

New information technology procurement strategies in Germany

I General Background

In the Federal Republic of Germany, information technology procurement observes three basic principles:

1. As a rule, all contracts for IT assets and services are to be awarded competitively – a fact that may result in rather large time lags between the invitation of tenders/bids and actual delivery;
2. In the majority of the cases, the responsibilities for IT procurement have a decentralised structure – i.e. each public entity is responsible for procuring its own IT assets and services;
3. If contracts are awarded non-competitively, applicable German procurement regulations and rules serve as a yardstick for steering the procedure.

The following procurement practices have emerged over the years:

- Apart from the decentralised procurement structure, some central procurement offices have been established such as the Federal Office for Military Technology and Procurement, the Procurement Office of the Federal Ministry of the Interior and the Procurement Office of the Federal Customs Administration;
- The body responsible for IT procurement only **responds** to requirements once these have been established;
- The long time lags associated with the public tendering procedure give rise to dissatisfaction among the future users of the IT assets and services to be procured where the users have to rely on the few central procurement offices. Potential IT users often do not appreciate the need for such long time lags because they may have to cope with their own challenges at short notice.

The Bundesrechnungshof's audit work has shown that users tend to evade centralised procurement procedures to the extent possible and try to procure the IT assets and services needed in a decentralised fashion, often disregarding the obligation to award contracts competitively. As a result

- No use is made of the lessons learnt by the procurement offices that have primary responsibility for awarding the contracts.
- The workload levels at the central procurement offices are declining below capacity.
- The experience gained with the application of contract awarding procedures is now scattered over a large number of bodies.
- It is rather difficult to develop specialised skills in this field.
- The error rate is increasing.

- The risk of litigation is increasing since contract awarding procedures may be subject to judicial review in certain circumstances.

In some branches of the public sector the problems with the central procurement offices stated above lead to an adjustment of procurement strategies:

⇒ Instead of **responding retrospectively** to the demands made by potential IT users/clients,

⇒ the bodies responsible have begun to plan requirements **proactively**.

A prerequisite for such a proactive approach are considerations such as

- What will be needed in the near future / what might be needed?
- Where are specific IT assets and services needed?
- How can demands be aggregated in the procurement of IT goods and services?
- What methods can be used to make procurements more efficient and effective?

The following options exist:

- Use of a preliminary information procedure;
- Selection of an adequate tendering/bidding procedure to help reduce the time lag between receiving the bids and awarding the contract.

An example where the new acquisition approach has been followed are blanket contracts for both hardware and software procurements.

- Blanket contracts for hardware procurements:

Rather than adopting the long and cumbersome procedure of inviting tenders/bids for individual IT deliveries is followed, which would imply the need:

- To verify the supplier's compliance with specifications prior to each contract award;
- To negotiate repeatedly with suppliers to agree the terms for each successive contract;
- To adjust contracts to technical modifications in the case of recurrent supplies or if the agreed deliveries are to be stretched over a period from 6 to 12 months.

Contracting public-sector agencies use the alternative option of concluding a blanket contract covering 1 to 3 years. As a result, IT assets and services can be ordered from one supplier within the period fixed. This option has several merits such as:

- Only a limited number of contracts needs to be kept up to date.
- Advanced procedures for making orders or configuration inquiries via the Internet can be used.

- When needing services, the public-sector users of IT assets procured under a single blanket contract need deal with only one contact.

The potential disadvantage of such a blanket contract, i.e. dependence on a single source, may be mitigated by concluding at least one additional blanket contract with a different supplier at the same time. Since the prices quoted by different suppliers for IT assets and services are fairly similar, it is almost impossible to identify the supplier who offers best value for money. (When public managers compare several IT configurations consisting of several IT components, they realize that frequently component 1 is offered less costly by one supplier whereas component 2 is offered less costly by another one.)

- Blanket contracts for software procurements:

Concluding blanket contracts with various suppliers may enhance the customer's bargaining power and thus effectively counteract monopolistic trends in the market for office communication software (MS). The (potential) user of such software benefits from such options because he is enabled to select the best product for his purposes in a situation where general terms and conditions of sale are almost identical.

The Bundesrechnungshof's audit work in this field has shown that blanket contracts are also a viable option where quantitative needs for certain IT assets (e.g. expendable items) are likely to exceed the envisaged quantities. Such additional needs can be met by providing for options to order supplies as they are needed.

II Replies to the questions included in the Canadian Lead Paper, some of which have been already answered above:

1 Analysing and reporting IT procurement information:

1.1 How much does the government invest year-over -year on IT assets and services?

- More than 2 billion DM

1.2 Who in government is investing and is the trend consistent?

- Generally, IT capital expenditure is incurred separately by each public entity. Average expenditures have remained nearly stable as seen against the background of budget constraints on non IT expenses.

1.3 What are government departments and agencies buying?

- IT purchases include both hardware and software and pertinent services.

- Public contract awarding regulations provide for competitive tendering/bidding, thus preventing the emergence of sole 'steady suppliers' especially in the hardware area.
- IT services also need to be awarded competitively.
- Selecting programs offered by one contractor only may have the effect that public managers will continue to rely on the one supplier for any adjustments/updates of the product (*cf.* 4.3).
- Currently there is a trend towards outsourcing, i.e. selecting a partner who is responsible for the smooth running and topicality of IT assets, especially IT hardware.
- As a result of users' IT requirements emerging at short notice and of short IT product cycles, procurement offices have begun to conclude blanket contracts (without purchase commitments) beforehand to help cover arising demand.

