

Central Purchasing Bodies

OGC Guidance on Central Purchasing Bodies in the Procurement Regulations



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Central Purchasing Bodies in the Public Contracts and Utilities Contracts Regulations

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1. Introduction

- 1.1. The public procurement Directives include specific provisions on Central Purchasing Bodies – see Article 11 of the Public Sector Directive (2004/18/EC)¹ and Article 29 of the Utilities Directive (2004/17/EC)². These were implemented by Regulation 22 of the Public Contracts Regulations 2006³ and Regulation 21 of the Utilities Contracts Regulations 2006⁴, which came into force on the 31 January 2006.
- 1.2 This guidance is not intended as a substitute for project specific legal advice, which should always be sought by a Contracting Authority where required.

2. What is a Central Purchasing Body?

- 2.1 A Central Purchasing Body (CPB) is defined in the Public Contracts Regulations as “a contracting authority which:
 - acquires goods or services intended for one or more contracting authorities;
 - awards public contracts intended for one or more contracting authorities; or,
 - concludes framework agreements for work, works, goods or services intended for one or more contracting authorities”.
- 2.2 Where a contracting authority acquires works, goods or services from or through a CPB, it will be deemed to have complied with the Regulations in so far as the CPB complied with them in the original acquisition or award. The effect of this is that providing the CPB has complied with the Regulations, the contracting authority procuring from or through it does not itself have to go through the procedures required by those Regulations. However, if the CPB has failed to comply with these Regulations, the contracting authority procuring from or through it will not be in compliance either.
- 2.3 Similar provisions apply to utilities under the Utility Contracts Regulations and similar considerations apply in the circumstances discussed below.

3. Must a CPB indicate during the procurement process that it is buying for others?

- 3.1 As set out above, the definition of a CPB is a contracting authority that acquires goods or services, awards public contracts or concludes framework agreements intended for one or more contracting authorities. Although the rules do not require a CPB expressly to refer to this intention during the procurement process, expressing such an intention is a requirement (by placing a tick in the appropriate box) in the various OJEU standard form of notice templates, e.g. in a Prior Information Notice

¹ Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. See: [Official Journal L 134](#).

² Directive 2004/17/EC of the European Parliament and of the Council of 31st March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. See: [Official Journal L 134](#).

³ http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf.

⁴ http://www.opsi.gov.uk/si/si2006/uksi_20060006_en.pdf.

(PIN), and a Contract Notice. What is important is for the CPB to be able to demonstrate that it was intending to act as a CPB for one or more contracting authorities. A contracting authority that set out with the intention of procuring services only for itself (and hence advertised on that basis), would not qualify as a CPB if it sought to sell any surplus on to another contracting authority.

4. Must a CPB indicate the contracting authorities on whose behalf it is acting when it undertakes a procurement?

- 4.1 This is not explicitly covered by the Directives or the Regulations. However, in carrying out a procurement exercise a CPB would (insofar as it was carrying out a procurement which fell within the scope of the Regulations, and as a contracting authority in its own right) have to comply with the procedures contained in the Regulations.
- 4.2 In the case of a framework agreement, for example, it would be necessary for the CPB to ensure that it is following the rules for framework agreements, set out in the Regulations. It would need to ensure that the description in the OJEU Contract Notice issued at the start of the procurement process was wide enough to cover all the contracting authorities it intended should be able to call-off under the framework agreement. Rather than listing every contracting authority, a recognisable class of contracting authority might be used, e.g. central government departments or all health authorities. It is to be noted that European Commission guidance on frameworks⁵ indicates that classes of contracting authority should be defined in a manner which enables "immediate identification" of the contracting authorities concerned. Thus, for example, it would not be sufficiently precise to simply refer to "all contracting authorities" in a given area. If there is an accessible list of contracting authorities in a relevant "class", or an organisation with responsibility for maintaining details of the members of a "class", a CPB may wish to quote that list or organisation in the Contract Notice or specification.⁶ Similarly, in our view, it would be good practice for a CPB to identify in the OJEU Contract Notice any contracting authorities in respect of which it was intending to make acquisitions as a CPB although, again, a class description could be sufficient subject to the above caveats.

