



HOW TO DEAL WITH AGGREGATION – A BASIC GUIDE

PUBLIC PROCUREMENT

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Aggregation and the rules surrounding it help determine how everything you might want to buy should be 'packaged' (or not) specifically to decide which rules must be followed to buy such things.

I have personally 'wrestled' with interpreting the EU aggregation rules for longer than I care to mention. Informed commentators, academics and legal advisors alike all agree on one thing; the rules are quite complex and often are hampered by uncertainties over how they are to be applied.

So, I've written down below what I've learnt!! In each case, I try to keep to as plain a language as I can in the hope that this note will help decision makers in some small way.

One key lesson I've learnt; if in doubt, aggregate.

Mike Smith
Procurement Manager

GENERAL PRINCIPLES

What the rules say or imply	What this means for you in practice
You must not break up expenditure artificially to avoid the procurement regulations i.e. not divide up contracts in order to bring them below the relevant thresholds.	You must not aggregate at a level which you know or suspect will reasonably leave such a decision open to challenge. Don't deliberately set out to circumvent the rules.
You shall not choose to apply any aggregation rule which helps you break your spend up to avoid the procurement regulations i.e. not divide up contracts in order to bring them below the relevant thresholds	If there is more than one rule you could apply to reach an aggregation decision, be extremely wary of choosing the one that leads to the greatest dis-aggregation without an objective, robust business case.
<p>You must make your aggregation decision at 'the relevant time'. The 'relevant time' in accordance with the regulations means:-</p> <p><i>'...the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with the Regulations....</i></p> <p>(i.e. at the time that an OJEU advert telling suppliers about an opportunity which was over threshold would need to be sent)....'</p>	<p>Make your aggregation decision at the start of a procurement process and, if you decide that the full public procurement rules don't apply, write down & record the reasons why, for audit scrutiny.</p>
<p>Aggregation requires the total amount of any procurement (excl vat) to be carefully and objectively estimated.</p> <p>In certain cases, the value of contracts must be added together, and the procurement regulations set out "aggregation rules" for this purpose.</p>	<p>It is a legal requirement, not a matter for discretion, for all purchasers to estimate the value of their purchase/s to the best of their ability. You cannot claim that uncertainty prevents you doing this; it won't stand up in court. Ignorance of the rules is also no defence.</p>
If you want the option to extend or renew a contract/s this <u>must</u> be included in your calculation of the estimated value of contract at the outset	It matters not that that the likelihood of you actually taking up an option to extend or renew a contract might be negligible, if it is a possibility it <u>must</u> be included in the aggregation calculation.
Everything which is payable under a purchase must be included	Fees, commissions, prizes, interest etc. All such 'consideration' must be included in the aggregation calculation. If in doubt, include it, or ask for advice.
What the rules say or imply	What this means for you in practice
The aggregation rules are 'enshrined' in the EU Procurement Directives as a legal requirement.	<p>The aggregation provisions of the regulations apply expressly only to determine whether or not the thresholds have been achieved.</p> <p>However, it is suggested that these same principles should, essentially, also be applied to determine how below threshold purchases should be valued and treated in terms of applying the University's own procurement rules.</p>

DIFFERENT SCENARIO'S

What the rules say or imply	What this means for you in practice
<p>HIRING OR LEASING</p> <p>Just because you want to hire something rather than buy it outright, you are not exempt</p>	<p>If you hire or lease something, the estimated value must be worked out over the corresponding finance period. If the contract is for a fixed period, this will be the aggregate consideration payable.</p> <p>If you don't know for how long the hire or lease will run because it is indefinite or uncertain, i.e. you cannot be sure, the default imposed on you by the aggregation rules is 4 years' worth of estimated spend (the value of the monthly consideration multiplied by 48).</p>
<p>ANY SERVICE CONTRACT WHERE THE TOTAL PRICE IS NOT INDICATED AT THE OUTSET</p> <p>If you want to purchase, for example, some services but the contract doesn't or isn't, set up to establish a total price upfront, the aggregation rules lay down how you must work out the aggregate value. You are not exempt.</p>	<p>For public services contracts where a total price is not indicated:</p> <p>If the contract is fixed for 48 months or less, the aggregate of the value of the consideration expected to be payable under that contract.</p> <p>If the contract is for longer than four years, or for an indefinite period, the amount expected to be payable each month multiplied by 48.</p>
<p>What the rules say or imply</p>	<p>What this means for you in practice</p>
<p>MY NEEDS AREN'T CONTINUOUS – THERE WILL BE A TIME BREAK BETWEEN THEM</p> <p>If there is a break in the requirement(s) for any purchase(s) then it should be reasonable to take account of this.</p>	<p>If your break in supply, works or services (that would otherwise require to be aggregated) is <u>more than 12 months</u> then it should not be necessary to aggregate these two amounts together.</p> <p>This would not apply, however, if the break is part of an option or renewal which allows you to simply resume after the break without going back out to quote or tender (i.e. no re-competition taking place) or perhaps where the 'break' is merely representative of phases of the same overall procurement(s).</p>
<p>I NEED TO SATISFY A DISTINCT/SPECIFIC REQUIREMENT BY ONE, OR MORE, PURCHASE ORDERS/CONTRACTS</p>	
<p>I'm buying a distinct type of goods, service or works and I know that I only need to do this via one, or more, purchase orders or contracts</p>	<p>You must make an objective, genuine pre-estimate of the likely spend to be incurred. This calculation must be defensible as it could be challenged through the courts.</p> <p>In the interests of transparency the methodology relating to the realistic estimate</p>

