



ReSPA

Regional School
of Public Administration

Third Meeting of the Public Procurement / Public Private Partnership Working Groups

1 – 2 June 2015

ReSPA – Danilovgrad, Montenegro

DISCUSSION PAPER AND DRAFT AGENDA

Background

In the first half of the year 2014, ReSPA made initial efforts to support Public Procurement (PP) in the Western Balkans. It has been decided to launch the network of public procurement decision makers and senior experts in order to create and facilitate the platform to exchange experience, opinions and enhance the knowledge, understanding and capabilities of the actors involved. On the ground of the recommendations resulting from the previous ReSPA activities, public procurement has been recognized as a topic with high level of interest in the region and identified networking needs among the stakeholders. Furthermore, public procurement is recognized as one of the sectors that is highly cross-related with other development aspects such as economic efficiency of public spending, electronic means, environmental and social aspects, elimination of corruption and conflict of interest.

The aim of the first event held in July 2014 in Danilovgrad (Montenegro) was to:

- review and analyse the existing public procurement systems by countries,
- share best practice and experiences focused on managing their further development in EU context as well as review of the implementing capacity.

Defined goals were specific, achievable and focused on real needs of PP Network's participants. Set objectives were fully achieved within the networking event.

Among other, organization of events focused on discussion and exchange of national experiences on specific public procurement topics. Drafting of additional regional comparative studies on specific aspects of public procurement and consequent specialized training in regards to the adopted recommendations from those studies were recommended to be considered for further activities.

Following the recommendations and requests submitted by the participants, the second public procurement working group meeting was organized with attention to two specific aspects of modern and flexible public procurement system: e-procurement and management of irregularities in PP (aside the review process). The second meeting of PP working group was organized in Warsaw, Poland and such choice was not accidental. The combination of study visit and working group meeting was organized with a purpose to ease the identification of tangible inputs and benchmarks for launching and development of the upcoming Regional Comparative Study in the selected topics.

Poland accessed EU in 2004 and at the same time new public procurement law, fully harmonized with the EU Directives and Regulations was adopted. In this regards the joint study visit of the Poland PP office and consequent working group meeting was excellent opportunity for identification of similarities, differences and also common challenges in e-



procurement and management of irregularities areas. ReSPA members and Kosovo*¹, identified these two topics as significant and grounded for further research.

Based on the extended insight in the Polish PP system, regarding e-procurement and management of irregularities in PP (aside the review process), working group members had an opportunity to present developments and status of their national PP systems in regards to the selected topics and to discuss the mutual differences and common challenges in relation to the Polish PP system – which is also in the process of synchronization with the EU regulations.

Participant agreed that adoption of the new 2014 EU directives² is one of the key elements of further development of national public procurement systems in the region and as a result the Study has to focus on best solutions and practices in the selected topics being in line with the new EU public procurement framework.

As a consequence of the above developments regarding the Regional comparative Study in the selected two topics (Management of irregularities in PP and e-procurement (aside the review process)), ReSPA GB members have required that consultation among broader audience and consolidation of topics needs to be carried out. This is to assure and confirm that the identified or some additional areas will be feasible subject topics for research and comparison in the Region, which as outcome should provide valuable, tangible and recognized comparative study recommendations to ReSPA Members. Such recommendations should be recognised as valid and viable to be accepted for further implementation in the Region. In that purpose a questionnaire was developed and disseminated among the PP working group members including a wider group of PP professionals in the ReSPA region, with a purpose to confirm or to amend the recommended set of topics and expected research outputs, as well as to highlight their necessity and viability for follow-up implementation. The feedback and result analysis of this survey will be compiled, evaluated, presented and elaborated at the 3rd ReSPA PP working group meeting.

Based on the survey output analysis the envisaged layout of the comparative study will be presented and consulted with the PPP participants at the back to back event of PP and PPP working groups. The survey outputs will be used as a smart toll for either confirming/emending/denying of the already selected topics (e-procurement and management of irregularities in PP (aside the review process)) or including newly recommended topics such as centralised procurement models, separation of design and implementation of tender procedures, challenges of archiving PP e-documentation, participation of SMS's in PP, etc.

¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo Declaration of independence

² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts



In this regards, the first day of the meeting will be dedicated to the presentation of ReSPA Program of Work 2015 in relation to the PP thematic area, and envisaged activities and instruments anticipated to be implemented in the succeeding period. Presentation of survey outputs, conclusions and recommendations, as well as presentation of the updated layout of the Regional Comparative Study in PP containing initial recommendations derived from the survey outputs will follow. Due to the collaborative purpose and nature of the meeting, participants' interactive discussion will be encouraged in each phase.

The first half of the second day of the meeting is envisaged to be held along with the participants of the Public Private Partnership Working Group, where the previously agreed layout of the Comparative Study in PP will be presented and discussed with the wider audience, for final conclusion and anticipated study outcomes.

This session and discussion will be followed by the presentation from the PPP participants concerning the topics of Private Partner selection procedure - Negotiated procedure, restricted procedure, competitive dialog; Tendering PPP Project; and PPP contract content.

The second part of the second day will be dedicated to the finalisation of meeting conclusion and individual participant presentation of the common needs for training and anticipated study recommendations, outcomes and their implementation in the national systems as part of the envisaged activities in ReSPA Program of Work for 2015 related to the PP thematic area.

