



# Procurement and Legal Aspects

Joshua Davison / Lucie Pocha

Procurement Officer / CERN Legal Advisor



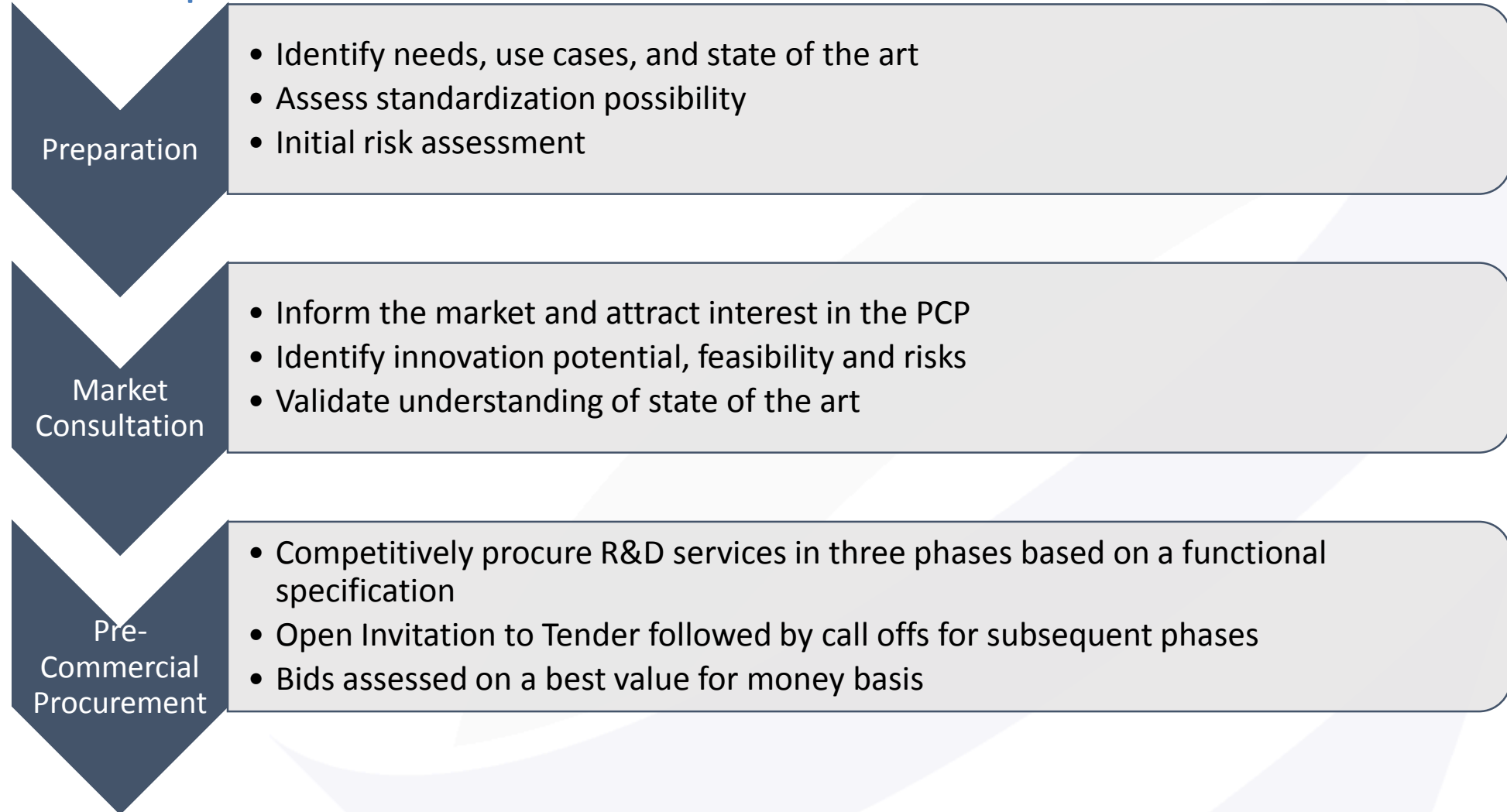
## What is a PCP?

