Public Procurement in Germany

Workshop on the Public Procurement Strategy
Package - Panel 2

Thomas Solbach
BMWi (Federal Ministry for Economic Affairs and Energy),
Unit "Public Procurement Policy"

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Outline

A. Structure of the German public procurement system

B. Legal framework – Overview

C. Key Aspects of the German public procurement system
A. Structure of the German PP system
Procurement Market Background

Key Figures (estimates):

- About **30,000 Contracting Authorities (CA)**
- Perform about **2.4 million procurement procedures** per annum
- **Estimated annual volume** of public procurement including supplies, services & works in Germany:
  
  Total: 280-360 billion € p.a.
  (est. German Federal Government)

  400 billion €/annum
  (est. EU-COM)

- Percentage of Gross Domestic Product (GDP): approx. **10-15 % p.a.**
A. Structure of the German PP system

Characteristics

- **Decentralized system** (→ federal structure of Germany)
- Each level (federal, regional, local/municipal) **independent**
  w/r/t financial and budgetary issues
- No overarching PP statistics *(at present)*

- **However:**
  - acceptance and compliance by authorities on all Gov. levels
  - working and highly efficient remedies system (above thresholds)
  - monitoring function of inspecting authorities, audits courts, EU-Commission, legal review system by ECJ (Europ. Court of Justice)
  - German Government is establishing federal public procurement statistics (on the basis of a new ordinance)
A. Structure of the German PP system

Contracting Authorities

Distribution of public procurement activities on governmental levels

- **Federal Level**: approx. 12% at the federal level
- **Regional Level ("Länder")**: approx. 30% at the level of the federal states,
- **Municipal / Local Level**: approx. 58% at the municipal level,
A. Structure of the German PP system

Duality:

**PP above and below EU thresholds**

- PP below EU thresholds:
  - 90% of all PP procedures
  - 75% of overall financial volume

- PP above EU thresholds:
  - 10% of all PP procedures
  - 25% of overall financial volume

(estimates)
A. Structure of the German PP system

Duality: PP above and below EU thresholds

► Above the thresholds: competition law:

- WTO/GPA
- Law against restraints on competition
  *(Gesetz gegen Wettbewerbsbeschränkungen - GWB)*
- Ordinance on the award of public contracts
  *(Vergabeverordnung - VgV)*

► Below the thresholds: budgetary law:

- Procedural/administrative regulations, UVgO (Code of procedure for procuring supplies and services below EU-thresholds), VOB (specific for public works)
B. Legal framework – Overview
Legal Structure above EU thresholds

**EU law**
- General Procurement Directive
  - Directive 2014/24/EU
- Utilities Directive
  - Directive 2014/25/EU
- Directive on Defence and Security
  - Directive 2009/81/EC
- NEW: Directive on Concessions
  - Directive 2014/23/EU
- Requirements of EU primary law

**GWB, Part 4**
Act against Restraints of Competition

- Ordinance on the Award of Public Contracts (VgV)
- Ordinance for Specific Utilities (SektVO)
- Ordinance on Concessions (KonzVgV)
- VSVgV Defence and security

14 Procurement Acts at Länder level
in accordance with § 129 GWB

- VOB/V-S
  - (construction-specific provisions only)
- VOL/A Part 2
- VOF Part 2
- VOB/A Part 2 (public works)
New: Law on a competition register

- The law sets up a register that contains information for example on criminal sentences for crimes such as money laundering, fraud, corruption offences or tax evasion that can be attributed to a company.
- The prosecutor’s office and other authorities will be obliged to submit to the register information on relevant convictions.
- Contracting authorities are then obliged to draw information on bidders from the register prior to the award of a contract.
- Contracting authorities have to decide whether to exclude a bidder on the basis of the information received.
C. Key aspects of German PP system
Principles of public procurement law

- Transparency
- Competition
e.g. more than one bidder
- Non discrimination
- Equal treatment of European and international bidders
  (no preference for local bidders)
- Interests of small and medium-sized enterprises
  (division into lots is mandatory; principle of proportionality)
- Sustainability
- eProcurement
C. Key aspects of German PP system
Non discrimination

- Principle of non discrimination of bidders / equal treatment

- The origin of the bidder is no selection criteria; no preference for local bidders

- Equal treatment of German, European and international bidders

- No preference for goods produced in Germany/EU, no local content requirements

- Principle of non discrimination has been in place in Germany since 1960; reinforced by EU internal market
C. Key aspects of German PP system
Most economically advantageous tender (MEAT)

- The **most economically advantageous tender (MEAT)** will be awarded the public contract.

- The MEAT shall be identified - at least - on the base of **lowest price** or **lowest cost**
  - Including LCC (life-cycle cost)

- **Other criteria** for MEAT may include (for example):
  - Quality
  - Environmental aspects
  - Social aspects
  - Innovation
C. Key aspects of German PP system
Strategic aspects / Sustainability
(environmental, social, innovative)

- Sustainability in PP ➔ esp. environmental + social aspects

- Option for contracting authorities to lay down strategic aspects (aspects of sustainability) in an individual PP procedure
  - technical specifications
  - award criteria
  - contract performance clauses

➔ However: no general obligation for contracting authorities to lay down specific strategic aspects

- Strategic Aspects must be:
  - linked to the subject-matter of the contract and
  - indicated in the call for competition or procurement documents
C. Key aspects of German PP system
e-Procurement

• Calls for Competition and Contract Award Notices
  – above thresholds: published on TED
    (= single point of access by electronic means)
  – below thresholds: published in the internet
    (website CA or e-tender platform)

• Availability of procurement documents by electronic means (= Internet)
  – unrestricted and full direct access free of charge

• All communication and information exchange only by electronic means
  – Submission of tenders
  – Requests of bidders

• Obligatory at the latest after 18. October 2018 (above the thresholds), at
  the latest by 2020 (below the thresholds)
C. Key aspects of German PP system

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e-Procurement

- Procurement procedures based on **electronic means mandatory**

- Possible **benefits**
  - Significant savings for all parties
  - Simplified and shortened processes
  - Reduction of administrative burdens
  - Increased transparency
  - Greater innovation
  - New business opportunities by improving the access of enterprises, including small and medium-sized enterprises (SMEs) to public procurement markets

- Gradual but ambitious transition: longer implementation periods were used to full effect
C. Key aspects of German PP system

Centralization

- Central procurement agency (CPA)
- Central procurement body (CPB) (within a contracting authority)
- Public contracting authorities may also procure supplies and services from central purchasing bodies
- Occasional joint procurement
- Technical cooperation
C. Key aspects of German PP system
Examples of centralization

▶ Federal level:
  • Federal Procurement Office of the Ministry of Interior (BeschA)
  • Federal Office of Bundeswehr Equipment, Information, Technology and In-Service Support (BAAINB)
  • Federal Institute for Materials Research and Testing (BAM)
  • Coordination Unit at the Federal Procurement Office of the Ministry of the Interior (Kaufhaus des Bundes) (73.000 standard products, 460 framework contracts)

▶ Länder level:
  • „Vergabemarktplatz NRW“

▶ Regional or local authorities:
  • Division procurement services City of Bonn
C. Key aspects of German PP system

Professionalization

Solid legal framework in place but one of the key challenges in Germany:

➢ Professionalization

➢ Training of public procurement officers has to be improved

➢ Multitude of private initiatives (forum vergabe, Deutsches Vergabenetzwerk etc.)

➢ Some public initiatives (Master programme of the Bundeswehr University Munich, Federal Academy of Public Administration, some academies on Länder-level)