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Public Procurement

Central Purchasing Bodies

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This Brief provides an overview of the establishment and operation of a central purchasing body (CPB), as defined by the Public Sector Directive (the Directive)¹, and is based on SIGMA Paper No. 47, *Centralised Purchasing Systems in the European Union*². The Brief focuses in particular on CPBs that base their operations on the award and use of centralised framework agreements. The Directive, as shown below, provides a broader definition of the activities of CPBs.

Legal basis for CPBs

The Directive includes specific provisions on CPBs that make it explicitly possible for Member States to enact or maintain provisions with regard to CPBs in their national procurement legislation³.

Definition: A CPB is defined in the Directive as a contracting authority that provides centralised purchasing activities and, possibly, ancillary purchasing activities.

Centralised purchasing activities are activities conducted on a permanent basis, in one of the following forms: (1) the acquisition of supplies and/or services intended for contracting authorities, or (2) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities.

Ancillary purchasing activities are activities consisting of the provision of support to purchasing activities, in particular in the following forms:

- technical infrastructure, enabling contracting authorities to award public contracts or conclude framework agreements for works, supplies or services;
- advice on the conduct or design of public procurement procedures;
- preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned.

Member States may prescribe that contracting authorities purchase supplies and/or services from a CPB offering the centralised purchasing activity (the CPB acts as a “wholesale dealer”). They may also prescribe that contracting authorities purchase works, supplies or services through CPBs by using contracts awarded by CPBs, dynamic purchasing systems operated by CPBs, or framework agreements concluded by CPBs (the CPBs act as “intermediaries”).

It is not mandatory to establish CPBs, but it is an option given to Member States. Member States may provide that certain procurement is to be carried out by having recourse to CPBs or to one or more specific CPBs. As a consequence, it may be obligatory at national level to use the services of CPBs for some procurement.

It is important to note that the Directive allows that contracting authorities may award a public service contract to a CPB for the provision of centralised purchasing activities, including ancillary purchasing activities, without having to apply the procedures provided for in the Directive.

¹ Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, 26 February 2014.

² SIGMA (2011), *Centralised Purchasing Systems in the European Union*, SIGMA Paper No. 47, OECD Publishing, Paris.

³ The Utilities Directive contains similar provisions: Directive 2014/25/EU on procurement by entities in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, 26 February 2014.

Deemed compliance: Article 37(2) of the Directive is of particular importance. It provides that contracting authorities purchasing works, supplies or services from a CPB offering centralised purchasing are deemed to have complied with the Directive.

A contracting authority also fulfils its obligations pursuant to the Directive where it acquires works, supplies or services by using contracts awarded by the CPB, dynamic purchasing systems operated by the CPB, or framework agreements concluded by the CPB offering centralised purchasing.

However, the contracting authority is responsible for fulfilling the obligations pursuant to the Directive with regard to the parts of the procurement process that it conducts itself. For example, when a framework agreement is awarded by a CPB in accordance with the provisions of the Directive, contracting authorities that purchase under that framework agreement will be deemed to have complied with the provisions of the Directive. Subsequent call-offs⁴ by the contracting authorities, using the framework agreement awarded by the CPB, will have to comply with the relevant provision in the Directive for the award of contracts subsequent to the framework agreement, but without having to go through the complete process of a standard procedure for the award of a public contract. Without this provision, all call-offs above the threshold values of the Directive might themselves be subject to award under the Directive. In the same way, the responsibility of a contracting authority for fulfilling the obligations pursuant to the Directive may, for example, cover the award of a contract under a dynamic purchasing system operated by a CPB.

Electronic procurement: The Directive requires all procedures conducted by a CPB to be performed by using electronic means of communication.

Procurement involving contracting authorities from different Member States: Contracting authorities from different Member States may act jointly in the award of public contracts by using one of the means defined in Article 39 of the Directive. This provision includes an option for contracting authorities to use centralised purchasing activities offered by CPBs located in another Member State. If that is the case, the provision of centralised purchasing activities by a CPB located in another Member State is conducted in accordance with the national provisions of the Member State in which the CPB is located. The same provision applies to the award of contracts under a dynamic purchasing system and call-offs under a framework agreement.

