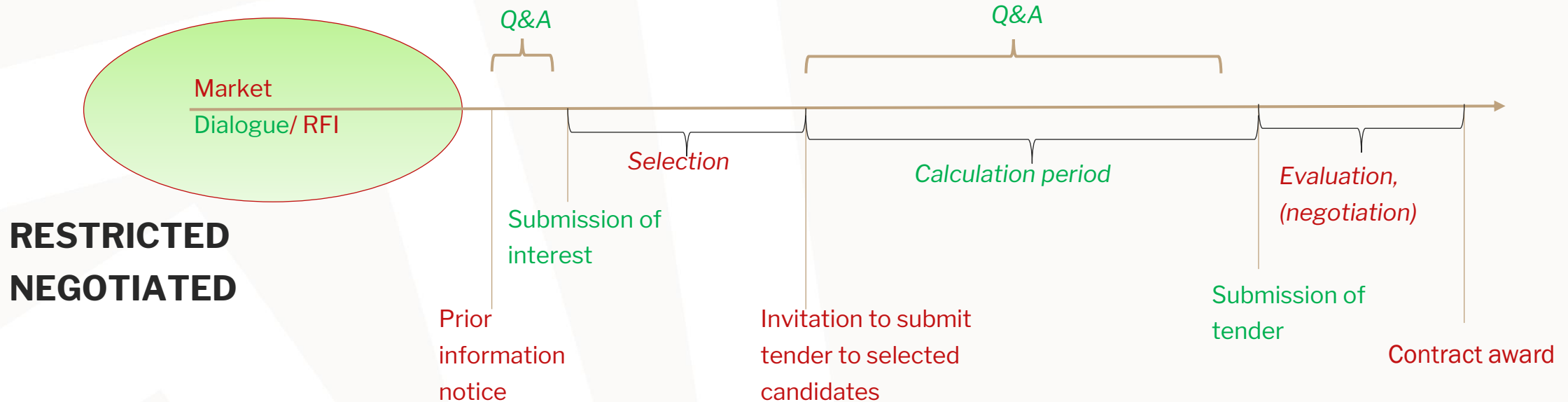
R&D contracts not financed or only partly financed by the PA typically fall outside the procurement rules (not an acquisition)

Phases of the procedure of a published call

OPEN



Phases of the procedure of a published call



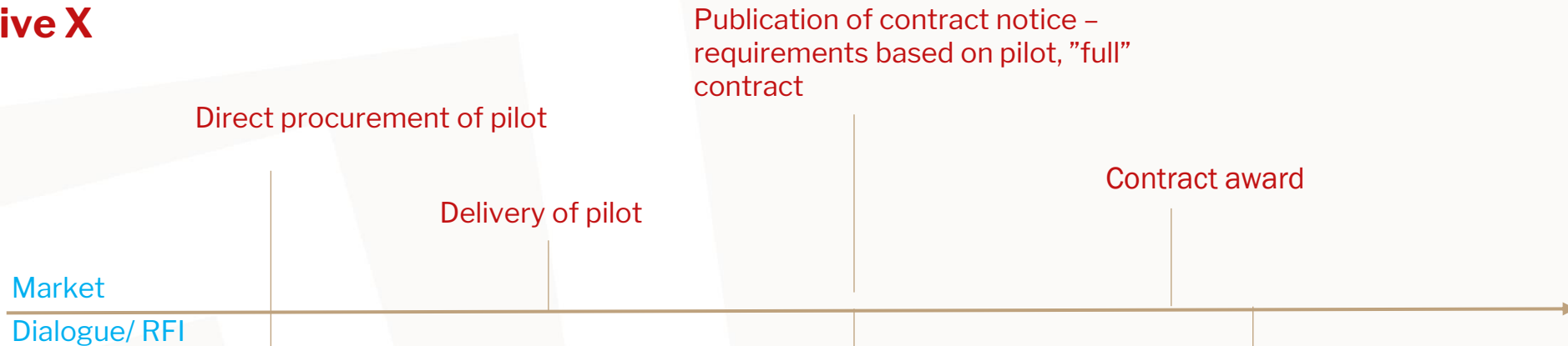
Possibilities in procurements subject to published calls

- Focus on the Market Dialogue
- Examples of what the supplier can achieve:

for itself	for the public authority
<ul style="list-style-type: none">• Awareness of opportunities• Knowledge of PA needs• Knowledge of PA concerns• Enable readiness to submit tender	<ul style="list-style-type: none">• Awareness of constraints• Encourage request for information• Ensure that the mandatory requirements of the contract document will be achievable

Example of procedures of procuring of pilot and the final result

Alternative X



Alternative Y

Publication of contract notice – functional requirements based on dialogue, "full" contract delivered in phases

Contract award

Right for PA to terminate contract after pilot phase or right to buy the developed goods/service

Prepare to be ready to submit a tender

Will we meet the qualification criteria?

- Economic and financial standing
- Technical and professional ability

Will our goods/services meet the technical specifications?

- Mandatory requirements which must be achieved
- Certifications

Can we team up with other companies?

Economic and financial standing

- Minimum turnover (not higher than 2 x contract value)
- Financial key indicators
- Minimum credit risk rating according to established institutes (e.g. in Sweden Creditsafe and UC)

Technical and professional ability

- Reference projects as proof of required experience of similar projects
- CV:n of key personnel as proof of required knowledge, experience and ability
- Organisational charge as proof of necessary resources to perform the contract
- Quality system - ISO or similar (relevance is increasing, e.g. for businesses covered by NIS II Directive)

Last minute advise

- Read the published call or prior notice carefully.
- Check the time schedule. When is the last day for submission? When is the last day to ask questions?
- Note all mandatory/absolut requirements that you need to fulfil.
- Make sure that you respond to all these requirements and that you provide all required proofs and documentation.
- If parts of the tender will be graded during the evaluation – make sure that your tender covers all requested aspects. Don't provide too little information - put yourself in the PA:s position !
- If you didn't win the contract - contact the PA and ask what you can do better next time.

Contact

Malin Håkansson

Advokatbyrån Sigeman & Co

malin.hakansson@sigeman.se

+46 709 83 94 19

