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Entschädigung der Angebotsausarbeitung bei PPP-Hochbauprojekten

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Bid Cost Recovery for PPP Projects

Abridged Report

1 Presentation of Problem and Main Objective

Due to essential planning services for PPP projects shifting from the contracting authority to the bidding consortiums, considerable costs for tender preparations arise for the companies involved. Although an adequate reimbursement for these costs is part of German public procurement law, in practice little or no bid cost recovery bearing any relation to the actual bid costs is received. Any reliable surveys regarding the bidder's costs for tender preparation, and any results of such, which may form the basis for assessment and assignment of adequate bid cost recovery, are missing. International experience shows that by granting adequate bid cost recovery, an increase in competition, especially for complex PPP projects, can be expected.

This research aims at developing a general classification system with which adequate bid cost recovery for PPP projects can be ascertained objectively and with transparency at the time of calling for tenders. The classification system is based on empirically surveyed actual costs for tender preparations. Due to the data available the system is focused on PPP construction projects.

2 Procedure and Results

In the first phase of investigations the bidder's services, which are required for tender preparations in PPP projects, are examined. In this context the tender procedures, during which bids are generated, will firstly be analysed and summarized into four bidding stages from the point of view of the bidder. Bidding stage 0 describes services on the part of the bidder for expression of interest, which in the narrower sense of the word does not otherwise count as tender preparations. After tender preparations and invitation to negotiate in bidding stage 1, the best and final offer follows in bidding stage 2. Here, the chosen bids, being indicative of and in accordance with the established assessment criteria of stage 1, are frequently further cemented in numerous rounds of negotiations relating to conditions of contract. The preferred bidder, with whom final negotiations are to be carried out, is chosen for bidding stage 3 at the end of the bidding stage on the basis of available eligible bids. As a general rule, and provided that an agreement regarding the final conditions of contract has been reached, tender preparations are drawn to a close once the preferred bidder has been awarded the contract.

Subsequently, the bidders' tender preparations are classified within the life cycle of a PPP project. Here, one ascertains that planning of the services areas financing, construction and

facility management is not spread out over the project's life cycle, rather effected as a block of planned services before implementation begins. The planning phase includes services rendered by the contracting authority for procuring invitation of tenders' documents and the implementation of contracting as well as bidders' services within the framework of tender preparations. Due to bidders' planning services having to be produced on a multiple basis, namely from all candidates invited to provide tender preparations, the total cost of tender preparations increases with an increasing number of bidders.

On the basis of an analysis of the organisational structure of bidders or bidding consortiums for PPP projects as well as the identification and demarcation of services to be rendered, a scope of services for bidders' tender preparations during PPP projects is developed as a main feature. Bidders' planning services are then differentiated into the three service areas, financing/bidding coordination, construction and facility management. Additionally, the services are presented in correlation to the four bidding stages so as to generate a scope of services with twelve service categories.

In the second phase of investigations the general framework of bid cost recovery for tender preparations during PPP projects is analysed. In doing so, the prescribed reimbursement for tender preparations set out in German procurement law is discussed and determined so that for different regulations different terms to circumscribe reimbursement are used. One is, however, to assume a synonymous usage of these terms. Reimbursement in accordance with VOB/A and the refunding of costs in accordance with VOL/A both consists of a lump sum, which does not take individual bidders' expenditure into account. This is, however, meant to be guided by a general expenditure estimate for tender preparation.

German procurement law distinguishes between services for tender preparations ("Angebotsbearbeitung") as cost free quotation processing and drafting of bids ("Angebotsausarbeitung") which require reimbursement. Whilst quotation processing services are essentially circumscribable through the bidders via inspection of the contracting body's given planning and pricing, a final listing of planning services related to the drafting of bids is not possible. As often the case with PPP projects, where specifications for tenders entail a description of the construction task, a considerable share of services of the whole tender preparation process can regularly be assumed to require reimbursement. A basis for a claim for cost recovery of services for the preparation of subsidiary tenders and for services of the expression of interest does not exist.

Analysis of provisions regarding reimbursement for tender preparations during PPP projects on an international level indicates widespread approval of bid cost recovery. However, binding regulations such as those seen in Germany, can to some extent only be identified in Austria. It is generally expected by the contracting authorities of all the countries examined that bid cost recovery will lead to an increase in competition.

In order to develop a classification system, with which adequate bid cost recovery for PPP projects can be determined, certain information regarding the bidders' actual expenditure for tender preparation services is required. Due to suitable data deriving neither from literature nor international practice, an independent data collection survey is carried out and described in the third phase of investigations for the purposes of this research project. In a comprehensive survey of businesses with experience of PPP tender preparations, the actual costs and project specifics of 33 PPP projects have been ascertained. The survey orientates itself in terms of the structure of tender preparations identified in the first phase of investigations. To avoid survey response problems the methods and progression of enquiry are followed up in a practically relevant manner and the written survey is supported with both personal and telephone interviews.

