

European Commission Update: Guidance 21

Proposals for Obligatory Use of CPV Codes

The European Commission has adopted a proposal for a Regulation of the European Parliament and of the Council which would establish the Common Procurement Vocabulary (CPV) as the only classification system used for public procurement in the EU. Currently it is just one of several nomenclatures available for use by public awarding authorities in the EU. The universal use of the CPV would help to ensure that the subject matter of contracts could be accurately identified, allow automatic translation of tender notices into all official Community languages and play a decisive role in promoting openness and transparency in European public procurement, a market which amounts to well over €1,000 billion every year across the EU. Using the CPV allows potential suppliers easily to identify and select those procurement opportunities which are of most interest to them in any of the Member States.

Internal Market Commissioner Frits Bolkestein said: "Adoption of this proposal would be another important step towards opening up public procurement markets to greater transparency, competition and efficiency. Obligatory use of the CPV would help suppliers easily to find and understand public contract opportunities across the EU, no matter what language the original tender notice was written in. Replacing four different nomenclatures with one common vocabulary would reduce errors, simplify procedures and make easier the comparison of different markets across the world. The CPV has been developed as the result of an unprecedented consultation exercise with the private and public sectors throughout the EU."

Currently Community law concerning public procurement procedures refers to four different nomenclatures: CPA (Classification statistique des Produits associée aux Activités), NACE (Nomenclature des Activités économiques dans la Communauté Européenne), CPC (Central Product Classification) and CN (Combined Nomenclature). This proposal to replace the four existing nomenclatures with the CPV, making it the only system to be used across the EU, forms part of a package of proposed measures designed to simplify and modernise the public procurement Directives (see IP/00/461). The public procurement Directives refer to the nomenclatures in three respects: the description in notices of the subject matter of contracts, statistical obligations and the definition of scope. Referring to the CPV would have no impact on the scope of the Directives, nor on the distribution of the annexes. The CPV would also contribute to simplifying the implementation of statistical obligations, thereby facilitating the task of contracting authorities and national authorities. At the international level, it should also be noted that the CPV allows for better comparability of data with the other nomenclatures used in the signatory states to the Government Procurement Agreement.

This proposal aims to provide a legal basis specific to the CPV and organisation of future procedures to update it. As with any nomenclature, the CPV will have to follow market trends in order to meet its users' evolving requirements (contracting authorities, potential suppliers and their intermediaries). This updating process will be driven by suggestions and comments from the users of the CPV.

Moreover, the CPV will play an essential role in the development of electronic public procurement. It is a determining factor in achieving the commitments made within the framework of the e-Europe and e-Commission initiatives, since it offers the possibility of electronically processing published data, improving the quality of information, the speed of its distribution, and therefore the efficiency of the publication system set up by the Directives.

The proposal includes the adoption of a new revision of the CPV (Annex I), which already improves on the 1998 version in the light of experience gained in use of the CPV. The proposed modifications were subjected to a wide consultation of the national authorities in all Member States, advisory committees (CCMP, CCO), the relevant professional organisations, intermediaries and service providers, such as Business Information Publications Ltd.

Background <Top>

In 1996, the Commission recommended (OJ L222, 03/09/96) the use of the CPV for describing the subject matter of contracts in the notices published in accordance with EU public procurement Directives.

Since 1996, the CPV has been used systematically in all notices published in accordance with the Directives, for identifying the subject matter of contracts as well as for automatic translation into other official Community languages. It has thus become the main way for potential suppliers to select and identify procurement opportunities.

Last year the Commission adopted a package of proposed amendments to simplify and modernise the public procurement Directives: one on co-ordination of procedures for the award of public supplies contracts, public works contracts and public services contracts (COM(2000)275, 30/08/00) and the other co-ordinating the procurement procedures of entities operating in the water, energy and transport sectors (COM(2000)276, 30/08/00).

Public procurement: Standard forms to improve contract notices <Top>

The European Commission has adopted a Directive imposing, from 1 May 2002, the use of standard forms in contract notices published in the EU's Official Journal in accordance with the EU's Directives requiring open and competitive public procurement procedures. The mandatory use of these forms will improve the quality of published notices, thus favouring openness, efficiency and transparency, and facilitate electronic procurement. In particular, use of these forms will make it easier for potential suppliers to use automatic search tools to find procurement notices of most interest and relevance to them. Moreover, for purchasing entities, the standard forms will simplify and cut the cost of compliance with EU procurement rules.

