



EUROPEAN BORDER AND COAST GUARD AGENCY

Frontex and Joint Procurement

16 March 2023

iProcureNet 2023 Advanced Security Procurement Conference

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Joint procurement

- *Joint procurement*, in the sense of the EU-Financial Regulation, means **joint purchasing action** between a Union institution and one or more contracting authorities from Member States (MS).
- When public authorities join forces, they can improve the way they purchase goods and services, attract more advantageous tenders, foster innovative procurement and also save the taxpayer's money.
- Joint procurement is implemented based on Joint Procurement Agreement (JPA) which :
 - defines **legal framework**,
 - describes the **decision-making process** concerning the choice of the procedures,
 - organises the **tendering work** (assessment of the tenders and the award of the contract, the management of the awarded contract(s) and the resulting specific contracts);
 - establishes **relevant Committees, their composition and roles**
 - determines the **practical arrangements**.

Joint procurement

- Types of JP:

- **Permanent JP organisation:** in some European countries organisations have been established to provide a centralised procurement function on behalf of a number of different contracting authorities.
- **Collaborative agreements between contracting authorities:** collaboration through the existing purchasing departments of contracting authorities; at the simplest level, contracting authorities can choose to combine their activities for (initially at least) a one-off procurement action.

Joint procurement

- Models of JP:

- **Full JP:** involvement of all contracting authorities; can be centralised or decentralised (leading contracting authority takes on the majority of responsibilities during tendering, though allows input from other contracting authorities when drawing up tender documents).
- **“Piggy-backing”:** where a contracting authority carries out the procurement on its own with an option allowing other authorities to set up a contract with the awarded tenderer at a later date (during the timeframe of the original contract) if they consider the conditions favourable.

Legal basis for Frontex

- Article 9 point 7 of the REGULATION (EU) 2019/1896, the Agency shall prepare an overview of the **national capability development plans and a multiannual strategy** for the acquisition of the Agency's equipment aiming at identifying possible **synergies and opportunities for cooperation** in various areas including joint procurement.
- Article 63 of the REGULATION (EU) 2019/1896 refers to the **acquisition or leasing of technical equipment** giving the opportunity for Agency to acquire, either on its own or as co-owner with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, activities in the area of return.

Legal basis for Frontex

- Article 165 point 2 of the Financial Regulation, where a contract or framework contract is necessary for the implementation of a **joint action between a Union institution and one or more contracting authorities from Member States**, the procurement procedure may be carried out jointly by the Union institution and the contracting authorities.

Joint procurement may be conducted with EFTA States and Union candidate countries if that possibility has been specifically provided for in a bilateral or multilateral treaty. (...)

- Article 90 of Frontex Financial Regulation, the Agency may use joint procurement procedures with contracting authorities of Member States to cover duly justified operational needs within the framework of its constituent act, Article 165 of Regulation (EU, Euratom) 2018/1046 shall apply.

Potential benefits of joint procurement

- **Advantageous prices** -> aggregate demand generates economies of scale that lead to more attractive offers from suppliers.
- **More purchasing power** -> joint action allows better contractual terms and a higher level of dialogue with suppliers, regulators and other agents.
- **Administrative cost savings** -> decrease of total administrative burden and associated costs by carrying out one rather than several tenders.
- **Sharing skills and expertise** -> enables the pooling of different skills and knowledge among the authorities; in particular smaller-sized authorities can benefit from the capacities of staff in larger authorities a fortiori when procuring innovative products and services.
- **Transparency** -> more widely publicised, the competition is increased.

Potential benefits of joint procurement

- **Standardisation and interoperability** -> requirements on the demand side to have a high level of harmonisation; harmonised requirements have a standardising effect on the market, enabling the supply side to lower its costs and promotes interoperability, crucial to operational effectiveness.
- **Innovative technological solutions** -> harmonised requirements at the aggregated capability level can is good research (e.g., aligning the research objectives with operational expectations and constraints on systems and technology).
- **Through - Life Support** -> preventive and corrective maintenance : sharing this burden among the parties reduces such costs.
- **Security of supply** -> secure equitable access to specific products/ services to all participating contracting authorities, for known and balanced prices.
- **Fostering Green Public Procurement** -> encouraging the market for more environmentally sound products and services.