Objectives

The purpose of this paper is to provide basis for contributions and discussion among the representatives of the interested ReSPA Members and Kosovo* on the reflection and objectives of the PP working group meeting and additionally:

- to take in consideration and agree on the implications from the survey conclusions, analysis and outputs regarding the previously identified topics of the Regional Comparative Study in PP;
- to communicate and conclude the agreed updated layout and anticipated results from the comparative study among wider group of PP and PPP working group members;
- to identify and share best practices and experiences in the field of e-procurement, management of irregularities and/or some additional topics which will be raised by the survey results;
- to provide suggestions for topics to be discussed and agreed regarding the envisaged training needs derived from the anticipated recommendations from the comparative study and ideas for further development of work group operation;



The preliminary agenda provides a framework for open discussion in which the participants are invited to take active part and share their experience and opinions.

Content

E-procurement concept is perceived as a tool to significantly simplify the way procurement is conducted, reduce waste and deliver better procurement outcomes (lower price, better quality) by stimulating greater competition. As European Commission notes in the communicate *A strategy for e-procurement* - it can also contribute to addressing two of the main challenges the European economy is facing today: the need to maximise the efficiency of public expenditure in a context of fiscal constraints and the need to find new sources of economic growth.

Directive 2014/24 put stress on use of electronic means of information and communication, stating that they should become the standard means of information exchange in procurement procedures. The provisions establish the transmission of notices in electronic form, electronic availability of the procurement documents, fully electronic communication (including the submission of bids). Furthermore the contracting entities will have the right to make use of electronic auctions, electronic catalogues and dynamic purchasing system.

The new opportunities created by use of electronic means of communication and information could be a starting point for discussion of all participants.

The second subject of the event – **management of irregularities** – is of special importance for aspects related to establishment of transparent and efficient national procurement system. The monitoring and control mechanism in place should prevent irregularities and enhance trust in the law and administration. As the solutions for management of irregularities could differ from country to country (and even internally between contracting authorities), when their aim remains the same, the share of experience could be fruitful in planes for development.

Target audience and participants' role

This 2-day public procurement working group meeting will gather 18 participants (three representatives from: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Kosovo*), representing: policy makers - Heads/directors of public procurement offices, agencies, ministries in charge for policy development on public procurement and heads/directors of other key bodies within the national public procurement systems who:

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- Have at least 5 years of relevant work experience in the topic of the working group.
- Possess a clear and demonstrated interest in the working group topics and are motivated to participate in discussions and exchange of opinions/best practices with other colleagues from ReSPA Members and Kosovo*.

The detailed description of the target group and the qualifications required from the members of the working group can be found in the ToR for public procurement working group members.

The participants are required to:

- Provide their considerations and stand points in regards to the presented survey outputs challenging the previously set study topics in e-procurement and management of irregularities, including overview of identified obstacles and challenges in its development, information on implementing capacities and planned future activities;
- Provide comments, suggestions and stand points on the content proposal of the Regional comparative study on public procurement including the viability of implementation of anticipated study recommendations in their individual PP systems;
- Provide the inputs for the further working group needs and steps to be taken in regard to the envisaged follow-up activities

The participants are invited to actively participate in the discussion and practices exchange.

Short Resumes of the Experts – TBC



DRAFT AGENDA

Day 1 – 1 June 2015 (Monday)

- 09.00 - 09.30 Opening Session
- Agenda overview and introducing objectives of the meeting
- 09.30 – 10.15 Presentation of the PoW 2015 – PP Thematic area
- 10.15 – 11.00 Presentation of survey analysis
- Presentation of the need for development of the Study, including relevant focus areas envisaged to provide feasible recommendations for improvement and exchange of good practices for implementation of the study recommendations related to the ReSPA region
- 11.00 – 11.15 Coffee Break
- 11.15 – 12.30 Discussion regarding the elaborated survey outputs relevant for the topics of the Regional Comparative Study and identification of significant focus areas for further implementation
- 12.30 – 14.00 Lunch
- 14.00 – 14.45 Presentation of the update layout of the Comparative study, based on the initial survey outputs
- 14.45 – 16.00 Discussion and updated of the presented layout based on the agreed and previously elaborated survey outputs



Day 2 – 2 June 2015 (Tuesday)

Part I – Joint PP/PPP Issues

- 09.00 – 09.10 Opening session. Wrap up of topics from the previous day
- 09.10 – 09.30 Presentation of PP Regional study
- 09.30 – 10.30 Private partner selection procedure. Negotiated procedure, restricted procedure, competitive dialog
- 10.30 – 10.45 *Coffee break*
- 10.45– 11.30 Tendering PPP Project
- Selection criteria
 - PPP Contract award criteria
 - The most *economically advantageous tender (MEAT)*
- 11.30 – 12.15 The PPP contract content
- Type of Agreements (Construction, Maintenance, Lease, Financial and Direct)
 - Termination provisions (early termination, compensation events, relief events, step-in-right, and dispute resolution)
- 12.15 – 12.30 Discussion

Part II – PP Issues

- 12.30 – 13.30 Wrap-up and conclusion of the topics for the upcoming development of the Regional Comparative Study , and discussion on further steps and activities within public procurement thematic area and envisaged activities in the follow-up period
- 13.30 -14.30 *Lunch*

