

PUBLIC PROCUREMENT OF ARMED FORCES IN SOME COUNTRIES OF THE EUROPEAN UNION AND USA

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***Abstract:** Defense system as a specific organization, its procurement activity carries out on different types of market. To make the task of procurement carried out in an efficient and economical way, purchasing authority must be fully aware of the laws of the market, as well as the goals and strategies adopted by (potential) suppliers-bidders, in order to successfully oppose the strategy of answering bidder's performance - potential suppliers and develop its own strategy on the market (procurement marketing). How the public procurement system would evolve in the right direction, it is necessary to coordinate with the experience of different systems, which implies the application of the positive experiences of developed market economy countries.*

***Keywords:** procurement, market, defense system, public sector*

INTRODUCTION

Public procurements is the area with growing importance in the economies not only in developed countries, which account for 10-15% of the gross domestic product (GDP), but even more in developing countries where the share of public procurement to GDP ranges up to 25-30%. Public procurements are carry out in a socially sensitive areas such as infrastructure (roads, airports), health (hospitals, medicines), education (schools), the military, police and so on. Effective and regular public procurements result not only in money, but better roads, more functional and better-equipped health and educational facilities, and therefore are all the more significant in countries in transition and developed countries and in countries of the European Union. The share of public procurements in the gross domestic product of the European Union has increased in recent years and reached 16%. At the same time, as a result of improving regulation and its efficient application, are generated savings of about 30%. When it comes to the experiences of countries in transition that joined the European Union at May 2004, it was shown that the effective implementation of regulations in public procurement is far more difficult and important task than the formal adoption of the European Union directives. [1]

INSTITUTIONAL EXISTENCE OF PUBLIC PROCUREMENTS IN THE EU COUNTRIES

Obtaining funds represent increase of all means on the use by budget organizations and institutions. The highest institutions for public procurement in the EU countries are the

ministries responsible for public procurement (depending on country to country, it may be the Ministry of Finance, Ministry of Economy, Ministry of Justice, etc.) and specific, specialized agencies, such as government or public procurement agencies, which are formed at the highest (central) level. The tasks of the highest institutions for public procurement in the 27 European Union member states can be divided into two groups: 1) the basic functions and 2) additional functions. [2]

National laws arising from the obligations imposed by EU membership define basic functions. All other functions, though important for the functioning of public procurement are put in additional functions, since they are not defined as a legal obligation in the Member States.

The basic functions are:

- Defining the public procurement policy and drafting the Law on Public Procurement,
- Preparation of secondary regulations and implementing documents,
- International coordinative function (harmonization and improvement of national system according to European regulations)
- The function of monitoring and control

Additional features include:

- The function of advising and supporting clients and suppliers,
- The function of publishing and informing,
- The function of professionalization and capacity building. The role of the top institutions for public procurement is primarily to initialize and coordinate national training programs in the public sector. In addition to training and research, the function of professionalization and capacity building includes activities directed to public procurement to find their place in the “political map” as a key strategic factor for ensuring the quality of public services at the best conditions, engagement of the positioning of procurement as a key element in managing budget, and public expenditure.
- Developing and coordinating functions (support and coordination in the implementation of framework agreements, the development of systems and methodology for electronic procurement, introduction of performance measurement of public procurement).

EU member states can be conditionally divided into three groups, based on the structure of the public procurement system: the first group consists of 13 countries with a centralized structure that is characterized by a high degree of concentration of functions in a small number of the highest bodies, the second group includes 11 countries with semi-centralized structure in which the functions are divided into a number of institutions and the third group of three countries with a decentralized structure in which the functions are arranged on a number of institutions.

In countries such as Cyprus, Estonia, Latvia, and Malta there is a so-called, “ex ante” control by the public procurement body, which means to give a preliminary ruling in less competitive procedures, while in two-thirds of EU countries, this practice does not

exist. The practice is that in a small number of EU countries there are, so-called "black lists" of bidders that are determined to have violated regulations in public procurement, failed to meet contractual obligations or gave incorrect information.

MAIN CHARACTERISTICS OF PROCUREMENT SYSTEM IN SOME EU MEMBER STATES

Of all 27 EU member states we will retain on the principles of public procurement in the Republic of Germany as a country that is a member, and also the founder of the Union and Hungary as one of the countries which joined the EU in the last few years, namely 2004.

The basic characteristics of the procurement system in the Republic of Germany

In the Republic of Germany, the Procurement law governs the public procurement system for the needs of budget users. Contracts that provide the necessary equipment for the defense system allocate to industrial, commercial, and industrial authorized civilian sources in accordance with the directives and regulations of the federal government.

Since the Bundeswehr requires efficient and modern equipment, the time of purchase must be *short* to meet the operational requirements of the defense system. The public procurement system is implementing through several stages that must be present starting from the receipt of papers.