European public procurement markets are together worth more than \approx 1,000 billion every year across the EU.

Internal Market Commissioner Frits Bolkestein said: "This is a practical measure that will help both purchasers and potential suppliers, thereby improving the efficiency of European public procurement markets."

The EU's public procurement Directives require open, transparent and competitive procedures to be followed by contracting entities and authorities for the procurement of goods and services and construction works. Notices concerning contracts falling within the scope of the Directives must be published in the Official Journal of the European Communities. To this end, the Directives include 'model notices'. As things stand at present, however, notices are incomplete and contain errors.

Moreover, there is a need to adapt the model notices to take account of technical progress, particularly the possibility of using electronic means for sending the notices to the Official Journal as developed and tested in the framework of the Commission's project to promote public procurement using electronic means such as PrOJECT. This measure will indeed facilitate the use of electronic procurement, within the framework of the e-Europe initiative.

The online notification systems, already operational and available to all potential contracting authorities, offer the possibility of taking full advantage of the standard forms for drafting, validating and dispatching notices for publication by the EC. The compulsory use of the forms will help to ensure interoperability of the electronic applications used or being developed in Europe.

Background <Top>

A first, voluntary standardisation of the data to be published, applying only to supplies and works contracts, was introduced by a Commission Recommendation (91/561/CEE) adopted on 24 October 1991 and a Communication of 30 December 1992. The Commission recommended the optional use of some 'standard models' of contract notices for supplies and works contracts.

In a second phase, standard forms have been designed and developed in close co-operation with Member States since 1994. The Commission has adopted this new Directive, imposing the use of standard forms using powers delegated to it by the public procurement Directives for revising, inter alia, "the conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices". The Directive has already been endorsed by two committees comprising Member State representatives, namely the Advisory Committee for Public Contracts and the Advisory Committee on Telecommunications Procurement.

The standard forms include all the provisions applicable to the content of notices under Community law and their substitution for the current model notices will not modify in any way the information contained in the notices. Standard forms contain, in addition to the headings which strictly correspond to the applicable provisions of the public procurement Directives as modified by the GPA (Government Procurement Agreement signed within the framework of the World Trade Organisation - WTO), mandatory headings derived from the regulations on Community funds.

Guidelines for E-Procurement<Top>

The European Commission has clarified how Community law offers numerous possibilities for public purchasers who wish to integrate environmental considerations into public procurement procedures. The clarifications take the form of an interpretative Communication that explains how environmental concerns may be taken into account at each separate stage of the contract award procedure. As public procurement amounts to over €1,000 billion every year across the European Union (14% of EU GDP), 'greening' these purchases could contribute substantially to sustainable development.

Internal Market Commissioner Frits Bolkestein said: "This Communication explains in concrete terms how current public procurement legislation enables public authorities to apply environmental considerations to their purchasing, whilst at the same time ensuring value for money for taxpayers and equal access for all Community suppliers."

Environment Commissioner Margot Wallström added: "I would like to encourage public authorities to seize the opportunities offered by this Communication to ensure that the public not only benefits from savings through the purchase of energy-efficient or recyclable goods, but from the contribution that green public procurement could make to environmental issues such as combating climate change or improving waste management."

Environmental criteria<Top>

The Communication interprets existing law, comprising EC Treaty Internal Market rules and the public procurement Directives. It therefore refers both to public contracts that are covered by the EC Directives on public procurement as well as those that are not covered by these Directives but are nevertheless subject to Treaty rules. In doing so, it seeks to reconcile the respective goals of protection of the environment and efficient and fair public procurement in the Internal Market.

The Communication examines the different stages in a public procurement procedure and explains how, at each stage, the protection of the environment may be taken into account.

For example, when defining the subject matter of a contract, public purchasers can, like private purchasers, decide to purchase environment-friendly products or services, defined according to their environmental performance and the production process used. Similarly, the public purchaser may specify the raw materials and the production processes to be used in the contract. Public authorities could, for example, request that energy for public buildings is supplied from a renewable source, or that food for a school canteen comes from organic produce. From the very start of the public procurement procedure, public purchasers can orient their policies towards products and services that better protect the environment.

