April 2020

EXPERT PANEL ON EFFECTIVE WAYS OF INVESTING IN HEALTH

Request for an opinion: Public Procurement in healthcare systems

Background - Rationale

Public procurement Directives 2014/24/EU "on public procurement and repealing Directive 2004/18/EC" and 2014/23/EU "on the award of concession contracts" provide an EU framework for public procurement in the EU. In short, when a contracting authority concludes works, supply or services contract for a monetary value exceeding above EU thresholds, EU public procurement rules apply. Apart from financial thresholds and guidelines, the framework also provides principles of transparency, equal treatment and non-discrimination. Directive 2014/24 and Directive 2014/25 (sectors: water, energy, transport and postal services) replaced directives of 2004 and the new Directive 2014/23 on concessions. Two remedies directives were also introduced in 2007 (89/665 and 92/13).

EU public procurement rules do not say **what** a public entity "has to buy" but rather **how** it "has to buy", i.e. which procedures and which rules must be observed, including the aspects of calls for tender or participation and tender specifications (subject, selection and award criteria).

In light of the rising healthcare costs in the EU as a whole, public procurement has increasingly been promoted as a tool for developing efficiency as well as contributing to better health outcomes. However, the healthcare sector has sector specific challenges which need to be considered when publishing tenders. For example, essential medicines need to have a certain number of suppliers to ensure supply over time; medical equipment often requires training of staff and organising IT systems (eventually creating switching costs should a healthcare provider change supplier). Centralised procurement to increase economies of scale is also increasingly promoted. In that light, Member State initiatives are also exploring joint procurement of health technologies such as through the Valletta, and BeNeLuxA and Nordic council co-operations. However, joint procurement between Member States can for certain health technologies be very complex especially for innovative (patented) medicines. Also, the question remains on the precise delineation of price negotiations and actual tenders (with product volumes explicitly purchased).

Furthermore, in light of the H1N1 pandemic influenza in 2009 the European Council requested in 2010 the Commission to start the preparation of joint procurement of vaccines in the frame of a future pandemic. Provisions for the joint procurement of medical countermeasures are included in Article 5 of Decision 1082/2013/EU on serious cross-border threats to health. The Joint Procurement Agreement (JPA) was approved by the Commission on 10 April 2014, and as of March 2020 has been signed by 26 EU countries, Norway and the UK. The JPA determines the practical arrangements governing the mechanism; defines the decision-making process with regard to the choice of the procedures; organises the assessment of the tenders and the award of the contract.

There is also the notion on "innovation procurement" (Supported by DG RTD and DG CONNECT); where there are initiatives at EU-level such as EURIPHI to support health providers in acquiring health innovations, which can be demand-driven, based on identified needs.

However, it is important to note that there is a discussion in certain cases on when there is a health care exemption, to apply procedures other than public procurement (e.g. direct negotiation) for acquiring goods and services not to risk patients' well-being. In that regard, it is important to consider **when** to perform public procurement.

Overall, the Directives apply the principle of Most Economically Advantageous Tender (MEAT), which award the contract according to:

a) price, or
b) cost, using a cost-effectiveness approach such as life-cycle costing, or
c) the best price-quality ratio (BPQR) to be assessed on the basis of award criteria linked to the subject-matter of the contract.

Considering the health sector specific challenges, it is important to discuss how to best include other award criteria than only economic/financial ones. For instance, a tender with an approach of "winner takes all" may in certain cases result in monopoly situations and potentially introduce a disruption of the supply chain. Furthermore, there are a number of important award criteria related to health technologies, which may be neglected if one does not reflect extensively on the different components such as learning curve of staff, support services and interoperability. Most importantly, one needs to reflect on the criteria of the tender which will contribute to better health outcomes.

In that regard, the Expert Panel should consider the challenges and potential solutions when using public procurement as a tool within healthcare systems. Notably, the Panel should consider specificities of different health technologies and also to which extent economies of scale (centralised procurement) should be applied. This should feed into the reflection on what quality criteria should be introduced to different tenders and also to which extent centralised procurement should be applied. Furthermore, there should be a discussion on what can be done at EU level to support Member States in this endeavour.

Questions for the Expert Panel on Health

Taking into account the work done by the European Commission, OECD, WHO and other sources of reported examples /existing studies/analysis, the Expert Panel is requested to provide its analysis on the following points:

(a) To identify health sector specific challenges in relation to public procurement.

(b) To identify health technology specific challenges (medicines, equipment, medical devices, e-health, services, etc.) in relation to public procurement with a focus on what award criteria beyond "lowest price" should be introduced according to MEAT.

(c) To analyse to what extent centralised procurement (bringing together several procurers at subnational or national level or between Member States) can be applied to ensure

maximum efficiency, also taking into account institutional features (such as the health system's organisation).

(d) To reflect what further EU cooperation can be developed.

Timing

- Finalisation: September/October 2020