Feasibility study: joint cross-border procurement

06.12. 2017
Brussels
Dana Mitea
Support of the internal market policy for growth: feasibility study concerning the actual implementation of a joint cross-border procurement procedure by public buyers from different Member States.
Content

1. Main findings (per project)
2. Conclusions
3. Recommendations
1. Main findings per project
Analysed projects

1. HAPPI (Healthy Ageing – Public Procurement of Innovation)
2. Citrix licences and Appliances: BBG and SKI
3. Procurement of standard software: EPCO
4. Infrastructure project BBT-SE
1. HAPPI- Main findings

- Coordinator: RESAH, a French CPB operating in the health sector
- **Buying organisations from:** F, IT, GB, LUX, B

- Happi was co-funded by the EC and aimed at creating a network of public buyers of innovation in health.
- Co-funding of coordination activities but also purchasing costs of innovative goods & services
- Project implementation period: 2012-2016.
1. HAPPI- Main findings

- Resah conducted an open procedure under French law and concluded a FA with 3 different technical lots
  - Lot 1: Fall detection and alert system
  - Lot 2: Treadmill for rehabilitation and analysis of walking disorders
  - Lot 3: Walking course for preventing falls
- Call-offs were conducted under the respective national laws
- Award was based on the terms and conditions stated in the FA → 1 supplier/lot (one from NL, two from F)
- Procedure conducted in 3 languages (F, EN, IT)
- CPBs acted as wholesalers
2. BBG-SKI-Main findings

- 2 CPBs: BBG from Austria and SKI from Denmark
- JCBPP for the purchase of Citrix software licenses and appliances
- Outside any EU financed project
2. BBG-SKI-Main findings

- FA with 3 suppliers in an open tender procedure.
- Call offs are based on either a direct award for contracts below € 50k or mini-competition for contracts of € 50k or above.
- Joint award of the FA based on Austrian law.
- Subsequent mini-tenders are conducted according to Danish and Austrian law.
- Bidders are asked to offer discounts on the base contract which BBG and SKI have negotiated with Citrix.
- Total volume: € 32 Mio.
- 4 offers received (Austrian bidders with Danish subcontractors).
- 3 suppliers were awarded.
2. BBG-SKI-Main findings

Challenges within the (Danish) market:

- The Danish market was unaware of the tender until very late during the process.

- The nat. AT publication platform (applying EU standards) was obligatory to use but not capable of handling several NUTS codes → knowledge about tender documents was difficult to access and find.

- As a result of the tender: only AT bidders with DK subcontractors.
2. BBG-SKI-Main findings
Citrix Distribution Channel

Manufacturer
- Has agreements with selected distributors in each country/region
- Sets a price list

Distributor
- Is not allowed to sell directly to customers
- Distributes licenses to reseller

Resellers
- Most of them are SME's
- Are the only ones selling the licenses directly to the customers
- Most of them are SME's
- Are the only ones selling the licenses directly to the customers
2. Conclusions
Conclusions

- All projects have been implemented before the transposition of the new directives but anticipating the possibilities provided for in art. 39

- The implementation of the projects showed that JCBPP is **possible** and now, with the new provisions, there is a legal basis!

- JCBPP initiatives are not necessarily only a risky endeavor, but open up possibilities to explore the various ways the several layers of legal provisions involved interplay and which opportunities they provide for optimally achieving the goal of enhancing efficiency in PP

- It is possible to conduct a JCBPP in different ways (even without EU financing)
Main Challenges

1. **Legal complexity**: Provisions in national PP legislation and national contractual provisions, product specific legislation

2. **Reaction of the market**: rigid market structures and pricing policies

3. **Complexity** in terms of **invested time in coordination of partners**

4. **E-procurement tools** can be a challenge as they have been designed for national procedures/language only (e-signature, publication platform)
   - Official information/tools may only be available in one language
   - EU Official Journal: no possibility to upload tender documents

5. **Language**: challenging but was not identified as the main barrier
   - Using EN proved to be the most efficient solution.
   - Legal English: there is no European legal language
Main benefits in JCBPP Procedure

1. Monetary savings (see CBA)
2. In “difficult” markets: possibility to work together in order to **change a market strategy** (pricing)
3. CAs gain **access to other markets**
4. **Steep learning curve** on: market, procedures, language, “thinking outside the box”
5. **Exchange of good practice** with CAs from other MS
6. **Create networks** and use the potentials of the Internal Market (EHPPA)
7. **Help suppliers** to discover new markets
Reaction of the market