- ☁ A phased, competitive approach to purchasing R&D services for the development of innovative solutions not yet available on the market
- ☁ Risk- and benefit-sharing contracts based on a functional specification
- ☁ Aim to solve socio-economic challenges and improve the performance or functionality of public services

# Legal Framework

- ☁ Exemption from EU Procurement Directives for R&D services – no commercial development activities
- ☁ Specific legal framework for Horizon 2020 PCP actions
- ☁ Procurement at market rates with risk- and benefit-sharing to preclude state aid
- ☁ General principles: equal treatment, no conflict of interest, transparency, openness, competition and best value for money

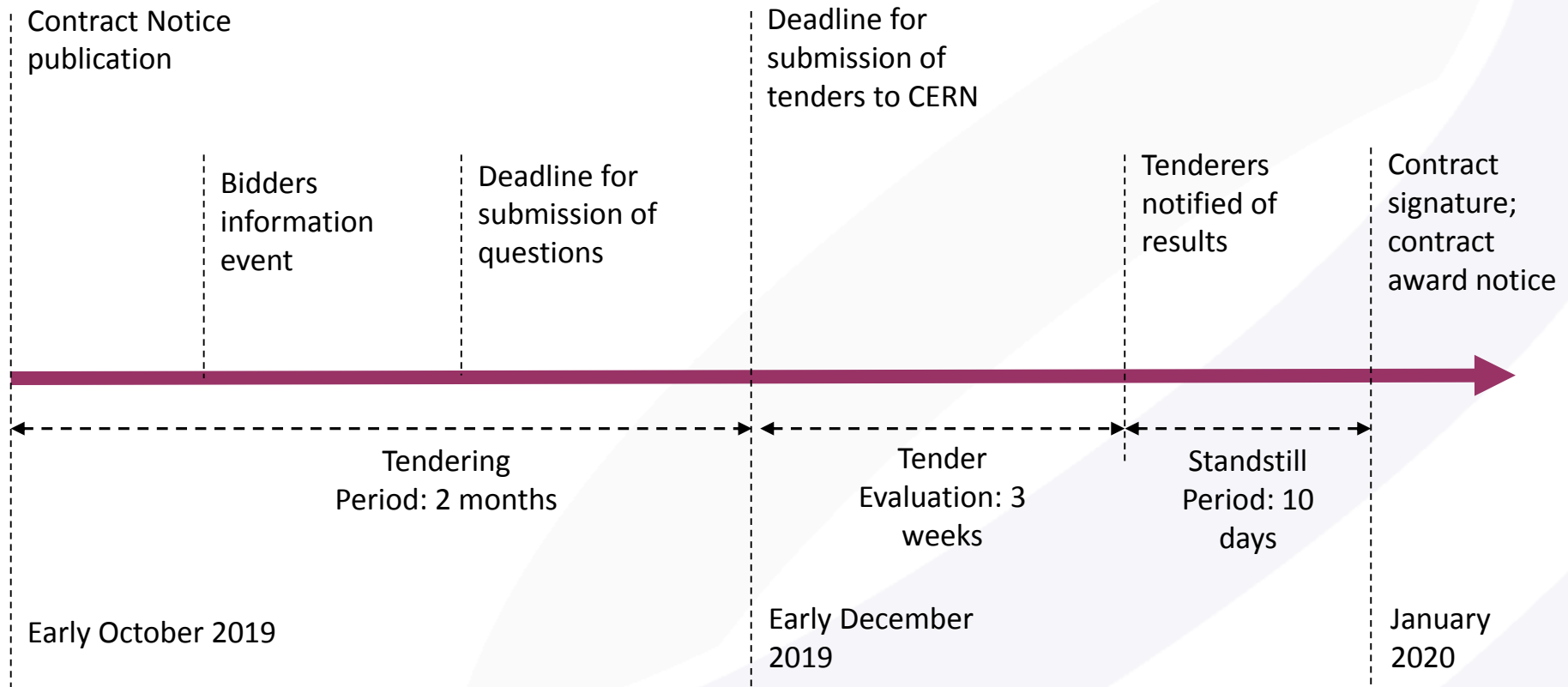
# PCP Concept



# Open Market Consultation

- ☁ A process to bridge the gap between demand and supply sides and scope the future PCP
- ☁ Check our understanding of the state of the art
- ☁ Map the risk and innovation potential
- ☁ Inform, connect and generate interest from potential providers