In the fourth phase of investigations a cost recovery classification system is developed on the bases of data ascertainment and findings from the previous phases. Building on a general evaluation of the collected data and presentation of the actual costs subject to service area and bidding stage, the effects which project specific characteristics have on the cost of tender preparations are examined. Subject to their influence on the bidder's costs for tender preparations, a total of eleven characteristics have been distinguished as general project characteristics, service features and project key figures.

By means of the project key figures a model for the evaluation of expected tender preparation costs is developed. The scope of application is determined by the specifications of the general project characteristics. Grouping of the projects is set through the potential peculiarities of the service features.

In order to use the evaluation model within the general concept of a bid cost recovery classification system, the model's actual cost data must first be adjusted to the requirements of adequate bid cost recovery. In doing so, deductions on the part of cost free quotation processing and other adjustments to procurement law regulations are necessary. In addition to this, the influence of prior developments and a limitation of bid cost recovery are considered.

Finally, in defining the area of validity and application requirements, the basic conditions for bid cost recovery classification can be fixed. On the basis of the project key figures, the classification system initially determines a basic bid cost recovery figure which is specific for to the three identified service areas. This is then allocated to the three cost recovery relevant bidding stages. The scope of application is essentially determined through the distinctiveness of the general project characteristics underlying classification.

The following diagram presents an overview of the basic conditions, the presentation of the problem, the main objective and the procedure of the research project.

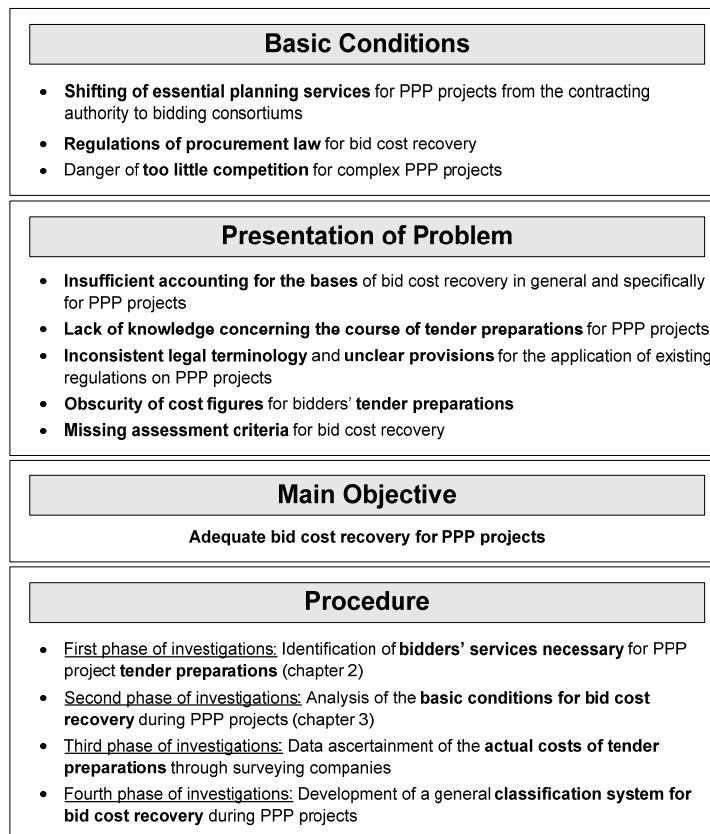


Diagram: basic conditions, presentation of the problem, main objective and procedure

3 Summary of Significant Results

According to previous elaborations, the following findings are decisive for determining adequate bid cost recovery for PPP projects.

- By applying the prevailing project specific characteristics, an evaluation model develops with which the average expected costs of a bidder passing entirely through the bidding stages 1 to 3 can be determined. Subject to the project key figures, long term levels of financing, construction costs according to DIN 276, and effective area according to DIN 277; the costs are determined separately for the service areas financing/bidding coordination, construction and facility management. The evaluation model is valid in a defined area of the project key figures.
- In order for an adequate reimbursement figure to be generated from the modelled average costs, these are to be adjusted to the requirements of bid cost recovery. For this, parts of the costs not ascribed to services eligible for cost recovery are identified and deducted from the modelled costs. The necessary deductions are derived, in particular, from procurement law regulations governing appropriate bid cost recovery. Furthermore, the influence of previous developments as well as a limitation of cost recovery is also considered. Having been established with the aid of the evaluation model, the adjustments result in a considerable reduction of tender preparation costs.
- The constituent adjusted net average costs are in keeping with appropriate reimbursement for a bidder's services in bidding stages 1 to 3. In order to take the bidders' actual expenditure into account, this so called basic bid cost recovery is to be allocated over the bidding stages. Allocation orientates itself with regard to the bidders' real expenditure over the different bidding stages.
- If a bid cost recovery legitimate project is not within the scope of application, as classified by the system and defined by the usual form which the general project characteristics take, the effects of this deviation on the bidder's costs for tender preparations are to be investigated and basic bid cost recovery adjusted accordingly. An adjustment requires an intensive examination of the underlying empirical investigation.