The Communication explains how contracting authorities can define technical specifications related to environmental performance of a product in line with 'Eco-label' criteria. It also sets out under which conditions registration of an environmental

management scheme could serve to demonstrate aspects of suppliers' and contractors' technical capacity.

The Commission proposal for a Sixth Environmental Action Programme (see IP/01/102) has identified public procurement as an area which has considerable potential for 'greening' through public purchasers using environmental performance as one of their purchase criteria. This Communication will help to make such action a reality by clearly identifying the options open to public purchasers who wish to go down that route.

As a follow-up to this interpretative Communication, the Commission intends to produce a practical handbook on green public procurement. This will be aimed principally at local authorities, and will contain examples of best practice in green public procurement throughout the EU, as well as practical guidance on how to integrate the environment into day-to-day purchasing without infringing Internal Market rules.

In order to promote and explain the possibilities set out in the interpretative Communication the Commission will hold an information event in Brussels in the autumn.

Q & A Environment - frequently asked questions <Top>

Q According to the interpretative Communication, is it possible to adequately take into account environmental considerations under the public procurement Directives?

A The Communication makes it clear that there are numerous possibilities for the 'greening' of public procurement under the Directives. This is particularly so if three guiding principles are followed - non-discrimination, transparency and thought about where in the tender process environmental elements should be taken into account. Generally speaking, the earlier in the tender process (definition of the subject of the contract, technical specifications) you place environmental considerations, the more is possible.

Q Is it possible to ask for process and production methods under the Directives?

A In the technical specifications of the tender, process and production methods can be requested where these help to specify the performance characteristics of the performance or service. This includes both process and production methods that physically affect the end product (e.g. absence of chemicals) and those that do not but nevertheless affect the nature of the end product, for example organic food, or furniture produced from sustainable timber. It is not possible to require that the factory producing the goods use recycled paper in its office, as this does not relate to the production of the goods.

Q Can I ask for specific materials, for example that windows be made of wood, in the technical specifications?

A It is possible both to ask for specific materials to be used in an object supplied or in a works contract, and also to ask that a type of material not be used. So you could ask

for your windows to be made of wood, or not to be made of a specific product, for example.

Q How can I use Eco-labels in my procurement?

A You can use Eco-label criteria to help determine your environmental technical specifications. You can also accept an Eco-label certificate as proof of compliance with those criteria, although you must accept other means of proof: you cannot say that you only accept products with an Eco-label certificate.

Q How can I use company environmental management systems in my procurement?

A The references a contracting authority may require as proof of a company's technical capacity are listed exhaustively in the public procurement Directives. Environmental management systems can play a role in so far as these fall within one of the categories or references listed in the Directives. Thus, environmental management systems can be accepted as proof of technical competence where the specific scheme applied has an impact on the capacity of the company to execute a contract with environmental requirements. Other means of proof of technical capacity must also be accepted. It is also possible to require the putting into place of specific environmental management systems for works contracts where, for example, there are significant environmental issues to deal with.

Q What happens if I want to ask for better performance than a European standard in the environmental field?

A The purchaser is obliged to refer to the European standard, but may request better environmental performance than the standard in the technical specifications.

Q What kind of environmental criteria can I use at the award stage?

A Only those criteria that have a link to the subject matter of the contract and give the contracting authority a direct economic benefit. This could include giving a bonus to products that are more energy efficient, that will last longer, or that will cost less to dispose of. In case the environmental aspects do not bring an economic benefit to the contracting authority, these aspects can only be taken into account at the beginning of the tender procedure, where the contracting authority defines the technical requirements of the contract.

Q How can contracting authorities balance their budgetary constraints and the intention to 'buy green'?

A Although green products will often save the public purchaser money in the longer term, they may have a higher up-front cost. If contracting authorities want to make a balance between environmental choices and budgetary restraints, they may define one or more variant options in addition to their 'basic' option. In the variants they can define a higher environmental performance. At the end of the tender procedure, contracting authorities can decide which variant best meets their needs.

Q Can I request that products or services be supplied using specific methods of transport?

A Yes. In the contract clauses for the execution of the contract, the means of delivery of the goods can be specified, as long as this does not lead to discrimination. Other possible ways of reducing the environmental impact of transport activities linked to the provision of goods or services could include requesting that deliveries of goods be made in bulk, or that cleaning products are transported in concentrated form, and diluted at the place of use.

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