# Tendering Process





# Tender Documents

- ☁ Draft versions of some of the tender documents will be made available during the OMC process, including:
  - ☁ Functional specification
  - ☁ Request for Tender
  - ☁ Framework agreement and work order template
- ☁ You will be able to make comments on the technical documents
- ☁ Q&A from the OMC will also be publicly available

# Eligible Tenderers

☁ Single Contractors

☁ Consortia, consisting of:

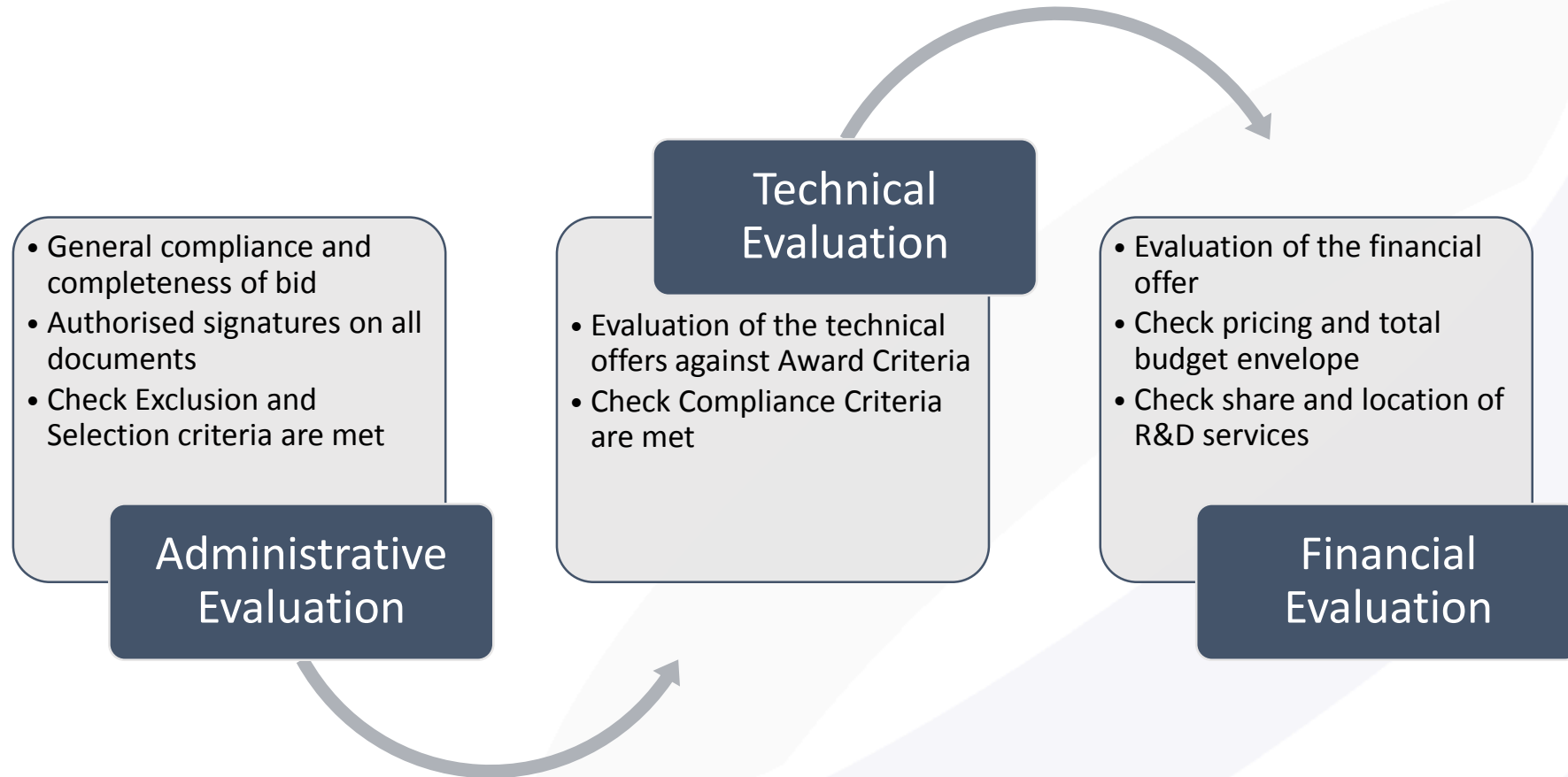
- ☁ A Lead Contractor

- ☁ Other Consortium Members signing a Power of Attorney in favour of the Lead Contractor