Framework agreements

The Directive defines a framework agreement as "an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, quantity envisaged."

The establishment and operation of a framework agreement take place in two steps: first, the framework agreement is awarded to one or more economic operators. Second, individual call-off contracts are awarded to one or more economic operators. This second step differs, depending on whether the framework agreement concerns a single supplier or multiple suppliers. For further information on framework agreements, see SIGMA Public Procurement Brief 19, *Framework Agreements*, and SIGMA Paper No. 47 (see footnote 2).

It should be noted that the provisions on framework agreements apply equally to all procuring entities falling under the Directive, irrespective of their operational differences. A CPB, which by definition is a contracting authority that is setting up a framework agreement for wide

⁴ The process of awarding contracts under a framework agreement is sometimes referred to as "call-off" or "calling-off" and contracts awarded under a framework are also referred to as "call-off" contracts.

cross-public sector implementation, thereby enabling *other* contracting authorities to make call-offs, has to apply the same rules and procedures as an individual contracting authority, which has the purpose of serving only its internal users and clients.

Rationale for establishing a CPB

The rationale for establishing and operating a CPB needs to be examined from various perspectives. The important stakeholders are as follows:

- The **customers** of the CPB's services – the contracting authorities that use the framework agreement or dynamic purchasing system operated by the CPB or that purchase supplies or services acquired by the CPB. The customers are likely to be interested in effective and efficient procurement with value-for-money outcomes.
- The **suppliers** of the works, supplies and services, either directly to the CPB or under the framework agreement or dynamic purchasing system – generally private sector economic operators. The suppliers are likely to be interested in the business opportunity and in effective and efficient procurement.
- The **owners** of the CPBs – usually government ministries, associations of local authorities, and other public bodies representing taxpayers' interests. The owners may be interested in reduced public expenditure, increased value for money, and the realisation of certain important policy goals, such as those related to environmental or social issues or to small and medium-sized enterprises (SMEs).

The main rationale for establishing a CPB is often described in the following terms:

- “Larger procurement volumes generate better prices.”

Under the right conditions, centralised procurement, based on an aggregation of the purchasing needs of all CPB customers, provides very interesting business opportunities for the private sector. With larger procurement volumes, an increasing competition in the market normally follows, affecting prices and other terms in ways that are favourable to the contracting authority purchaser. An individual contracting authority will seldom have a procurement volume large enough to generate prices that are comparable to those obtained in a situation where an aggregation of needs among several contracting authorities has been made. The potentially larger sales volumes that can be expected under centralised procurement mean that economic operators can exploit economies of scale.

For a centralised purchasing system based on the award and management of framework agreements, the aggregation factor and its effect on prices have to be evaluated with respect to the type and subject matter of the framework agreement to be awarded.

- “Transaction costs are reduced.”

From the perspective of contracting authorities, a full competitive procurement process, when compared to a simple call-off exercise, is normally associated with substantial transaction costs, in terms of time and expenditure, related to the management of the procurement process, from the first stage of defining the needs to the final stage of closing the file. Economic operators also incur significant transaction costs when participating in a tender. With centralised framework agreements, both contracting authorities and economic operators can expect a significant reduction of these costs. Furthermore, with reduced transaction costs incurred by contracting authorities and economic operators, resources, in terms of staff and time, are freed for other, more important, functions.

However, as in the case of the impact on prices, the effect of aggregation on transaction costs incurred by both contracting authorities and the private sector cannot be generalised but must be calculated with respect to the type of framework agreement used. A call-off under a single-supplier framework agreement will not entail any tendering costs (only transaction costs for the placing of the orders), whereas a multi-supplier framework agreement involving a mini-competition will entail tendering costs for the contracting authority as well as the economic operators.

- “Other benefits of a significant nature occur.”

