

Expert public procurement consultancy for Buyers and Suppliers at your service



PASS CONSULTANCY

BiP's Procurement Advice and Support Service (PASS) provides organisations with access to experts in public procurement practices and procedures, thus helping you develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

The PASS consultancy's mission is to help you deliver the best in government procurement through:

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training

PASS HEALTH CHECK

The PASS service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed PASS Mark Health Check Outcome Highlight Report (OHR) that outlines areas of strength as well as those requiring further attention, and provides an outline Project Initiation Document (PID) designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The PASS service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

PASS ONLINE GUIDANCE

The PASS service provides online guidances on all aspects of the public procurement process and legal requirements: www.bipsolutions.com/html/briefing.php

PASS – CAPS SERVICE

Introducing CAPS – the public sector's guardian through the EU public procurement process, helping you to quickly access in-depth, authoritative EU public procurement procedure assistance. We are now pleased to offer your organisation access to this vast knowledge base as and when required, through subscription to BiP's new Contract Administration & Process Support (CAPS) helpline service. The CAPS service level agreement aims to answer 99% of your enquiries within one working day and 85% of these within one working hour.

PASS IN-HOUSE PRESENTATIONS

PASS consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: pass@bipsolutions.com



The PASS Mark Health Check is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

For further information on the PASS service, contact our PASS Team on 0845 270 7055, email pass@bipsolutions.com or visit www.bipsolutions.com/pass/



GUIDANCE 06

2005

CROSS BORDER PUBLIC PROCUREMENT PROBLEM SOLVING

The European Public Procurement Network (PPN) is an international cooperation network of public procurement expert officials involving all EU Member States, including all the 2004 accession countries, EU candidate countries, European Economic Area members, Switzerland and other European countries.

The PPN's objective is to strengthen the application of the procurement rules through a mutual exchange of experience and benchmarking. The network aims to create a reliable and effective forum for informal cooperation on problem-solving in cross-border public procurement. The European Commission strongly supports the PPN and is present in the network as an observer.

The current participant states are:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

THE NETWORK

The Public Procurement Network was established in Copenhagen on 31 January 2003. At the opening conference, 27 countries and the Commission were represented. Slovenia will host the next conference in 2005.

The Public Procurement Network is managed by its members and meets annually. The chairmanship of the network rotates between the participating countries on a voluntary basis. The former chairman assists the upcoming chairman in preparation of the conference, etc.

PPN RULES OF OPERATION

The Public Procurement Network is an international cooperation network in the field of public procurement.

The objective of the network is to strengthen the application and the enforcement of the procurement rules through mutual exchange of experience and benchmarking, and to create reliable and effective informal cooperation on problem-solving in cross-border cases related



to public procurement. The Commission supports the activities within the PPN.

At the first meeting on 31 January 2003 in Copenhagen the participants agreed on the following set of operational rules for the Public Procurement Network:

PARTICIPATION

The network is open to all EU/EEA Member States, accession countries, candidate countries, other European countries and the Commission.

CHAIRMANSHIP

The chairmanship of the network rotates between the participating countries on a voluntary basis. The chairman is responsible for the establishment of the agenda for at least one meeting of the network.

The current chairman is assisted by the former and the upcoming chairman in preparation of PPN meetings, etc.

Each chairmanship period may last for preparation and chairing of one plenary meeting.

MEETINGS

Meetings in plenum should be held once a year with a duration of one-two days. The chairman arranges and invites for a meeting giving notice of at least two months.

The tentative agenda for each meeting would normally contain at least the following points:

- Approval of the minutes of the last meeting
- Adoption of the agenda
- Actual cross-border cases

- Discussion of selected issues, relevant to the application of public procurement law
- Next chairmanship and next meeting
- Miscellaneous

The final agenda should be sent to all participants three weeks in advance of the meeting.

The Commission should be invited to organise and launch discussions.

STEERING GROUP

The Public Procurement Network functions without a Steering Group.

WORKING GROUPS

With a view to the preparation of the agenda of a meeting in plenum, specific ad hoc working groups may be set up on specific relevant topics.

LANGUAGE AND COMMUNICATION

The country which holds the chairmanship decides on the language regime at meetings. It is recommended that administrative costs be kept at a low level.

COSTS

Each participant is responsible for his/her own costs for transportation and accommodation in connection with the network.

INTERACTION WITH THE ADVISORY COMMITTEE ON PUBLIC PROCUREMENT (CCMP)

It falls within the scope of the Public Procurement Network to make a contribution to improving the application of procurement law.

In this respect the network focuses on issues that are not covered by work of the Advisory Committee on Public Procurement or other relevant formal committees. It is of great importance that the network does not duplicate any work or efforts made by other committees.

DISCUSSIONS OF PPN ACTIVITIES IN THE CCMP

Information about activities within the PPN is transmitted by the chairman to the CCMP in order to coordinate efforts and avoid any overlap.

CONTACT POINTS

Each country appoints a Contact Point for taking action in connection with PPN activities including taking action in cross-border problem-solving. The Contact Points are to be listed on <http://simap.eu.int/> and can also be reached by the SOLVIT Co-ordinating Centres.

INFORMATION

All necessary information about the PPN can be found on <http://simap.eu.int/>

THE FORMAL REVIEW SYSTEM

Many countries participating in the study have chosen different ways to set up the formal review system. Therefore, pre-contract problem-solving is also different in these countries.