☁ In both cases, subcontracting is permitted



# Tender Evaluation



# What you will prepare





## Administrative documents:

-  General submission form
-  Questionnaire to demonstrate eligibility of the tenderer

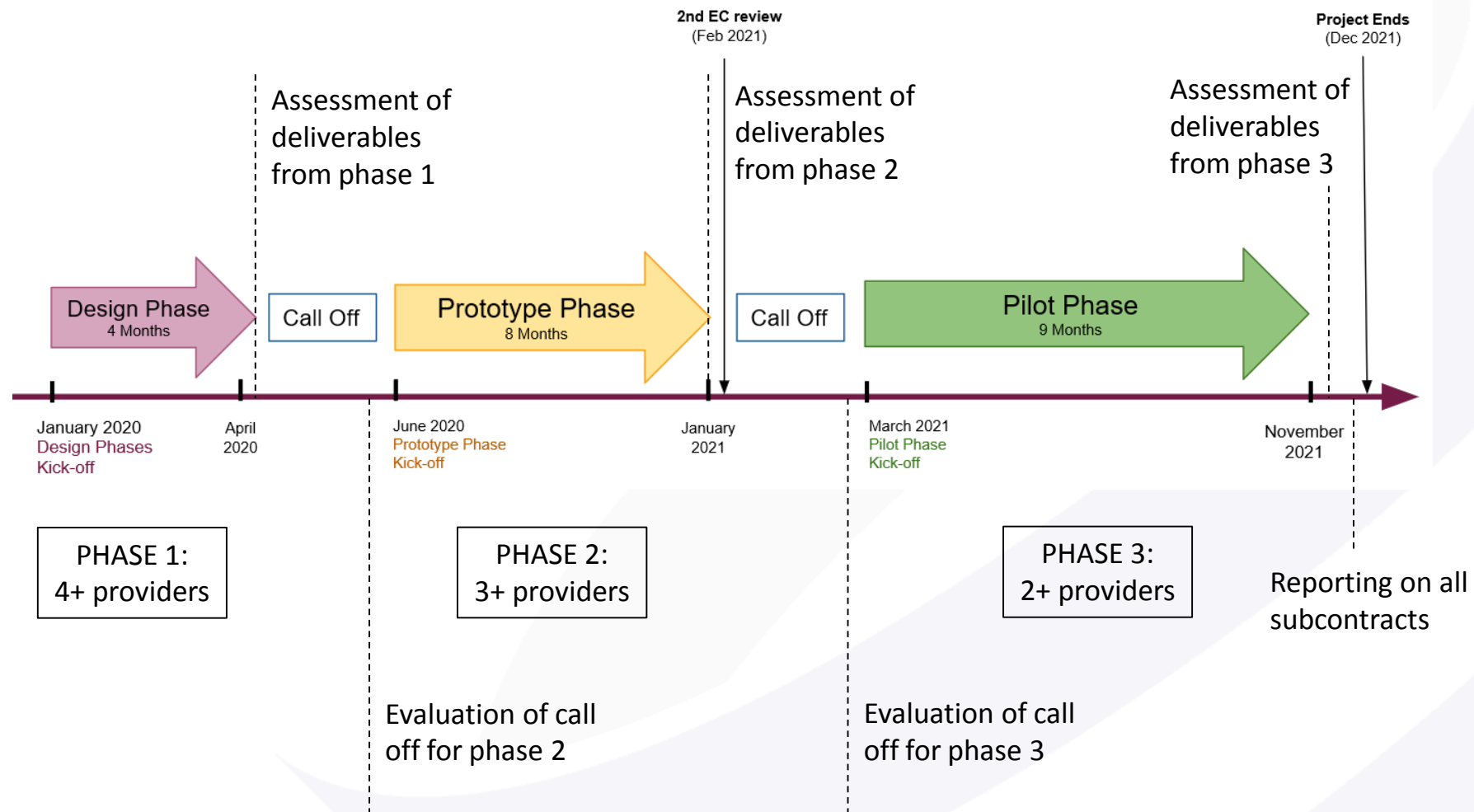
## Technical offer:

-  Questionnaires to demonstrate compliance and value of the offer against criteria indicated in the tender

## Financial offer:

-  A virtual price
-  An actual price, taking into account the risk- and benefit-sharing contract approach
-  Price breakdown including binding unit prices/hourly rates
-  Price estimates for phases 2 and 3

# Contract Implementation



## Key requirements for the PCP

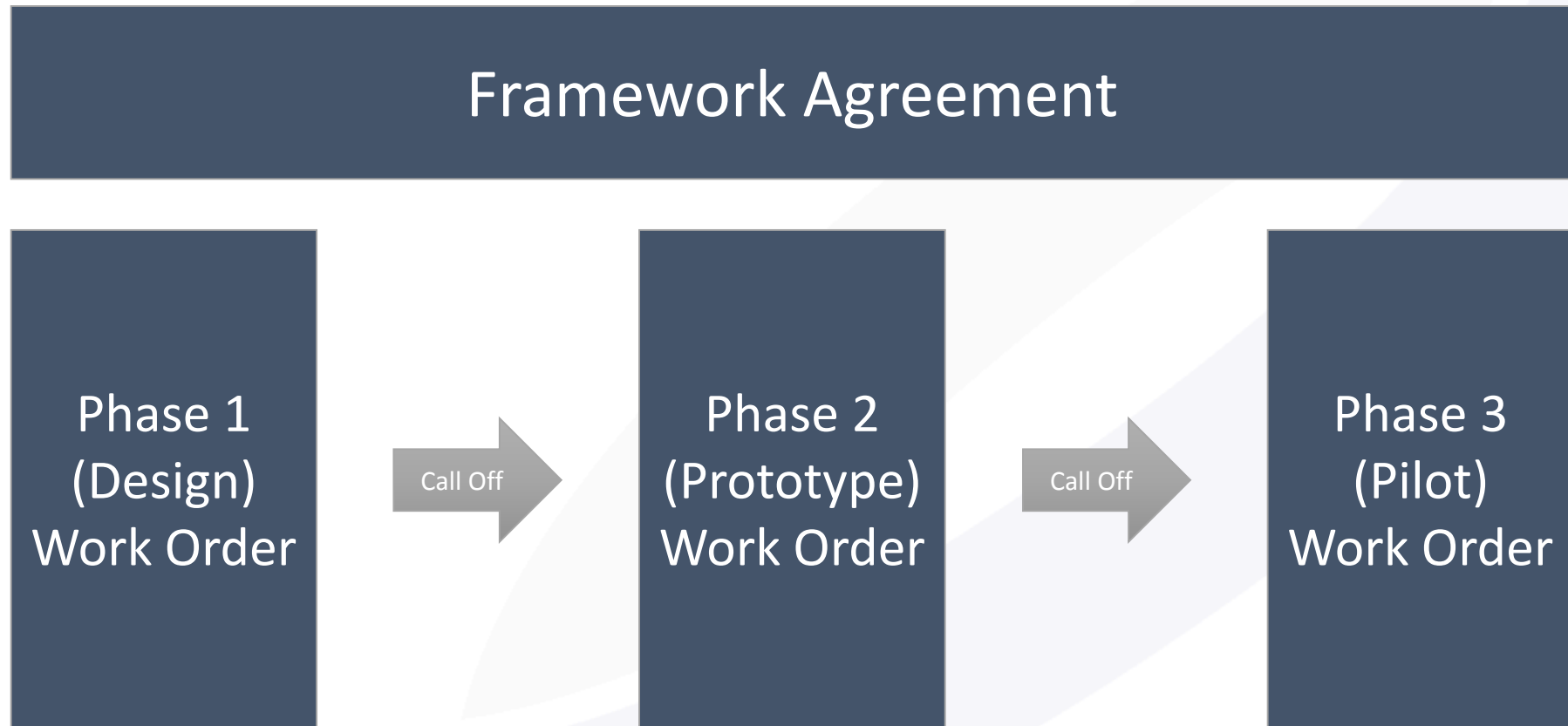
- ☁ R&D services must constitute the majority of the PCP contract
- ☁ The majority of the R&D activities, including the principle researchers working for the PCP contract, shall be located in EU Member States or H2020 Associated Countries
- ☁ Tenderers shall demonstrate an ability to commercialise the results of the PCP (e.g. research institutes acting alone are not eligible)
- ☁ No negotiation is possible