Analysis phase is the phase in which integrated working groups discuss and analyze the available and necessary capabilities for the entire Bundeswehr. Based on this analysis, the gaps identify and solve problems and in five planning categories: personnel, operations, infrastructure, organization, and weaponry.

Introduction phase, which analyzes the state of products available on the market in accordance with applicable regulations and products that are available on the market, at this stage they can be obtained without special procedures, as identified for the requests.

Risk reduction phase in which the acquisition is realized only after a comprehensive review of risks and alternatives, where priority is given to developing new products, reducing risk and providing demonstrations of product features (simulations, demonstrations, prototypes, etc.).

Contracts may be awarded in any of the stages of the procedure. Bundeswehr differs more than 1.8 million items for purchase. **Depending on the subject of procurement, there are:**

- centralized supply, which means that all requirements are unified and commonly prepared, to reduce the individual purchase price in the market, and
- Decentralized supply, which means that several suppliers agency can cover the requirements of the regional sector of Bundeswehr for the goods and other types of supplies or services

Types of contract allocation are open, restricted, and negotiated procedures. In awarding the contract, the Bundeswehr as a public purchaser must comply with the regulations for awarding the contract and depending on the type and volume of required performance, **implements national and international regulatory procedures.** In the international procedures of allocating contracts to international bidders and suppliers must be present enforceable requirements for the implementation of regulations for the award, equal treatment, and transparency in allocation.

WEAG International procedure (Western European Armaments Group - Group for Western Europe armament) is an association (group) of 19 European countries under the European auspices applied in the field of "heavy weaponry".

NATO's International Infrastructure procedure offers companies the opportunity to express their interest in granting the contract, which includes the list of bidders, and thus receive a formal request for participation.

The use of digital business communication in public contracting is also present and it does not mean a deviation from regulations for allocating contracts. Allocating contracts by electronic means includes a notice of intent to contract, the invitation for providers - contractors, submission of tender documents, bidding and bid evaluation, allocating, and contract processing.

The supplies for the needs of the Bundeswehr are mostly centralized, made by the applicable national and international regulations, implemented by special federal body of federal defense system administration, are strictly programmed to maximize the short deadlines for implementation of procedures, which are usually carried out after the risk reduction phase conducted, where in some way to filter needs, focusing requirements and priorities, identify risks and alternatives, the conditions of supply (costs) and access to realization of procurement.

THE BASIC CHARACTERISTICS OF THE PROCUREMENT SYSTEM IN THE REPUBLIC OF HUNGARY

All procurement for the needs of defense system performs agencies for supply and safety of investments, which numbers 130 persons, and is subordinated to the administrative state secretary. Otherwise, the entire economic policy in the defense system is the responsibility of the administrative state secretary. Administrative deputy of Secretary of State for Defense Economics is in charge for professional activities (has a secretariat of 10 persons, main department of Economics of Defense (30 persons) and the main Department for the development of military equipment is subordinate to him.

Immediately planning starts the Deputy Administrative Secretary, it provides a framework in a vertical line to the level of battalion command. Land Command and Air Force have a division, brigade sections and battalions documentations for acquisition, who are professionally related to the administrative state secretary. Upon completion of planning, the final word gives the administrative state secretary and then agency for the supply and investment security plan and executes the procurement. All procurements are carried out strictly according to the law on public procurements. Proposals for contracting give commands independent battalions and brigades.

Procurements under the law on public procurement are not made for five of the intelligence services (these are special funds) and the Law on Services regulates those supplies. Starting from 2004, since Hungary became a member of the European Union, all purchases are made through public contracting, and contracts are concluded at the end of previous year. Delivery is done on the dynamics required by the recipient.

MAIN CHARACTERISTICS OF PROCUREMENT SYSTEM OF U.S.

When we talk about supply in the logistics of the U.S. armed forces, then it refers to funds and military equipment from the moment of manufacturing to the final retirement from the military inventory. The first part of this cycle, from development of specifications, design, and production is a function of manufacturing logistics. Acceptance of equipment and its introduction into service, distribution, and storage of the same, repairs, maintenance, and withdrawal from operational use are consumer logistical tasks.

The supplies required for defense purposes in the United States relating to all funds and military equipment and other devices used to equip, support, and maintenance of military forces of the United States. Two basic methods of carrying out procurement for the armed forces of the United States are by public auction and through direct negotiations, which is regulated by the suppliers of public supplies, which was adopted in the 1975, and which became the basis for performing and ensuring all procurements required for defense.

For the execution of procurement by public bidding, the intention is to reduce the effect of subjective factors in making decisions and choosing suppliers and thus avoid the suspicion of budget spending is obvious. This is also often quoted statement by Congressman Herbert C. Bonerra, back in the 1964, before the Procurement Subcommittee, where he says: "Government contracts must not only be good, but they must also leave a good impression, and it is almost impossible that some agreement concluded through direct negotiations will leave a good impression." For Congress and supplier authorities carried out efforts to improve usage of the bidding method. However, as weapons become more complex and an increasing share of budget allocated for defense is allocated for research and development, it is difficult to carry out this method of procurement.