Centralised purchasing systems may also offer advantages that cannot be directly expressed in economic terms.

Arguments in favour of centralised purchasing arrangements include:

- **Increased administrative efficiency:** Centralised and co-ordinated solutions offered by CPBs may assist in delivering required standardisation or increased administrative efficiency within the public administration, for example in the area of information and communication technology (ICT) systems and software applications.
- **Expertise and capacity:** CPBs may provide the expertise and capacity that many contracting authorities may lack, for example the knowledge of a particular market or the capacity to prepare and carry out complex tenders in areas requiring specific products.
- **Certainty:** Professional, centralised purchasing provides certainty to contracting authorities in many key aspects – legal, technical, economic and contractual – thereby reducing the risks that otherwise would have been borne by the contracting authority. These risks might include the risk of complaints, poor or insufficient quality of products, failure of suppliers, and inadequate contract terms.
- **Simplicity:** Call-off arrangements give the procuring entity and its user departments the possibility, even without any professional procurement background, to contract with economic operators that are party to the framework for the acquisition of works, supplies and services.
- **Delivery of policy goals:** Governments may use the CPBs as instruments for the execution of policy goals in specific sectors, such as promoting green procurement, innovations and SME participation in public sector tenders.

Arguments against centralised purchasing arrangements include:

- **Market concentration:** The activities of CPBs may create a risk of market concentration and the development of monopolistic structures. The large volumes that are often involved in centralised procurement tend to favour large economic operators rather than small, new economic operators.
- **Reduced opportunities for SMEs:** CPBs often concern high-value tenders or large contracts. It is often the case that an SME will not be able to participate in its own capacity, since it is probably unable to meet the qualification criteria or to compete with large economic operators. Instead, SMEs may act as subcontractors or participate in consortia. Greater SME interest is more likely where the purchaser has arranged lots of such a nature and size that SMEs would be able to participate as tenderers in their own capacity.
- **Lack of responsiveness to market changes:** Framework agreements, due to their long duration (normally two to four years), can be relatively unresponsive to ongoing changes in the market, unless they are designed correctly. The incorrect design of a

framework agreement can potentially lead to key developments in market prices and technology being neglected. It is therefore important that the duration of the framework agreement is set realistically and that competition is maintained through the use of mini-tenders.

- **Uniformity:** The uniformity of many framework agreements and the degree of standardisation constitute another concern. Framework agreements sometimes tend to offer an approach that is too restrictive, in particular with regard to technical aspects. This uniformity makes it difficult for contracting authorities to fully satisfy their own procurement objectives.

Typical product and service areas covered by a CPB

Works, supplies and services covered by framework agreements awarded by CPBs should generally be of common interest to, and frequently purchased across, the public administration. The range of items normally covered by the operations of CPBs includes the following supplies and services (works contracts are more rarely awarded by CPBs):

- ICT products and services (computers, photocopiers, printers, servers, software);
- telecommunications products (networks, mobile phones, landline phones, telephone exchanges);
- office furniture;
- travel services;
- office equipment and supplies;
- vehicle and transport services;
- fuel (for heating and transport) and electricity;
- food (foodstuffs, meal tickets);
- organisational and human resource development services.

See SIGMA Paper No. 47 (footnote 2) for more details on the typical subject matter of a framework agreement.

In terms of purchasing volumes, the largest product area is generally that of ICT products. Although many of the products and services could be considered to be comparatively uncomplicated and standardised on a technical basis, there are also areas of high technical and commercial complexity (such as advanced IT systems) that may be under the responsibility of a CPB. In fact, a CPB may offer standardised products and services of non-strategic importance as well as products and services of significant strategic importance. In the latter case, the centralised arrangement is often driven by the owner's objectives to improve administrative efficiency and effectiveness within the public sector as a whole by ensuring interoperability and standardisation of the administrative systems used by contracting authorities.