Table 1 shows that some countries have not established specific national complaint systems for procurement. The reason is that the general rules of civil procedure offer the facilities requested by the Remedies Directives, for instance interim proceedings in urgent cases, normal or accelerated proceedings and claims for damages. The courts have the powers to investigate and intervene in procurement cases under national law, and to suspend or set aside a decision made by the contracting authority.

This is the case in, for instance, Norway, Ireland, Italy, the Netherlands, Spain, Switzerland and the UK. In the Netherlands, decisions of a public authority regarding procurement are also seen as legal transactions under civil law. Disputes in procurement procedures outside the scope of the

Directives (for instance tenders under the threshold values) may also be brought before the ordinary courts. Specific remedies such as a corrective mechanism, conciliation and attestation/verification have been implemented separately in Dutch law.

Some of the countries using the courts operate at a regional level. Procurement undertaken by the regional authorities may be challenged in the regional (administrative) courts. This is, for instance, the case in Switzerland.

Other countries, for instance Austria, Germany and Denmark, have set up Complaints Boards to meet the requirements of the Remedies Directives. These boards have the necessary power to review the cases brought before them, as required by the Directives.

The Complaints Boards are independent administrative units that hear complaints submitted by complainants concerning violation of the EU rules in specific cases. As required by the Directives decisions of the Complaint Board can be subject to juridical review. Since the cases are brought before the Complaint Boards in the same manner as cases are brought before civil courts, these boards do not normally have the powers to investigate and intervene in procurement cases under national law on their own initiative.

When considering the remedies for breaches of the Directives the Member States have different opinions on appropriate measures.

In some Member States, for instance in Germany and in Denmark, the Complaints Board can intervene in an ongoing procedure and has the power to nullify illegal decisions. Thus the Board can intervene both before and after the contract has been awarded.

In other Member States, for instance in the Netherlands and in the UK, if the award decision is challenged after a contract between a contracting authority and a company has been concluded, damages are the only potential remedy.

The countries participating in the PPN have also been asked about the possible time gap between the award decision (and the notification) of the contract and the conclusion of the contract.

In Germany a new provision has been put into force requiring the contracting authority to inform bidders 14 days in advance of the awarding date.

In other countries, such as the Netherlands, the UK, Denmark and also Austria, the awarding and the conclusion of the contract is contemporaneous. In Denmark, however, there is a possibility both to have an illegal awarding nullified and to have the signed contract declared illegal.

USE OF THE SYSTEM

The participating countries were also asked about the number of cases treated per annum under the formal review system. (See Table 2.)

It appears that the number of cases varies a great deal from one country to another, depending on how the Member State has implemented the review system.

ADVANTAGES AND DISADVANTAGES OF THE SYSTEM

The participating countries were asked about the advantages and disadvantages of their particular system.

Typical advantages of the formal review system mentioned by the participating countries:

- Conformity with the law
- Systems provide a final decision
- Possibility to intervene in an ongoing procedure

In general the countries do point out the following disadvantages:

- Typically high costs for the involved parties
- Length of the procedure
- Complainants are reluctant to use the formal review system because of the above
- Companies fear their chances of winning future contracts might be harmed

The above stresses that – in addition to the above-described formal systems – there can be a need for alternative methods to handle pre-contract problems.

TABLE 1 TYPE OF SYSTEM, FORMAL PROBLEM SOLUTION




















 Austria	The unit responsible for meeting the requirements of the remedy is the Bundesvergabeamt (BVA), an independent legal review system.
 Denmark	The Complaints Board for Public Procurement acts as required in the Remedies Directives as a legal administrative court.
 Finland	The Competition Council has jurisdiction and works as the Complaint Authority.
 Germany	Complaint Boards, responsible for the proceedings in the first instance, are set up in each Land. Federal contracts fall within the jurisdiction of the federal Complaint Board.
 Ireland	There is no designated Complaint Authority. The Government's Contracts Committee is responsible for procurement policy and practice.
 Italy	Infringements of the EU rules regarding public procurement awarding procedures are subject to the administrative courts.
 Netherlands	There is no designated Complaint Authority. Decisions of a public authority regarding procurement are seen as legal transactions under civil law.
 Norway	There is no designated Complaint Authority. The national court is used as a review body.
 Spain	There is no administrative court in the matter of procurement. Decisions taken by an administrative authority are submitted, in case of remedies in the ambit of the juridical system, to the final decision of the competent judge.
 Sweden	There is no designated Complaint Authority. The review system operates through the administrative courts in Sweden.
 Switzerland	At a federal level the independent Federal Appeal Commission takes the final decisions. At the cantonal level the administrative courts work as the formal review system.
 United Kingdom	The Directives are implemented in the UK by Regulations. They allow for proceedings to be brought in the High Courts. The Courts then have the necessary power.



TABLE 2 NO. OF CASES, FORMAL PROBLEM SOLUTION

 Austria	83
 Denmark	20
 Finland	130-140
 Germany	114
 Ireland	2-3
 Italy	800
 Netherlands	850 ¹
 Norway	10
 Spain	N/A
 Sweden	100
 Switzerland	N/A
 United Kingdom	< 10

N/A: Not available

¹ Only arbitration within the building industry

DISCLAIMER

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