In practice, there are **three basic modes of procurements such as bidding, direct contracting with the competition, and direct contracting without competition.**

Eligibility requirements for public bidding are very specific and any deviation almost automatically requires that one of two methods of direct negotiations replace it, and preconditions are as follows:

- The existence of complete and explicit specifications of procurement items;
- Specifications must be available to all prospective bidders, in which should not be limitations on confidentiality;
- There must be more than one supplier who is able to successfully participate in the competition;

- It is necessary to provide sufficient time to make time for bidding, delivery specifications, and proposals, and
- Selection of the best suppliers can be made only based on price, if the bidder is qualified as qualified and solid.

In order to facilitate rigid procedural principles in the procurement with competition in the field of technical supply, the Ministry of Defense has approved a combined procedure called “two-stage tendering”, which is implemented in two phases: **the first** is based on the offers that are related to the required specification of properties funds, which want to obtain, selects those bids which meet the technical performance, without considering the price offered (something that is called a restrictive procedure, the first phase). **The second phase** is implemented as the process of bidding for those bidders who passed the first stage, where bidders shall provide the required specification in detail, with delivery time and price (second phase of the restrictive procedure). In this way minimum of the required standard assets that are acquired is provided and simultaneously competition among suppliers is provided.

A characteristic example is the purchase of meals, where, in addition to the U.S. Department of Defense, *The Wornick Company* has developed a business with diets containing different customers, including foreign governments, governmental agencies and various other institutions. The Wornick Company is world renowned as a leader in the manufacture of ready-made meals for the Ministry of Defense. Since the establishment in 1979, more than 300 million meals were produced (Meal, Ready-to-Eat). [3]

Unlike the competition, carrying out *procurements through direct negotiations* includes informal discussions and negotiations with the aim to reach agreement on price and other terms of procurement. The goal of direct negotiations is as for competition, to ensure the most efficient way to achieve more efficient and cost-effective procurement, not to prevent competition. Great importance has the a material status of the procurement staff who is motivated through salary incentives to protect the interests of the Ministry of Defense, which led to a number of contracting professionals, engineers, financial experts, and experts in quality control remain loyal to the Ministry of protecting its interests in spite of pressures and recruitment by suppliers and industry. [4]

The use of direct negotiations is not considered easier through the provision, as it requires and imposes a much greater responsibility and a lot more technical and business expertise from the whole supplier’s staff. [2] The Law on conducting procurement for the armed forces as well as under section 10 of the Code 2304a of the United States gave 17 exceptions where procurement and contracts can be transferred through direct negotiations.

Cases of exceptions when you can go to the direct negotiations are in a time of national readiness, the public needs (natural disasters), in the case of small purchases that do not exceeds \$2,500, in the case of using the services of educational institutions, supplying food, in the event of experimental, developmental or research tasks, and so on.

In making decision regarding the type of contract, acquisitions staff must consider

following factors: *the type and complexity of the procurement subject, emergency of procurement, the degree of competition presence, information about costs and strong market prices, past experience with the supplier, technical and financial solvency of the contractors, the adequacy of the system calculations and administrative costs for both sides.* By type of contracts that are concluded for the procurement may include *contracts with mandatory fixed price, fixed price contracts and currency of the sliding prices, contracts with mandatory fixed price with a clause on the reconsideration of rates, contracts with the stimulation, the contracts based on spent time and materials and contracts based on working hours.* Different types of contracts must be modified to purchase items, but it must provide the best price and cost-effective execution of the contract.

The supply of the defense system the United States, a commitment to strategic suppliers is present, which greatly facilitate and simplify procurement processes.

RESUME

With analysis of the defense system procurement procedures of presented countries it is obvious to emphasize the presence of centralization, i.e. procurement system will be implemented through specialized institutions, which over agency or committee for procurement in the defense system, deal with procurement, with the possibility of delegating some duties to lower organizational levels. In addition, the fact is that procurement procedures, except for the part of arms and military equipment, apply the provisions of the procurement law of the country, somewhere international conventions too (e.g. Germany). If the procurements are performing centrally, the above-mentioned segment of the budget funds, which is the subject of civilian control, can be controlled easily, which in addition to easier and more efficient control, provides achieving of significant savings, compared to the decentralized procurement system.

In the world, there is increasingly applied principle of the focused logistics “on time and according to needs.” For strategic acquisition of which everyday life and work of units and institutions of the defense system (food, fuel, energy, etc.) depends on, different ways to purchase, maybe something similar to the ways in the United States, must be found through the determination of strategic partners - suppliers. That possible choice of “strategic” suppliers should have full support in the economic-state frameworks, which would define all other elements (selection of suppliers, financing, etc.).

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