

The challenges of collaborative procurement in the healthcare sector

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Abstract

The article points out the new challenges of collaborative procurement in the healthcare sector. The research focuses on the optimization of healthcare purchasing through the reduction of costs without any prejudice to the quality of healthcare performances, but also assuring rationalization and innovation. Moreover, the importance of collaborative procurement is particularly evident considering the ensuing valorization of the diverse professional skills and their use of strategic purchasing power in their relationships with economic operators.

Article

Purchasing aggregation and the professionalization in the public procurement field have become two of the most important challenges for public purchasers and for procuring authorities in general and particularly in the healthcare sector¹.

The importance of the public procurement is indeed evident to-date. It is worth mentioning that the procurement market can reach approximately 15% of EU's GDP and account up to 20% of developing countries' GDP². Such considerable percentage determines a strong purchasing power that can be driven towards innovation and the creation of value.

Nonetheless, an overall vision of public organization strategic power is still missing, probably as a widespread fragmentation of procuring entities is still present. This is often an obstacle to a complete and comprehensive vision of the possible strategies of public procuring policies. Thus, the promotion of every form of collaborative procurement so as to obtain instruments to steer the uses of such considerable resources is of the utmost importance³.

In general terms, every government, local authority and public organisation, utility and agency at any level is endowed with contractual autonomy and can purchase according to international, European and national rules depending on the case, pursuing the goal of obtaining the best value for money⁴. However, the demand of reducing public expenditure, even as a result of the economic crisis, as well as the goal of the European Union to increase competition in the public market can improve the value of any form of collaborative procurement and of professionalization, thus achieving a wider and more comprehensive vision of the different market conditions and characteristics.

Nevertheless, in order to create an Internal Market, the European legislator set common rules for the Member States referring to the principles and procedures of public

contracts awarding⁵. An effective internal market in the supply and services sectors has to be accomplished yet, in the healthcare sector too. Healthcare purchasing is surely a strategic sector in the area of public procurement. The reduction of resources seems to require the development of public procurement policies in order to maintain a high level of protection (as to the healthcare performances), taking into account the new costs associated to the evolution of medical science, too. In fact, collaborative procurement optimizes public purchasing, especially, but not only, thanks to the economy of scale it achieves.

Purchasing aggregation entails reduction of costs and consequently may facilitate the achievement of such goals becoming creator of value. These costs concern on the one hand the prices of goods and services - for each unit - and, on the other hand, the awarding phase of public procurement (including human resources savings, both in terms of time and money). The large volumes purchased determine a higher purchasing power by assuring the effectiveness of the public action and by acquiring health care products (drugs, equipments, medical devices) and services at better market conditions and at the best value for money. Furthermore, public bodies may enjoy the benefits arising from the reduction of costs and time related to autonomous award procedures (according to a rough calculation the cost of an autonomous award procedure can reach 20,000 €). Moreover, purchases aggregation entails the reduction of human resources involved in the award procedures thus allowing - with a view to improving the control of the performance phase - their assignment to the task of monitoring contracts performance and possible infringements⁶.

Purchases aggregation is not only an instrument to reduce costs, as it can drive innovation, by promoting competition between economic operators. Indeed, collaborative procurement does not harm the development of competition, as it has been claimed, rather being an instrument that helps to improve its value ensuring a competitive quality level. Regulatory rules at European level have been introduced in 2004, so as to rationalize public procurement, providing a European definition of Central Purchasing Bodies⁷. In fact, it has been considered that those techniques can help increase competition and streamline public purchasing in view of the large volumes purchased by these organizations. Obviously, collaborative procurement affects the role played by the contracting authorities, as long as an aggregated awarded procedure differs greatly from an autonomous one. In other words, the purchaser is not a person acting individually anymore, since, to the contrary, he is part of a team of several people with different professional skills (technical, methodological, economic, legal, engineering etc.). Those skills are often out of reach for most contracting authorities within the healthcare sector and require the implementation of forms of aggregation⁸.

In this context, an organization such as a central purchasing body can enhance these skills and implement some new purchasing techniques such as those defined by the 2004 European Directives (framework agreements⁹, electronic auctions, dynamic purchasing systems), with the aim of managing better the coordination of public demand, by referring to more complex award procedures.

