How to carry out collaborative procurement(s) and related benefits
Agenda

- Collaborative procurements – how are we doing within the EU?
- Legal basis for collaborations within public procurement
- Different alternatives for collaboration
Collaborative procurement - how are we doing within the EU

• 11% of the procedures in EU

• The European Commission aims to promote joint cross-border public procurement

• Indicated as key tool in driving development of innovations (e.g. Preamble 47 to 2014/24/EU)
Legal basis for collaboration
Legal framework may depend on at what stage you are collaborating

- Assessment of needs, market analysis, R&D, etc.
- Market Dialogue/RFI
- Public Procurement Law
- Contract award
- Submission of tender
- Publication of contract notice
- Know how sharing

Contract law
- IP Law
- Trade secrets
- Administrative laws
Different alternatives for collaboration
Some examples

- Joint R&D projects (e.g. EU financed projects)
- Joint assessments, market analysis etc.
- Joint market dialogues/RFI
- Joint public procurements
- Joint know how and knowledge sharing
Joint assessments, analyses etc (pre-procurement).

- Collaboration based on agreement
  - Define purpose and content of joint project
  - Agree on management of project
  - Agree on right to use background and results (IPR)
  - Regulate secrecy/handling of trade secrets
  - Agree on financing, if any
- Local administrative legislation applicable to the participating entities may need to be considered
Joint market dialogues/RFI

• Collaboration based on agreement (see slide re. joint assessment)
• Local administrative legislation and public procurement legislation may provide limitations
• Local law may be relevant for the object of the upcoming procurement
  • Important to define the content and purpose to ensure that involved parties’ needs are met
  • Individual analysis may need to be done before the market dialogue/RFI
• Possible secrecy issues depending on content of the dialogues/RFI
Joint public procurements

• Permitted under the EU procurement directives
• Joint cross-border procurements possible in principle but complex (c.f. slide re. joint market dialogues)
• Typical example:
  • Cross-border infrastructures
Joint know how and knowledge exchange

- Collaboration based on agreement
- Define purpose of the collaboration (e.g. indicate which areas are subject to the collaboration)
- Agree on which knowledge shall be shared and how it shall be shared
- Agree on the right to use information
- Consider:
  - At what point in time the information is shared (sharing of information during ongoing procurements may not be permitted acc. to law)
  - Some information may constitute trade secrets – can it be disclosed at all?
  - Authorities’ information or suppliers’ information?
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