Framework agreements managed by some CPBs

Central Purchasing Body	Product and Services
SKI, Denmark	Information technology, furniture, office equipment, energy, automobiles, spectacles, foodstuffs, catering centre equipment, electrical equipment, building materials, tools, timber, work clothes, cleaning services, research and laboratory equipment, temporary staff, consulting engineers, and management consultancy.
Hansel, Finland	70 framework agreements covering ICT procurement contracts (ICT hardware, software and services), procurement of administrative services (financial administration, organisational and human resource development, travel and conference management), procurement of materials and technical services (material and facility services, vehicle and transport services, office and energy supply services).
UGAP, France	Products and services are split into six groups: IT equipment, medical equipment, furniture, vehicles, respiratory masks, and services.
KSzF, Hungary	Info-communication, telecommunication, office equipment, e-government services, office furniture, paper and office supplies, vehicles, fuel, medical supplies, and travel services.
Consip, Italy	Health care (e.g. ambulances, diagnostic equipment, services for managing health care equipment); fuel (for heating and transport) and electricity; office goods/equipment (printers, photocopiers, computers, servers, software); transportation (car purchase and rental); facility management (for offices, hospitals); telecommunications (networks, mobile phones, landline phones, telephone exchanges); furniture (for offices, schools, universities); insurance and financial services (credit cards); food (foodstuffs, meal tickets).

Source: SIGMA Paper No. 47, *Central Purchasing Systems in the European Union* (footnote 2).

Key operational issues for CPBs

Should the use of the services of CPBs be compulsory for contracting authorities? In some countries, the governments have made it mandatory for contracting authorities to buy certain works, supplies or services through or from a CPB. In other countries, it is up to the contracting authorities to use whichever source delivers the best “value for money”.

Proponents of a system under which contracting authorities would be obliged, in principle, to use the services of CPBs argue that this measure would ensure cost-efficient public sourcing and would increase standardisation among contracting authorities. Critics argue that such a requirement would weaken the incentive of CPBs to be user-friendly and would create a risk of monopolistic behaviour.

It is argued that one of the benefits of having a voluntary system is that it provides an incentive for CPBs to offer favourable framework agreements and other services to their customers on competitive terms. If CPBs failed to do so, there would be no demand for their services and their own existence would be at risk. The benefit of a voluntary system is that it exposes the CPB to a form of competition, which stimulates it to offer attractive products, thereby creating the most value for money.

What organisational forms does a CPB take? The most common organisational form for a CPB appears to be the non-profit limited company, although a government agency model is also

used. See SIGMA Paper No. 47 (see footnote 2) for more information on the types of organisational forms for CPBs in the countries surveyed.

How should the operations of a CPB be financed? Many CPBs are funded through service charges. Two different variants are used: either contracting authorities pay a fee when call-offs are made or the fees are paid by economic operators when they invoice through the framework agreements. An alternative funding model is the financing of CPBs directly from government funds.

What is the importance of good customer and supplier relationships? The main objective of a CPB is to provide attractive and workable framework agreements, which requires the strong involvement of customers in the whole procurement process: determining the appropriateness of a specific product or service area for framework purchasing; design of technical specifications, tender selection and evaluation criteria; choice of the type of framework agreement and call-off system; and award of the framework agreement.

The CPB's effective execution of its main functions is based on its capacity and ability to "understand and manage" the supply market efficiently, which demands that the CPB knows the main suppliers of a specific product or service segment of the market as well as their size and market presence. Pre-information and dialogue with economic operators at an early stage of the procurement process, when carried out transparently and in accordance with applicable procurement rules, are valuable in determining the various options for the best design of contracting and procurement strategies for the framework agreements and attached call-off systems.

What types of framework agreements should be used? The Directive allows CPBs considerable freedom as to the type of agreement and procedures to use. CPBs take advantage of this freedom, and as a result both single-supplier and multi-supplier framework agreements are used, as well as various call-off procedures.

One advantage of a single-supplier framework agreement is that the award of such a contract is likely to be very valuable for the economic operator chosen. This advantage has to do with "the winner takes all" nature of such a contract.