- Main reasons for bidding: expected turnover, expected market share, expansion to new markets
- Most of the EOs addressed consider that JCBPP is a **good purchasing procedure** and they would participate in future procedures
- The majority of companies participating in the JCB procedures were SMEs, most of them, medium size
- None of the EOs needed external staff to support the preparation of the tender (not even the SMEs)
- Challenges encountered: language barriers, complexity because of fulfilment of an international contract, question related to review bodies and courts.
CBA

Quantitative CBA: BBG-SKI

BBG-SKI - Cost-Benefit Analysis (in €)

<table>
<thead>
<tr>
<th></th>
<th>product price</th>
<th>searching project partners</th>
<th>coordination among project partners</th>
<th>travel</th>
<th>searching for the best product</th>
<th>preparation of tender documents</th>
<th>legal costs</th>
<th>translation</th>
<th>award and contract preparation</th>
<th>managing the contract</th>
<th>risk management</th>
<th>legal enforcement of contract</th>
<th>other costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBG</td>
<td>104,000</td>
<td>-64</td>
<td>-13,176</td>
<td>0</td>
<td>-324</td>
<td>-27,000</td>
<td>-13,524</td>
<td>-2,212</td>
<td>0</td>
<td>-1,080</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>SKI</td>
<td>1,799,200</td>
<td>-4,053</td>
<td>-9,900</td>
<td>-11,263</td>
<td>0</td>
<td>3,000</td>
<td>7,800</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>BBG-SKI</td>
<td>1,863,200</td>
<td>-4,917</td>
<td>-23,076</td>
<td>-11,263</td>
<td>-324</td>
<td>-24,000</td>
<td>-5,724</td>
<td>-2,212</td>
<td>0</td>
<td>-1,080</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Results from comparison of CBAs of the projects:

**Benefits**
- Economies of scale (procurement savings) \(\rightarrow\) better prices achieved
- Reduced process costs due to decreased number of procurement procedures
- Co-funding by the EU because of cross-border-character of the project

**Costs**
- Required coordination among project partners leads to increased number of days spent on the JCBPP project (especially for lead buyer)
- Additional traveling essential for initial trust building (at meetings, roadshows, infodays), but leading to additional costs
- Additional costs due to translation/consolidation of documents into the language/legislation in which procurement takes place
## CBA- Organisational perspective on costs and benefits

<table>
<thead>
<tr>
<th></th>
<th>Lead buyer</th>
<th>Participating organisation (active)</th>
<th>Participating organisation (passive)</th>
<th>Coordinating organisation</th>
<th>Overall project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordination</td>
<td>➕➕➕</td>
<td>➕➕➕</td>
<td>➕➕➕</td>
<td>➕➕➕</td>
<td>➕➕➕</td>
</tr>
<tr>
<td>(Co-)funding</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
</tr>
<tr>
<td>Economies of scale</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
</tr>
<tr>
<td>Savings of process costs</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
</tr>
<tr>
<td>Learning effects</td>
<td>➕➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
<td>➕➕</td>
</tr>
<tr>
<td>Total</td>
<td>➕/➕</td>
<td>➕➕</td>
<td>➕➕➕</td>
<td>➕</td>
<td>➕➕</td>
</tr>
</tbody>
</table>
3. Recommendations
Recommendations based on procurement phases
What is important to consider when conducting a JCBPP Procedure?

- Finding the suitable partner(s): same needs at the same time
- Conducting a benchmarking exercise to assess the potential benefits in the field of procurement
- Conducting an accurate market analysis
- Setting up a cooperation agreement between partners where the modus operandi is defined
- Consider the best cooperation scenario
- Think about e-procurement tools which can be used and test if interoperable
What is important to consider when conducting a JCBPP Procedure?

- The more partners, the more complex the procedure → start small!
- Having a coordinator simplifies the administrative work
- Most probably it is easier to procure in fields where there is no complex delivery process (e.g. software)
- Consider standard goods and services which do not involve complicated technical specifications
- Plan longer time when conducting JCBPP for the first time
Thank you for your attention!