The IT contractor is obliged to supply a fixed number of personal computers within an agreed time frame. This is done to avoid storage of assets with the supplier and to allow for technological advances. All suppliers that are able to provide IT assets on a just-in-time basis have the chance to submit their tenders/bids.

1.4 Is there central reporting on a government-wide basis?

- Yes, however, reporting does not provide a complete picture.
- Overall reporting is based on statistics prepared by the individual departments and agencies.

1.5 How reliable are such sources of data?

- Depending on the reporting department or agency, the facts and figures supplied are fairly reliable. However it is also of concern who demands the statistical report or who is the report user.

2 Acquiring assets and services for large IT projects:

2.1 How important is the contracting phase to the overall rate of success for developing large IT projects?

- The contracting phase is of pivotal importance, because all decisive contract elements need to be duly stipulated.
- Reliance is increasingly placed on standardised contract provisions developed by specialised Federal Government agencies in conjunction with German industry associations.

2.2 What are some of the known weaknesses from past experience?

- Poor specifications as a result of imprecise requirement definition can lead to project failure as well as to the submission of inadequate tenders/bids because the workload may be underestimated by the contractor.
- Public managers may develop unrealistic estimates of costs or of workloads involved.
- Frequently costs are deliberately underestimated to have the project survive budget negotiations and to succeed at least in launching the project.

- Interfaces / data exchange formats are not defined on the basis of standardised formats generally accepted in the marketplace. If this shortcoming could be remedied, this would help avoid excessive dependence on a small number of manufacturers.

2.3 Are there approaches and methodologies in dealing with those weaknesses?

- Negotiations about the essential points of a contract should be completed before awarding the contract.
- 'Rated break points' / clearly defined project components that may be run / operated /integrated independently are useful tools.

2.4 Have they been used and do they work effectively?

2.5 What are some of the best practices that can be shared with other SAIs?

- Standardised contract provisions developed by specialised German federal agencies in conjunction with German industry associations.

3 Method of supply for hardware:

3.1 Are there specific methods of supply for routine purchases of hardware?

- It is advisable to conclude at least two blanket contracts covering the same assets and services with different suppliers at the same time in order to maintain competition.
- Where possible, no purchase commitments should be made. Since the sales managers of the potential bidders know market conditions much better than any public sector procurement office, the contract provisions should be beneficial in the first place for the actual users of assets and services.

3.2 How do we satisfy ourselves that the hardware purchases are made with due regard to economy and efficiency?

- Within legally permissible limits, bidding periods should be as short as possible.
- Specifications should require state of the art products and services. At the time of delivery the requirements earlier stated will correspond to the general standards achieved by then.
- Time lags between tendering and contract awarding should be kept as short as possible.
- Where possible, no scope for raising prices should be allowed.
- Short duration of contracts such as 2 years plus an optional extension of 1 year. Where financial years coincide with the calendar year, the contract should preferably begin in the course of the year, e.g. on 1 June instead of on 1 January).
- Contracts concluded should not provide for definite purchase commitments. Where contracts have been concluded at the initiative of the public sector, contract terms should ensure that the supplier is obliged to deliver systems at the prices agreed upon in the bidding procedure in order to help avoid cut-rate prices and dumping prices (i.e situations where the price quoted only serves to win the competition while subsequent technological advances up to the time when a sizeable number of systems is delivered frequently lead to an adjustment of contract conditions and often also to an adjustment of prices). Cut-rate prices and dumping prices also have a negative impact on service quality.

- Further market developments should be observed while the contract is in force.
- Competition among suppliers should be ensured by concluding at least two blanket contracts.
- Without blanket contracts the user may be furnished with a variety of systems by changing suppliers, with public-sector systems administrators facing the problem of having to identify the one and only relevant supplier responsible for a specified system each time any services are needed.

3.3 Is there assurance that such purchases provide value and are they tested in some fashion?

- Not generally, but purchasing IT assets and services from reputable suppliers ensures a certain minimum quality standard.

3.4 Are there government-wide standards for such purchases?

- Yes, general guidance on standard requirements for personal computers to be used by federal departments and agencies.
- Blanket contracts limit an undesirably excessive variety of products by standardisation; not all items that are nice to have should be purchased. User needs should be aggregated and steered to achieve economies of scale.

4 Purchasing software products and related services:

4.1 Are all software products treated alike?

Yes, basically the same contracts can be used. However, suppliers of standard software often do not accept them. Where a public entity wants or needs to make a procurement, it must often sign the standard contract drawn up by the supplier.

4.2 Does your government buy software products on a piecemeal or enterprise-wide basis?

- On a piecemeal basis but under blanket contracts;
- Enterprise-wide licenses are the exception rather than the rule.

4.3 Do government departments and agencies regard software products and related services as a commodity or a longer-term relationship and what are the respective implications?

- As to software procurements (both individual solutions and standard software) a longer-term relationship is created which in the extreme case may lead to an total dependence.
- In such a case a change of suppliers is a rather difficult and costly endeavour.

4.4 To what extent do trade laws affect the dynamics in procuring for software?