Framework agreements with multiple suppliers have the advantage of providing more reliable sourcing than single-supplier agreements. Another advantage is that the risk of a successive market concentration is smaller. A potential disadvantage of a multi-supplier arrangement is that, in most national laws, economic operators have no guarantees of selling anything under their framework agreements.

The option whereby contracting authorities make call-offs through a mini-competition has the advantage of introducing a kind of ongoing competition between economic operators during the lifespan of the framework agreement. On the other hand, the mini-competition option may involve substantial transaction costs.

How should the performance of a CPB be measured? Generally speaking, it is difficult to calculate the savings that are generated through centralised procurement. The fundamental reason for this is the impossibility of observing the counterfactual outcome of centralised procurement of supplies or services and the various prices and other terms generated by an alternative procurement method. An alternative outcome therefore needs to be constructed in some way.

In co-operation with universities, several CPBs have developed methods for measuring performance. These evaluations provide valuable information regarding performance, especially if they are conducted on a regular basis so that trends and patterns may be observed over time. Also, these evaluations have the important function of putting a certain pressure on CPBs, which are aware that their performance is under review. For further

information about performance measurement, see SIGMA Public Procurement Brief 21, *Performance Measurement*.

Important “Lessons Learned” – Risk and Success Factors

To successfully set up and implement a modern and value-creating centralised purchasing system, several challenges – risk and success factors – need to be understood and dealt with. If they are not addressed, the success of the CPB may be jeopardised.

Centralised purchasing systems can be organised and managed in several different ways – there is no single best model: Centralised purchasing is carried out in various ways, and differences may exist with respect to:

- the legal status of the CPBs and the sectors/levels of the public administration that they cover;
- the way in which the mandates of the CPBs have been given by the owner(s);
- the types of framework agreements and call-off systems used;
- the organisation and financing of the CPBs.

Sensitivity to the needs of key stakeholders: The success of a CPB will depend on the extent to which trust and confidence can be strengthened and maintained in its relations with major stakeholders – owners, contracting authorities and suppliers.

“Competitive” framework agreements with user-friendly and low-risk call-off systems: The success of a CPB is highly dependent on its ability to offer framework agreements that are technically and commercially attractive to a large proportion of potential “customers” in the public sector served by the CPB. This ability is decisive for a CPB in a voluntary environment, but is almost equally important for a CPB operating in a compulsory situation.

Appropriate identification of contract scope and value: CPBs have put in place mechanisms for the identification not only of the works, supplies and services to be purchased through centralised procurement, but also of the value of those contracts, usually based on an in-depth supply and demand analysis or on feasibility studies. The identification of the scope and value of the contracts to be awarded under a framework agreement provides potential tenderers with the information they need to decide whether or not to participate. Similarly, the type of framework agreement (single-supplier or multi-supplier) will alter, from the tenderers' perspective, the potential success rate of participation and, in effect, it will alter the scope and value of the agreement. The choice of call-off mechanisms is also a factor to be taken into account in terms of the attractiveness of the framework agreement.

An efficient organisation with competent staff: The design of the CPB's structure is vital to its success and should reflect the specific characteristics of its work. Its main functions are usually centred around market and customer relations, product management, procurement, and contract management, together with key support functions, such as ICT, legal services and administration, including accounting.

Failure to effectively manage the legal risk: Several CPBs have witnessed an increase in the number of complaints concerning not only the tenders for the award of framework agreements but also – which further complicates the position of the CPBs – the proceedings during the call-off stage. Complaints concerning multi-supplier agreements imply a transfer of risk from the CPB to the contracting authorities, which may create a situation of legal uncertainty.

Lack of focus: Another risk is that the CPB will start to lose focus and try to expand the boundaries of its operations into areas where it either lacks a competitive advantage or is not

able to respond correctly to the needs of contracting authorities, thereby offering services or framework agreements that are potentially unattractive to contracting authorities.

Further information

Publications

SIGMA (2015), *Public Procurement Training Manual* – Module D1, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/public-procurement-training-manual.htm>

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