Dana.mitea@bbg.gv.at
Additional information
Methodology
Methodology, 3 Phases

1. Preparatory research phase:
   - identification of relevant studies, mapping of relevant stakeholders and analysis of the existing legal, administrative and organizational framework for joint cross-border procurement

2. Case study phase:
   - data collection phase in the selected case studies with the aim to assess the role and impact of legal, procedural and policy-based tools in order to enable and strengthen joint cross-border procurement with regard to the stakeholders involved

3. Analysis of data, including cost-benefit analysis
   - development of an analysis guideline
   - analysis strategy by which qualitative data were segmented, categorized, summarized, and reconstructed/compared in a way that captures the important concepts within the data set
   - examination of the data and drawing conclusions
Case study phase

- **4 cases** have been taken into consideration
- **Interviews** with CAs:
  - 10 interviews within 9 buying organisations (lead buyers and participants) and 1 coordinator (EPCO)
  - Interview partner from each organisation: Project leader

- **Online questionnaires** for EOs
  - all **suppliers** and as many as **possible bidders**: getting the contacts- difficult for data protection reasons (Happi)
Cost-benefit analysis (CBA)

- Qualitative description of costs and benefits of the project in the interviews
- Factsheet for product prices and incurring costs/hours in different stages of the project (contrasting between ‘JCBPP’ and ‘baseline’ scenarios):
  1. Conduct of a quantitative cost-benefit analysis (CBA) within the scope of the JCBPP project
  2. Description of the method that was applied for the CBA
  3. Achieved price/s for the procured product/s
  4. Quantification of the total costs of the JCBPP project for different stages/areas in the procurement process
  5. Expected development of costs in future similar procurement projects
  6. (For lead buyers:) Total value of the goods and services that were procured within the project, and shares of the project partner organisations
Cost-benefit analysis (CBA)

- Initial design: start from the CBAs that were conducted within the scope of the projects

  → Lack of required data

- Applied method: mostly qualitative information for each project – quantitative elements implemented where available

- Comparing and contrasting values for each of the projects: obtained prices and costs/benefits in different phases

- Commenting on differences between coordinating organisations, lead buyers and participating organisations
Difficulties encountered in the collection of data

- availability of interview partners
- different “procurement language”
- availability of specific data
- insufficient data management
- language
- fluctuation of personnel during the implementation of the project
1. HAPPI- Main findings

Main barriers

- **Language:**
  - Publication platform only available in French!
  - Official Journal: publication possible only in one language → help-desk with translated screenshots
  - Time consuming because of translation processes

- **Innovative character of the products purchased** → very few call-offs

- **Keeping all partners involved due to the length of the project**

- **Legal complexity**
1. HAPPI- Main findings

Main Chances

- Help suppliers to discover new markets
- “True advantages”: exchange of good practice with other countries, create networks and use the potentials of the Internal Market, gain of expertise and language skills
- Important outcome: creation of EHPPA association

“Now we finally understand what is going on in Europe“
1. HAPPI - Main findings

CBA:

- External funding from the EU (95% of project costs, also co-funding for purchase of final products)
- Access to international markets/wider supplier base through the project → less market research costs for participating organisations
- (Potential learning curve: less time required if project to be continued)

Costs:

- Coordination among the project members is time intensive
- Travel costs for different purposes (meetings, roadshows, infodays)
- Translation costs for documents due to different languages
- Longer communication chain/more time intensive (HAPPI → participating organisations → final procuring organisations)
2. EPCO- Main findings

- **Challenges:**
  - Market: „the big 5“ software companies (Microsoft, SAP, Oracle, IBM, HP)
  - External legal staff was hired to deal with the CB situation

- **Chances**
  - Cooperation with partners
  - Support through EPCO for the coordination work

- New follow-up procedure was published in August 2016.
2. EPCO- Main findings

CBA:

Benefits:
- Reduced number of tenders (estimated costs of ca. 50,000 € per tender)
- Savings in time and money due to less tenders for participating organizations, also because of expertise available at the level of the lead buyer and EPCO
- Economies of scale → better prices due to bundling of volumes

Costs:
- Increased time efforts for lead buyer due to coordination among partners/EPCO
- Risk management more prominent in contracts with larger sums
- Tender and contract under the law of a different country
- Travel costs due to coordination with partners
3. BBT-SE- Main findings

CBA:

- Price savings in JCBPP setting
- Reduced number of tenders
- Co-funding by the EU: 50% of costs (if procured nationally, a co-funding of only 20-30% would have been expected)

Costs:

- Peculiarities of Italian procurement law
- Coordination difficult due to governance structure of the organisation (CEOs in two different locations)
3. EPCO- Main findings

- Contracts and FA are centrally managed by the lead Central Bank or by EPCO, but implemented (ordered and paid for) by the participating Central Banks.
- EPCO focuses on getting the participating banks to commit to a certain procurement volume.
- Particular EPCO legal situation
- Decision ECB/2008/17 laying down the framework for joint Eurosystem procurement (ECB/2015/51)
3. EPCO- Main findings