Potential challenges of joint procurement

- **Trust and confidence** -> fostering trust and confidence, crucial for working together, takes time. Parties need to get to know each other and establish working methods.
- **Harmonisation of requirements** -> although there might be an agreement on what to purchase, issues may arise relating to how and where the equipment will be used, which may make challenging the design and establishment of the Terms of Reference.
- **Different timelines and budgets** -> even though several MS may have plans to acquire the same type of equipment, the timeline may vary due to the fact that not all MS have access to funding at the same time (depending on national budget processes and priorities).
- **Intellectual Property Rights** -> it is best that Parties involved must address the ownership of those prior to entering into a joint procurement and not after.

Potential challenges of joint procurement

- **Ownership of assets** -> the ownership of the equipment purchased via joint procurement and its related services (any license, insurance, maintenance, etc.) might be complex, mainly when it comes to the products developed after commonly funded research projects.
- **Administrative burden** -> since the JPA shall address numerous concerns, the drafting and agreement on the terms of such a document could take significant time; coordination and communication tasks need a dedicated team; moreover, the administrative workload and challenges of managing various joint working groups might be a significant disadvantage. Disputes on the burden-sharing may happen.
- **Prolonged decision-making** -> different administrative timelines for national level decision making vary and may substantially delay the launch of tenders and the conclusion of resulting contracts; national authorities may need to seek first authorisation for regulatory flexibility to ensure a smooth cooperation, before entering into any JP.

Opportunities for implementation of joint procurement

There are several cases for implementation of joint procurement:

- Where a MS is already about to launch a procurement procedure or is in the midst of it, and where there is a contractual possibility for third parties to join. This is an easy form of joint procurement where the third parties accept the already existing technical requirements and contractual conditions.
- Where equipment or services do not exist in the market and there are fewer preconceptions. It allows to start from a blank sheet and together draft harmonised requirements.
- Where pooling demand for many types of bulk items, big and small, which already exist in the market in a standardised format can have a huge impact on prices.
A classic financial incentive

Prerequisites for the JPA

- Common interest
- Common ground on the legal framework and procedural provisions
- Confirmation of completion of national procedures for approval of the Agreement
- Absence of obstacles jeopardising the sufficient autonomy in the decision-making process
- Setting up clear roles & responsibilities, administrative structure and means of cooperation (i.e. Steering Committee, Rules of Procedure, other)
- Agreement on detailed practical arrangements for the evaluation of the requests for participation or of the tenders, the award of the contract, and the contractual provisions (i.a. the law applicable to the contract and the competent court for hearing disputes)
- Genuine willingness - thus going beyond the 'publicity stunt' - to engage in a process which will require efforts, resilience and problem-solving skills

Results of joint procurement procedure

Separate ownerships of the deliverables by each participating entity	Co-ownership of the deliverables jointly by at least 2 different entities
<p>Sole ownership is clear</p> <p>Management of maintenance expenses seems to be easier</p>	<p>Art. 63 (1) of the Frontex Regulation: co-ownership with a Member State is allowed</p> <p>Subject: technical equipment to be deployed during operations</p>
<p>Challenge: depreciation of expensive, heavy assets not being used very often</p>	<p>Challenge 1: national registration needed for major equipment as aircraft, vehicles or sea vessels</p>
	<p>Challenge 2: possible disagreements at the post-purchasing stage between the co-owners</p>
	<p>Way out to avoid risks: Joint Ownership Agreements</p>

EU Joint Procurement of medical countermeasures

- The EU's JPA offers the participating countries to jointly procure medical counter-measures for cross-border health threats as an alternative or complement to procurement at national level. It has been a key element in helping Member States during the COVID-19 pandemic.
- As of April 2020, the JPA has been signed by 37 countries, including all EU and EEA countries, the UK, Albania, Montenegro, North Macedonia, Serbia and Bosnia and Herzegovina, as well as Kosovo. It aimed to secure more equitable access to specific medical countermeasures and an improved security of supply, together with more balanced prices for the participating EU countries.