## PCP Available Budget

	Expected maximum total budget (EUR)	Expected minimum no of selected contractors	Expected maximum budget per selected contractor (EUR)	Expected maximum duration for the phase (months)
Phase 1	425 000	4	85 000	4
Phase 2	1 275 000	3	425 000	8
Phase 3	1 700 000	2	850 000	9
Total	3 400 000			

 Unallocated funds may be transferred to subsequent phases

# Framework Agreement





## Contracting Parties

- ☁ CERN, for the benefit of the ARCHIVER Buyers Group (CERN, DESY, EMBL, IFAE/PIC)
  
- ☁ The service provider (or consortium of service providers)

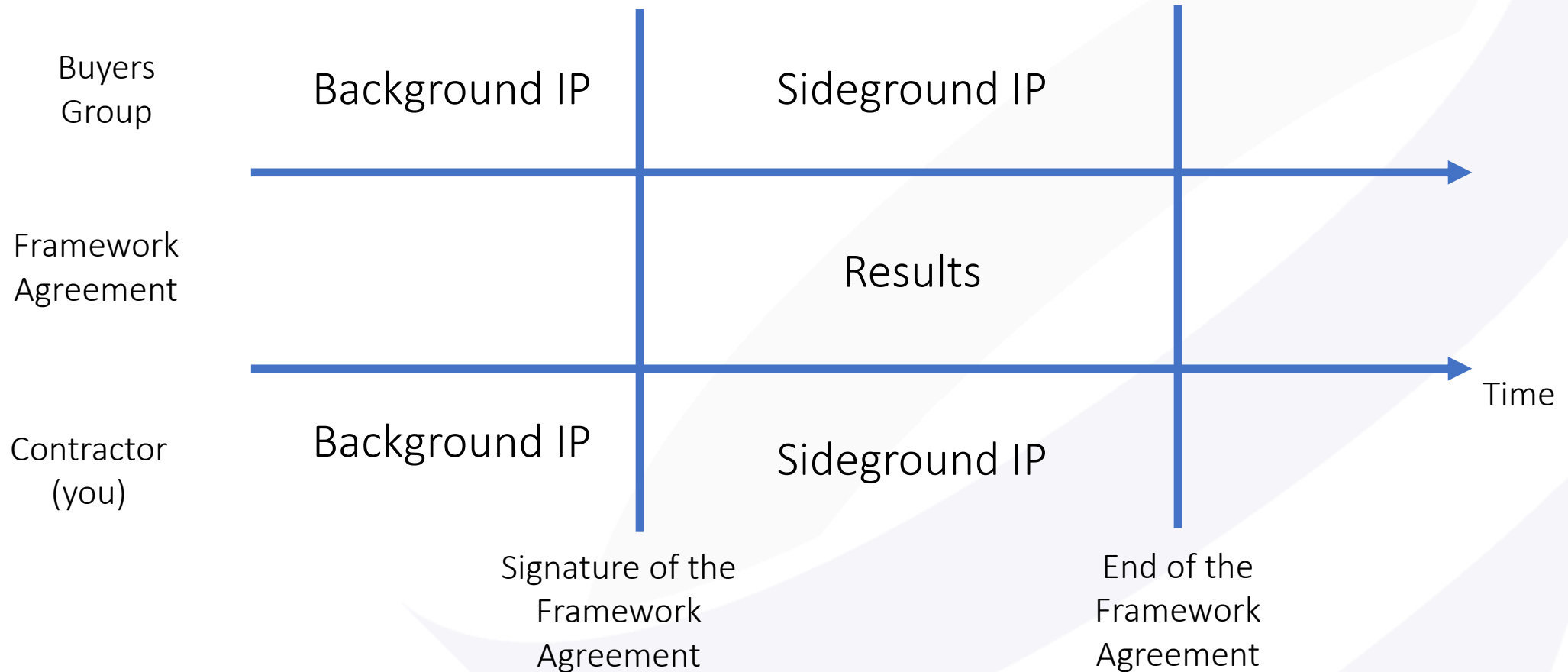
## Scope

- ☁ The Framework Agreement covers all 3 PCP phases and entrusts the contractor with the performance of the R&D services, including delivery of the data preservation solution
- ☁ The Work Order for Phase 1 will be awarded together with the Framework Agreement subject to a tendering procedure
- ☁ Work Orders for Phases 2 and 3 will be awarded subject to a tendering procedure (“Call Off”)