Moreover, in the most evolved legal systems, central purchasing bodies conduct extensive studies in the relevant markets that the purchasers cannot carry out on their own. The knowledge of the market structure enables the outlining of suitable procurement procedures, in order to fill the gap of common standards to ensure the monitoring of the exact performances, to define more precisely the sum of lots included in the procuring procedures or to identify the best moment to launch a new award procedure or a framework agreement¹⁰. This seems to ensure the expansion and the strengthening of competition and it helps promote the entry of new firms (new economic operators) on the market (also SMEs).

With regard to this latter aspect, we may recall that the «Small Business Act Europe» improves the activity of SMEs in accordance with the principle «Think Small First»¹¹. This does not mean that the award procedures should remain below the European threshold, but, on the contrary, it entails the creation of award procedures with lots that are territorially and quantitatively adapted to the system of the providers, by identifying the territorial level that is optimal for the aggregation and by ensuring the participation of more innovative SMEs, even from abroad¹².

The optimal level for collaborative procurement in the healthcare sector is normally identified by the kind of goods and services needed. Therefore it may be at a local, regional, national level and, under a more innovative perspective, at a European level. Indeed, geographic regroupings can be identified aiming at federating hospitals that operate on the same territory, as well as regroupings set by nature of the organization (because of the homogeneous characteristics they present). This does not exclude forms of centralization based on the creation of networks in which each organization can specialize itself in order to purchase certain categories of specific goods and services, even on behalf of others (one for drugs, the others for consumable medical devices).

The implementation of policies of collaborative procurement can not only contribute to the increase of the purchasing power of public bodies, but also to the improvement of the quality of public expenditure. More specifically, the proper use of the public demand can drive the relevant market to a change in order to positively orient the choices of the enterprises, thus rising social and environmental standards and achieving a better and more sustainable quality of life for citizens¹³.

However, it can be pointed out, that, on one hand, the percentages of aggregated purchases are different from State to State and, on the other hand, that physicians' preferences can -at times- make such aggregation more difficult, especially with regard to those operator-dependent products (i.e. any kind of medical device)¹⁴. Nevertheless, even the latter hypothesis does not exclude centralization, as the possibility of collecting data and cataloguing suppliers, also by means of more complex framework agreements with more economic operators can be considered, by involving doctors too in the definition of the technical specifications.

The prospect aimed at pooling public purchases could be developed through the creation of a network of European purchasers, composed by Central Purchasing Bodies or Professional Buying Organizations. Thus, the evaluation of benchmarks comparing the prices of equivalent products (or services) becomes a foreseeable possibility, in order to set shared contractual terms designed for the promotion of a true European competition.

Indeed, if the European Union pursues the goal of the achievement of an internal market, it should be noticed that the public demand still results highly fragmented compared to the offer of companies, which seems to be more structured. For example, referring to the health products market sometimes and for certain categories of products only few suppliers (even on a worldwide level), who organized themselves by creating supply chains in order to meet the public demand, can be identified. Moreover, in a few years the computerization (and the data filing system) of these complex procedures will be complete. It will radically change the possibilities of comparing services and prices obtained, as well as the possibility to set benchmarks. To-date for example, in Italy, the costs of medical devices are extremely different depending on the hospital, even in the same area. Thus, the Ministry of Health encouraged centralization of purchases by means of a government bill aimed at creating a database of medical devices, in order to control consumption and expenditure of products.

Computerization seems to ensure transparency and controls on the quality of goods and services¹⁵. This control will not only be performed on the award procedure. Its scope will include the control of the quality of health care provided by doctors in relation to quality and the quantity of devices and treatments provided. In this context, the role of central purchasing bodies could really become strategic since the exchange of information - supported by electronic tools - seems to allow for a coordination to develop common contract terms which may, in turn, lead to a truly internal market in which the best hospital purchasing practices could be identified and innovative solutions could be developed¹⁶.

The development of standard contract models (with reference to different categories of purchase), and of uniform contract terms including reference to the execution phase of contracts and payments can promote the participation of a higher number of companies.