5. Could a contracting authority use the CPB provisions to provide goods or services to one or more other contracting authorities from its own resources eg providing HR functions to other local authorities or setting up a joint finance function?

No. The CPB provisions are not relevant to this case because the goods/services are "from its own resources" and thus the definition of a CPB (see paragraph 2 above) is not met.

6. Can a body which is not a contracting authority act as a CPB?

No, because it would not comply with the definition of a CPB (see paragraph 2 above). There is, however, nothing in the Regulations to prevent other bodies from acting as agents for contracting authorities. In that case the contracting authority

⁵ http://ec.europa.eu/internal_market/publicprocurement/docs/explan-notes/classic-dir-framework_en.pdf

⁶ For example, a list of non-departmental public bodies (NDPBs) is kept by the Cabinet Office, and may be found at <http://www.civilservice.gov.uk/about/public/bodies.asp>

would remain directly responsible for ensuring compliance with the provisions of the Regulations.

7. Could an agent acting on behalf of a contracting authority acquire goods from a CPB?

Yes, provided the agent was specified as a class of organisation able to access and use the CPB's facilities. If a contracting authority used an agent (which could be another contracting authority) to purchase goods, works or services from a CPB, our view is that the legal effect of this would be that the contracting authority, rather than the agent, had acquired those goods or services from the CPB. Such acquisitions are permitted by the Regulations.

8. How should CPBs best follow advertising rules on aggregating contract value?

In principle, the application of the aggregation rules to a CPB is no different to the situation with any other contracting authority. Information on aggregating contracts, where appropriate, is set out in the Introduction to the EU Public Procurement Rules guidance on the OGC website⁷. A CPB would need to ensure that the total estimated value of similar contracts was aggregated, where appropriate. In cases of doubt, it may be useful to err on the side of caution and advertise rather than risk breaching the relevant threshold.

9. What if a contracting authority bought from or through a CPB in good faith and it later transpired that the CPB had not fully complied with the Regulations?

9.1 If the CPB has failed to comply with the Regulations then the contracting authority will not be in compliance either. However, it is important (if the CPB provisions are not to be undermined) for a contracting authority to be able to rely on the CPB to carry out its various obligations under those Regulations. Thus a contracting authority should not have to supervise the processes of the CPB, but it should be careful, in entering into arrangements with CPBs, to ensure that there are appropriate provisions in those arrangements to protect itself. For example, it may be sensible for provision to be included in any such arrangements to the effect that the CPB will comply with all necessary provisions in the Regulations and providing that where the CPB fails to do this (and as a result of which the contracting authority incurs legal costs or has damages awarded against it) that the CPB will compensate the contracting authority in respect of those legal costs or damages. Where both the contracting authority and CPB are Crown Bodies, the contracting authority should, however, bear in mind that even if such a provision is included, it will not be legally enforceable.

9.2 Even without the inclusion of such a provision it may be possible, providing the contracting authority had acted in good faith in entering into an arrangement with the CPB, for the contracting authority to recoup damages from the CPB in respect of breach by the CPB of the Regulations. Any such action would probably take one of two forms - either a claim for breach of contract or a negligence claim. Contracting authorities would need to seek their own legal advice, based on the merits of a particular case, on whether such a claim would be worth pursuing. Of course, where

⁷ [OGC - Guidance on the 2006 Regulations](#)

both the contracting authority and CPB are Crown Bodies, it is not open to the contracting authority to initiate legal proceedings against the CPB.

- 9.3 The form of any agreement or contractual arrangement between a CPB and the contracting authority procuring from or through it is a matter for the parties concerned. The Regulations do not address how a procurement between the two parties should be conducted, as the EU rules should already have been applied by the CPB in acquiring the supplies, works or services in the first place. Of course, in the case of a framework agreement, the EU rules will apply to call-offs made under the agreement.

OGC
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