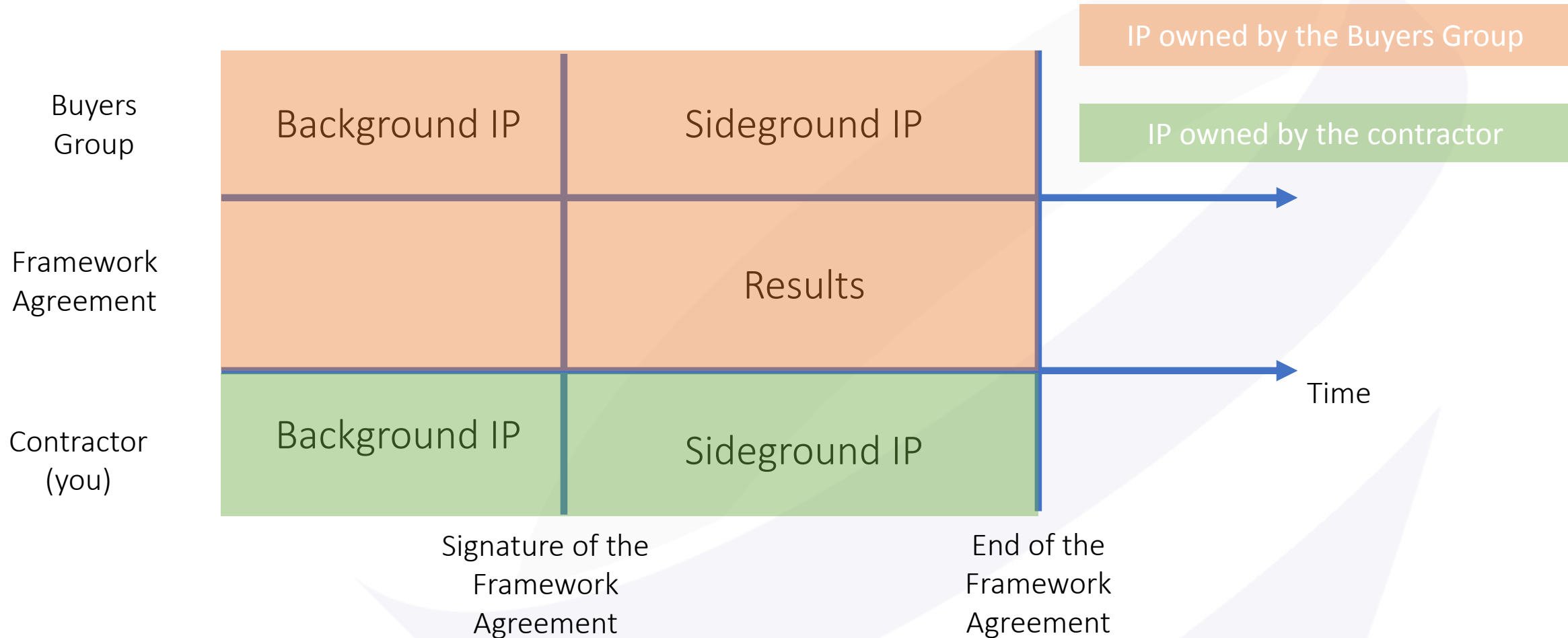
# Performance

- ☁ The contractor shall deliver and comply with key deliverables and milestones e.g. reports on the phase
- ☁ The contractor shall be assessed on its performance of R&D services
- ☁ Compliance with specified standards