By way of example, in Italy it was noted that the payment terms for health providers can reach almost 800 days. This situation surely discourages participation in public procurement. From this perspective it would be, in the European area, take the forms of experimentation and fruitful cooperation with a view to comparing contractual conditions, achieving coordination of procedures, defining models of typical contracts, and perhaps, initiating joint award procedures¹⁷. This cooperation could achieve the definition of a draft European Directive proposed by public purchasers (not by the high European institutions) who can define models of uniform contracts, defining all aspects, from award procedures to the execution of the contract. This perspective seems to contribute to the development of an effective competition among European suppliers. Such competition should improve the quality of healthcare performances in the public interest and collaborative procurement could really become creator of value¹⁸.

¹ Racca, G. M., (2008). *Le modalità organizzative e le strutture contrattuali delle aziende sanitarie*, in Pioggia, A. – Dugato, M. – Racca, G. M. – Civitarese Matteucci, S. (eds.), *Oltre l'aziendalizzazione del servizio sanitario*, Milano: Franco Angeli (pp. 264-297), that is the outcome of the project which the Unit of the University of Turin (Head of research Prof. Gabriella M. Racca: gabriella.racca@unito.it) is developing as regards "Contractual autonomy of health authorities: object limits, organizational structures and cost efficiency", as part of the Research Program of Relevant National Interest (PRIN) on "Health service organization in a comparative perspective: the Italian model of Health Agencies' structure in comparison with other organizational models" together with the research Units of the University of Perugia, University IUAV of Venice and University "G. d'Annunzio" of Chieti-Pescara; see also: Racca G. M., (2010). *Collaborative procurement and contract performance in the Italian healthcare sector: illustration of a common problem in European procurement*, *Public Procurement Law Review*. (pp.119 e ss.).

² Commission (Ec) - Internal Market, *Public procurement indicators 2008*, April 28, 2010.

³ Racca, G. M., (2010). *Professional buying organisations, sustainability and competition in public procurement performance*, proceeding for 4th International Public Procurement Conference (IPPC 2010) – Seoul (Korea); Schneller, E. S., *Role of Group Purchasing in the US*, proceeding at 2ème symposium International, Paris 8 and 9 September 2010; Rooney, C., *Pooling Hospital Procurement through Group Purchasing Organizations (GPOs): The U.S. Experience*, proceeding at 2ème symposium International, Paris 8 and 9 September 2010. See also: Schneller, E. S., Smeltzer, L. R., (2006) *Strategic management of the Health Care Supply Chain*, Jossey-Bass, San Francisco; Schneller, E., (2009). *The value of Group Purchasing – 2009: Meeting the Needs for Strategic Savings*, in *Health care Sector Advances*.

⁴ Racca, G. M., (2010). *La professionalità nei contratti pubblici della sanità: centrali di committenza e accordi quadro*, in *Foro amm. - C.d.S.* (pp. 1727 ss).

⁵ European Parliament and of the Council Directive 18/2004 of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [2004] O.J. L134/114. See also: Commission (EC), DG Enterprise and Industry, *The lead market initiative* (2009).

⁶ Cavallo Perin, R., Racca, G. M., Albano, G. L., (2010) *The safeguard of competition in the execution phase of public procurement*, *Quaderni Consip*, VI.

⁷ See art. 11 (2) of European Parliament and of the Council Directive 18/2004 of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [2004] O.J. L134/114: “Contracting authorities which purchase works, supplies and/or services from or through a central purchasing body in the cases set out in Article 1(10) shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it”.

⁸ Legouge, D., (2010). *Secteur hospitalier et médico-social public: vers de nouvelles stratégies d'achat de groupe*, in *Contrats Publics*, July - August. (pp. 43 ss.); Cormier, M., (2006). *Mutations et enjeux des coopérations hospitalières*, *Actualité Juridique Droit administratif*. (pp. 416 ss.).

⁹ Pongérard-Payet, H., Bangui, T., (2007). *La procédure de l'accord-cadre : un nouvel instrument du droit de la commande publique*, *Actualité Juridique Droit administratif*. (pp. 1055); De Géry, P., Schmidt, P., (2007). *Les accords cadres*, édition du Moniteur, Paris. (pp. 117 ss.).