EU Joint Procurement of medical countermeasures

- The JPA enables reallocation of reserved quantities, redirection of orders, donation, resale of deliveries between the participating Contracting Parties, withdrawal by any Contracting Party (but the termination of the agreement shall only be terminated if agreed in writing unanimously by the Contracting Parties).
- Participating Contracting Parties are responsible for awarding and signing specific contracts and are fully responsible for the implementation of these contracts, to include settling directly with the contractor any financial commitments resulting from a contract.

EU common procurement: EDIRPA

- Proposal of 19/07/2022 for a Regulation of the European Parliament and of the Council establishing the European defence industry Reinforcement through common Procurement Act (EDIRPA) and its main expected results are:
 - to reinforce and develop the Union defence industrial base to allow it to address the industrial gaps relative to the most urgent and critical defence products;
 - EU financial contribution of EUR 500 Million to allow for an appropriate incentive for Member States to induce them to procure in common (actions which otherwise would not be started);
 - increased cooperation is expected to provide greater value for money, enhance interoperability and avoid that the most exposed EU Member States face an impossibility to obtain what they need, because of conflicting demands on the defence industry.
- Goal: incentivise common procurement via EU budget and a dedicated short-term instrument.
- Legal Basis: Art. 173 TFEU (competitiveness of EU industry).

EU common procurement: EDIRPA

- Ongoing discussion on **joint procurement of AMMUNITION** given war in Ukraine (the joint arms buying could be similar to the EU's advance purchase of COVID vaccines).

EU proposes three-fold approach to secure ammunition:

- to continue the use of **European Peace Facility** as the **financing mechanism** with the increased budget of at least additional €1 billion to reimburse the use of MS's current stocks available (to provide them swiftly to Ukraine) and to boost ammunition production in EU; also with an option to directly procure and deliver ammunition for Ukraine and for Member States.
- to find an immediate agreement between MS for the **joint long-term procurement project led by the European Defence Agency** to replenish the stocks of MS and to cover Ukraine's future needs;
- to identify gaps in production capacity and to **assist in procurement management** in order to solve the general problem of rapidly declining ammunition stocks in the EU and insufficient ability to replenish them.

EU common procurement: EDIRPA

- Establishment of **Defence Joint Procurement Task Force**, comprising of European External Action Service (EEAS), including the EU Military Staff, the European Defence Agency (EDA), and the European Commission (Directorate-General for Defence Industry and Space and the Secretariat-General), supporting and facilitating the coordination and de-confliction of Member States' short term joint procurement needs.

ANNEX: Research and Innovation at Frontex

Research and Innovation at Frontex

In the area of research and innovation, Frontex is continuously developing its capabilities related to border security technologies, providing and supporting research; promoting and delivering innovation and promoting and delivering standardisation and harmonisation of border management capabilities, including support for third countries. Research and Innovation activities follow the Capabilities Development Plan (CDP), which includes the capabilities of the Member States and of the Agency itself.

Recent projects:

- Frontex Industry Day and exhibition on solutions for document security
- Conference on innovative technologies for strengthening the Schengen area

Research and Innovation at Frontex

- Frontex Industry Day and exhibition on solutions for document security

Frontex assists the EU Member States in supporting the development of modern technologies for the border and coast guard community. As part of its mandate, Frontex regularly meets with industry, researchers, and experts from the Member States to provide a platform for discussion and help develop new technologies and innovations related to border control.

On 1 March 2023, Frontex organised an Industry Day for companies to present their products and solutions for document security and to combat document fraud (transparent windows on ID Cards and passport data page, next generation of modern ePassports & new demo passport with innovative security features, innovative personalization solutions using combination of different technological methods, and many more).

Research and Innovation at Frontex

- Conference on innovative technologies for strengthening the Schengen area

On 28 March 2023, the European Commission (DG HOME), Frontex and Europol will jointly hold a conference on innovative technologies for strengthening the Schengen area.

The conference will include discussions on the current situation and needs in Member States, selected innovative technology solutions that could strengthen Schengen as well as selected technology use cases relevant for police cooperation within Schengen.

For more information please visit <https://frontex.europa.eu/innovation/research-and-innovation/research-and-innovation-at-frontex/>

Question time