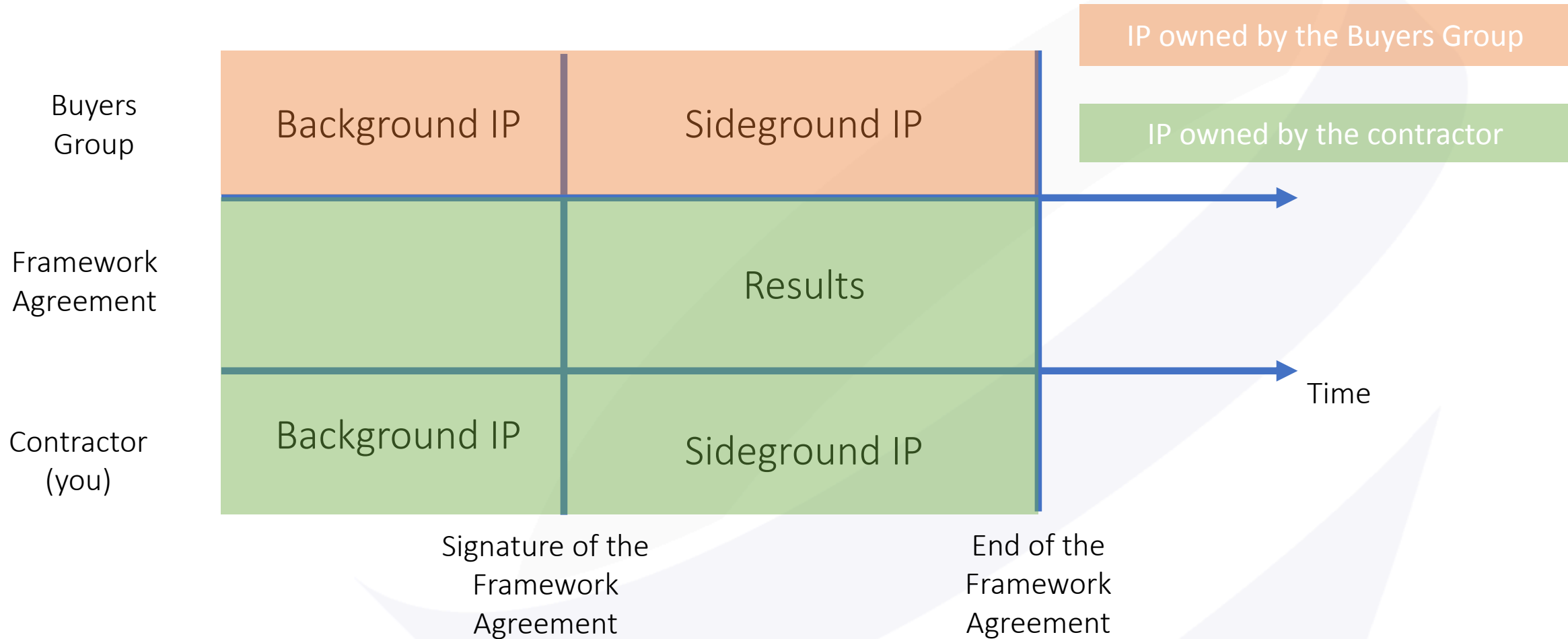
# Intellectual Property Ownership



# Intellectual Property Ownership (Traditional R&D Contract)



# Intellectual Property Ownership (PCP Contract)







# IP Access Rights and Commercial Exploitation



- ☁ Contractor must grant to the members of the Buyers Group:
  - ☁ Access to the Results on a royalty-free basis for use by each member of the Buyers Group
  - ☁ The non-exclusive right to license to third parties the exploitation of the Results under fair and reasonable conditions (without the right to sublicense)
- ☁ Contractor must ensure that Results are commercially exploited; failure to comply will result in a transfer of ownership of the IPRs from the contractor to the members of the Buyers Group

# Liability, Governing Law, Dispute Resolution

## Liability:

-  Contractor must indemnify CERN and other members of the Buyers Group against loss and damage arising under the Framework Agreement
-  Limit of liability except for personal injury or death, gross negligence or willful misconduct

## Governing law and dispute resolution:

-  Governing law: Framework Agreement and Swiss substantive law (in case individual provisions of the Framework Agreement are unclear or unambiguous)
-  Dispute resolution: arbitration