	<p>should be shared with prospective bidders in your invitation to bid documentation.</p> <p>So, if you just need to raise one purchase order/contract to meet your distinct requirement then the aggregate value of the single purchase order determines which rules to follow. Once that purchase is finished, a new procurement process will typically be needed if more requirements arise.</p> <p>Alternatively, if you choose to raise multiple purchase orders/contracts to meet your distinct requirement then each of them must be purchased following the rules <u>which apply to the total aggregated amount</u>.</p> <p>So, if the total aggregated value of the distinct requirement is estimated at £400k, to be satisfied by 10 purchase orders each valued at £40k, then <u>every one</u> of those purchase orders each have to be awarded following the correct process for a £400k contract. This is an example of an EU anti-abuse measure designed to stop contracts being 'artificially' split up.</p>
What the rules say or imply	What this means for you in practice
I BUY MANY DIFFERENT THINGS, HOW FAR AM I EXPECTED TO GO WITH AGGREGATION TESTS?	
<p>I buy lots of goods, services and/or works.</p> <p>Some of them are distinct, some of them could, in theory, be grouped/packaged together.</p> <p>How am I supposed to check this?</p>	<p>Common sense should prevail.</p> <p>The aggregation rules help determine where a single 'package' of works, services or supplies is likely to attract the attention of a single supplier and thus is sufficiently large to warrant open advertisement/competition.</p> <p>In terms of a single 'package' the main 'tests' here appear to be whether the same providers (supplier or service provider) are likely to be interested in the contracts, which will depend on many factors.</p> <p>For example, pens, pencils and rubbers could reasonably be regarded products of the same type (and suitable for 'packaging') since they are all generally available from individual stationery firms whereas individual types of vehicles e.g. refuse collection vehicles and fire engines are probably different types of product since it may not necessarily follow that they are available from the same supplier but potentially from different specialist enterprises.</p>

	<p>Other ‘tests’ include, for example, whether the contract is for outright purchase or hire/lease (which may, in some industries, be covered by different providers) or perhaps on the legal terms of the contract which may be very different for day to day needs as opposed to one off special projects.</p> <p>Another ‘test’ is also, potentially, whether additional subject matter is included (e.g. where a contract is for purchase and maintenance as opposed to purchase only, which may attract different providers).</p>
<p>What the rules say or imply</p>	<p>What this means for you in practice</p>
<p>IF I ‘PACKAGE’ SOME OF MY REQUIREMENTS, DO I HAVE TO GO OUT TO COMPETITION FOR THAT ‘PACKAGE’</p>	
<p>OK, so I might reasonably need to ‘package’ up some of my purchases.</p> <p>If I do, how should I value that ‘package’?</p>	<p>If you have a definitive period in mind e.g. a 2 or 3 year contract then clearly you must add up all expected spend for the ‘package’ of goods, services or works over that period to decide which rules you have to follow.</p> <p>This does not mean that multiple requirements all have to be contractually awarded or subjected to a purchase order at the same time and/or awarded to the same supplier (unless you choose to).</p> <p>If you do not have a contract period in mind then the calculation of the ‘package’ value must be made in one of three ways:</p> <p>i) For goods or services where previous purchases have been made, by aggregating the value of the consideration payable under contracts (for the same type of goods or services) in the last financial year (or the last 12 months) then adjusting this figure for any expected changes in cost and quantity required in the next 12 months.</p> <p>ii) For goods or services alternatively (e.g. if no previous purchases have been made) by estimating the value of the consideration to be paid under the contracts (for the same type of goods or works), going forward, either for 12 months from the date of delivery of goods or commencement or services, or for the financial year (if this is longer than 12 months).</p> <p>iii) For services contracts (exclusively) either without a definitive contract period/end date or if anticipated to be for longer than 4 years then your aggregation calculation, in such a</p>

	situation, must be as per item 4.2 hereunder i.e. 48 months (4 years) minimum estimated spend, to see which rules apply to such purchases.
What the rules say or imply	What this means for you in practice
IF I BUY OFF A FRAMEWORK CAN I FORGET ABOUT AGGREGATION?	
If I buy from an approved framework contractor surely aggregation is not an issue?	<p>Yes and No!!</p> <p>It is true that making a legally compliant purchase via a framework contract which has itself been through a full competitive EU tender process should avoid any further consideration of the public procurement rules.</p> <p>Framework buyers guides often advocate the re-opening up of competition for certain call offs.</p> <p>For a specific one-off low value (e.g. below £5k) call offs on a direct award basis, little risk is envisaged.</p> <p>However, the longer and/or more substantive the call off proposed the more important it is to accurately estimate the value of such call offs and, in the interests of transparency, the methodology relating to the realistic estimate should be shared with prospective bidders in your invitation to bid documentation.</p> <p>Also, if your call off is over the value of the EU Thresholds (stated on page one of this document) then you will need to consider applying additional measures related to 'voluntary' standstill' periods.</p> <p>Contact the Procurement Manager for advice.</p>
WHAT ABOUT SMALL 'LOTS'?	
<p>I have a single requirement which is over the EU threshold in aggregate but I want to make multiple awards and not necessarily all to one supplier.</p> <p>What do I need to do and what, if any, exemptions exist?</p>	<p>Under the regulations a purchase/s can be exempt from full procedural requirements if it is part of a bigger aggregated requirement and its individual value is below £66.6k excl vat (£833.4k excl vat if public works) and also provided the aggregate value of that one purchase (and any other exempt purchases meeting this same criteria) is less than 20% of value of total aggregate requirement.</p> <p>Contact the Procurement Manager for further details.</p>