- Procurement of standard software 2011
- Lead buyer: Dutch National Bank
- 14 Central Banks participating
- FA awarded in a restricted procedure under Dutch law
- Call-offs under Dutch law
- Only 3 offers received, 1 supplier awarded (reseller)
- Non exclusive FA: only the DNB is obliged to call-off, the others not!
- Contract volume: max. € 50 mil.
4. BBT-SE Main findings

- The founding of the BBT SE is based on a State Treaty between Austria and Italy, 2004
- SE: 50% Austrian Railways Company ÖBB & 50% TFB, IT
- Treaty includes no provision on how PP procedures will be conducted → the General Assembly decided on applicable rules
- Registered office of the SE in the planning phase in Innsbruck with branch in Bolzano and during execution phase, in Bolzano with branch in Innsbruck.
- BBT SE is a sectorial CA → dir. 25/2014
4. BBT-SE Main findings

Applicable PP rules:
- Procurement for services carried out in AT, under AT law
- Procurement for services carried out in IT, under IT law
- JCBPP under IT law
4. BBT SE Main findings

- Open procedure to award a contract with a single economic operator, no division into lots
- **Participants:** 1 joint entity owned by 2 MS
- the contract was managed under Austrian law for the services provided in Austria and under Italian law for those provided in Italy.
- **Procurement volume:** EUR 3.4 million
- **Number of bidders:** 5
The idea was born 3 years ago in the CEO-network between the three CPBs Hansel, SKI and BBG. In order to assess the most suitable area for a JCBPP, the three CPBs held workshops testing and discussing different business areas. This was followed by a benchmarking exercise of different products: office supply, flight tickets, hardware, copy machines, and software. Hansel, BBG and SKI found out that the most appropriate product for a first JCBPP project was standard software: No physical delivery and Does not imply complicated technical specifications. Hansel was obliged to step-out due to national legal restrictions related to the cross border nature of the procedure and the national organization of ITC.
Cross-border cooperation between Distributors and Resellers
Bidding situation

DISTRIBUTUROR

- Reseller margin
- Distributor margin
- Negotiated conditions manufacturer

Selling price from distributor to reseller

Compensation

RESSELLER

- Reseller margin
- Distributor margin
- Negotiated conditions manufacturer

Selling price from reseller to customer
Results after bid

DISTRIBUTOR

- Reseller margin before tender
- Distributor margin before tender

- Reseller margin after tender
- Distributor margin after tender

Manufacturer margin

RESELLER

- Reseller margin before tender
- Distributor margin

- Reseller margin after tender

Additional saving
Main findings

Advantages

- The project has strengthened the good relations between the CPBs – now also on an operational level
- Professional exchange in everyday life of af CPB between colleagues across SKI and BBG (and Hansel)
- Knowledge of the market
- Tackling something that has not been done before in that market
- Savings

Chances

- Steep learning curve on: market, procedures, language, “thinking outside the box”
- Challenge the market: cooperation between Distributors & Resellers
3. BBG-SKI-Main findings

- **Challenges:**
  - Time consuming as it was the first JCBPP project
  - Language in the tender process
  - Legal: mostly in the outset of the project due to provisions in the FIN legislation
  - Two different contractual paradigms and tender standards
  - Negotiation with Citrix (pricing policy in two different regions) in 4 rounds. Rather a challenge for Citrix to react
  - Special situation on the software market: distribution channel: manufacturer-distributor-resellers. Bidding only possible in a consortium between D&R.
3. BBG-SKI- Main findings

CBA:

- Economies of scale → better prices due to bundling of volumes; these benefits outweigh any additional costs incurred in the JCBPP project
- Benefits for one project partner due to distribution of workload (e.g. for SKI in terms of legal costs)

Costs:

- Drafting of tender documents: time intensive due to the need of coordination of the different provisions
- Coordination efforts (several meetings and telephone conferences)
- Language issues: English as working language → time-intensive
- Travel costs
CBA

- Savings due to higher volumes (economies of scale)
- Generation of **savings of process costs**
  - Decreased number of tenders due to central coordination
- Increased external **(co-)funding**
  - Important role, especially for generating know-how
- **Coordination** and communication among project partners
  - Related to issues like travel, language/translation, integration and consolidation of legal systems/terms from partner organisations
  - Communication and coordination can lead to major risks/costs
  - Depending on Project structures – level of involvement of PO
CBA

- Degressive development of procurement savings due to economies of scale:
CBA – Distribution of benefits

- Compensation of coordinating organisation/lead buyer:
  - Rotation (long-term cooperation)
  - Annual lump-sum payments (long-term cooperation)
  - Compensation payments per tender (also used for one-off projects)