¹⁰ Arrowsmith, S., (1999). *Framework Purchasing and Qualification Lists under the European Procurement Directives*, *Public Procurement Law Review*. (pp. 115-146 and 168-186); Arrowsmith, S., (2005). *The Law of Public and Utilities Procurement* (2nd ed) London: Sweet & Maxwell; Arrowsmith, S., (2006). *The Past and Future Evolution of EC Procurement Law: From Framework to Common Code?*, *Public Contract Law Journal*. (pp. 337 ss.); Arrowsmith, S., (2009). *Reform of the UNCITRAL Model Law on Procurement: Procurement Regulation for the 21st Century*, Eagan:West; Arrowsmith, S., Kunzlik, P., (2009). *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions*, Cambridge: Cambridge University Press; Bovis, C. H., (2008). *EU Public Procurement Law*, Cheltenham: Edward Elgar Publishing Limited; Chard, J., Duhs, G., Houlden, J., (2008). *Body beautiful or vile bodies? Central purchasing in the UK*, *Public Procurement Law Review*. (NA26); Edler, J., Georghiou, L., (2007). *Public procurement and innovation – Resurrecting the demand side*, *Research policy* (pp. 949-963); Garcia, R. H., (2009). *International public procurement: a guide to best practice*, London: Globe Law and Business; Yukins, C. R., (2009). *Use and Regulation of Electronic Reverse Auctions in the United States*, in Arrowsmith, S. (eds.), *Reform of the UNCITRAL model law on procurement: Procurement regulation for the 21st century*, Danvers: Thomson Reuters/West. (pp. 469-489); Yukins, C., (2008) *Are IDIQs inefficient? sharing lessons with European framework contracting*, *Public Contract Law Journal*. (pp. 546 ss.); Bowsher, M., John, L. E., (2009). *The use (and abuse?) of framework agreements in the United Kingdom*, in García, R.H. (ed.) *International Public Procurement*, (pp. 356 ss.); OGC, *Framework Agreements: OGC Guidance on Framework Agreements in the new Procurement Regulations* (January 2006), Commission (Ec), *Explanatory Note – Framework Agreements – Classic Directive*, 14 July 2005; Arrowsmith, S., (2006). *Implementation of the new EC procurement directives and the Alcatel ruling in England and Wales and Northern Ireland: a review of the new legislation and guidance*, *Public Procurement Law Review* (pp. 96-97).

¹¹ Commission (Ec), “Think Small First” - A “Small Business Act” for Europe, COM(2008) 394 Final, June 25, 2008.

¹² Commission (Ec), *European code of best practices facilitating access by SMEs to public procurement contracts*, SEC(2008) 2193, June 25, 2008.

¹³ Racca, G. M., (2010). *Aggregate models of public procurements and secondary considerations*, in *The Law of Green and Social Procurement in Europe*, Caranta, R. e Trybus, M. (eds.), Copenhagen. (165 ss.); McCrudden C., (2007). *Buying Social Justice: Equality, Government Procurement, & Legal Change*, Oxford. (114 e ss.); Commission (Ec), *Public procurement for a better environment*, COM(2008) 400 Final, July 16, 2008.

¹⁴ Montgomery, K. and Schneller, E. S., (2007). *Hospitals’ Strategies for Orchestrating Selection of Physician Preference Items*, *The Milbank Quarterly*, Vol. 85, No. 2. (pp. 307–335).

¹⁵ Commission (EC), *Green paper on expanding the use of e-Procurement in the EU*, October 18, 2010. Commission (EC) - Internal Market, *Study on the evaluation of the Action Plan for the implementation of the legal framework for electronic procurement - Analysis, assessment and recommendations*, July 9, 2010.

¹⁶ Mourier A., (2010). *Compétences managériales et modernisation de la fonction achat dans les hôpitaux public français*, in *Techniques hospitalières*, July - August. (pp. 29 ss.); Baily P., Farmer D., Jessop D., Jones D., *Purchasing Principles and Management*, London, Pitman Publishing, 1994.

¹⁷ Racca, G. M., (2008). *Le modalità organizzative e le strutture contrattuali delle aziende sanitarie*, in Pioggia A. – Dugato, M. – Racca, G. M. – Civitarese Matteucci, S. (eds.), *Oltre l’aziendalizzazione del servizio sanitario*, Milano: Franco Angeli (pp. 264-297).

¹⁸ Legouge, D., (2010). *Fonction achat: une créatrice de valeur pour l’hôpital et le secteur médico-social*, in *Revue hospitalière de France*, July - August. (pp. 28 ss.).

