BENEFITS AND OBSTACLES OF ENVIRONMENTAL, SOCIAL AND SUSTAINABLE PROCUREMENT

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ABSTRACT

Although Turkish Public Procurement Law (PPL) does not contains detailed and direct green or social provision at the moment, a draft law, which it will be sended to the Parliament soon, includes some environmental and social considerations parallel to European Union legislations. But, the government firmly believes that, green, social and sustainable procurement is an urgent necessity for companies and contracting entities both. In this regard, my study is mostly scrutinized on the EU regulations/implementations, other related international agreements and Turkey example.

INTRODUCTION

Sustainable, environmental and social procurement is not a new development. Companies or contracting authorities realized long ago that efficiency in energy usage, waste generation and water consumption could lower costs.

But growing economic pressures, rising expectations of customers and other key stakeholders, and stringent government regulation are increasing the focus on green, sustainable and social procurements for many companies and public entities.

Green Public Procurement is much more than just purchasing recycled paper for offices. It is about tapping into a huge market where the environmental impact related to the production, transportation, use and disposal of goods and related services can be reduced.

Public authorities in Europe have a purchasing power equivalent to 16% of the EU's gross domestic product. By using their market leverage to opt for goods and services that also respect the environment, they can have a major influence on suppliers and stimulate the production of more sustainable goods and services. Examples include more energy efficient school buildings, energy-saving streetlights, catering services offering organic food, and less polluting public transport. By giving a clear signal to all parties involved in the procurement process, public authorities can draw new environmental technologies into the marketplace that in turn

have the potential to strengthen the competitiveness of European industry.

Development of Concepts

For many years, the single most important indicator in the practice of public purchasing was the economic factor. Environmental and social factors were seldom if ever taken into account. However, the importance of non-economic factors in public procurement increased significantly with the development of the concept of sustainable development, understood as *'Development that meets the needs of the present without compromising the ability of future generations to meet their own needs'*.

The relevance and practical application of the environmental aspects of a public procurement can be demonstrated rather easily. Green requirements can be specified in the technical demands for the production technology and the selection of materials. Performance and quality standards included in the technical specification can be easily defined and introduced at any stage of the procurement process. In most cases, environmental requirements related to the production process or the product itself are relevant to characterise a product and can hence be used to describe it in the tender documents of a public tender.

The relevance and specification of social and ethical aspects of sustainable procurement is much more difficult to demonstrate as it is often difficult to demonstrate their effect on the characterisation of the final product. Additional problems arise in terms of objective verification and quantitative benchmarking of effects and benefits that would allow for accurate and fair evaluation of tenders.

Policy Background

The potential of GPP as a policy instrument has been increasingly recognised, and over recent years there has been growing political commitment at national, EU and international levels. In 2002, the OECD adopted a Recommendation on green public procurement. As a follow-up to the Johannesburg World Summit on Sustainable Development (September 2002), a Marrakech Task Force on Sustainable Procurement was created with the aim of spreading sustainable and green public procurement practices. Sustainable procurement policies have been launched in many OECD countries (USA, Japan, Canada, Australia, and South Korea) as well as in rapidly developing countries (such as China, Thailand, and Philippines).

Within the EU, the potential of GPP was first highlighted in the 2003 Commission Communication on Integrated Product Policy where Member States were recommended to adopt national action plans for GPP by the end of 2006. The new European legal framework for public procurement has clarified how public purchasers can include environmental considerations in their procurement processes and procedures. Most recently, the renewed EU Sustainable Development Strategy (June 2006), set the policy objective for 2010 of bringing the average level of EU green public procurement up to the standard achieved by the best performing Member States in 2006.

DEFINITIONS OF SUSTAINABLE, ENVIRONMENTAL (GREEN) AND SOCIAL PROCUREMENTS

Sustainable Procurement

There is no single definition of sustainable procurement – not least because sustainability is a contested concept but incorporate extrinsic cost considerations into decisions alongside the conventional procurement criteria of price and quality. These considerations are typically divided thus: environmental, economic and social (also known as the "triple baseline").

But any way, we can define Sustainable Public Procurement that contracting authorities take into account all three pillars of sustainable development when procuring goods, services or works at all stages of the project.

The UK Government Sustainable Development Strategy, defines sustainable development in broad social, environmental and economic terms. The term sustainable procurement therefore encompasses all issues where procurement is seen as having a role in delivering economic, social and environmental policy objectives. (http://www.ogc.gov.uk/index.asp)

Sustainable procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

Environmental (Green) Procurement

Green Public Procurement means that contracting authorities and entities take environmental issues into account when tendering for goods or services. The goal is to reduce the impact of the

procurement on human health and the environment. (http://ec.europa.eu/environment/gpp/background_en.htm)

Environmental concerns are the dominant macro-level justification for sustainable procurement; born out of the growing 21st century consensus that humanity is placing excessive demands on available resources through unsustainable but well-established consumption patterns.

This is a sufficiently influential issue that environment-centric procurement (green procurement) is sometimes seen to stand alone from sustainable procurement. The most straightforward justification for green procurement is as a tool with which to address climate change, but it offers the broader capacity to mitigate over-exploitation of any and all scarce resources.

Social Procurement

"Social issues" might broadly be defined as issues which impact on society or parts of society and cover a range of issues including equalities issues (i.e. age, disability, gender, race, religion and sexual orientation), training issues, minimum labour standards and the promotion of small and medium-sized enterprises (SMEs), including ethnic enterprises and the third sector including social enterprises.

The priority for all public procurement is to achieve the best Value for Money (VFM). VFM does not mean accepting the cheapest price. It means obtaining the best possible balance between price and quality in meeting the customer's requirements.

It is important that, in seeking value for money, purchasers do not allow quality standards to fall below an acceptable level. Purchasers and contractors should not seek cost improvements by cutting corners on compliance with obligations to employees under employment, equal opportunities and health and safety legislation.

There may be circumstances where it is appropriate to consider wider social benefits (sometimes also referred to as "*social added value"*) in a procurement context. For example, when awarding contracts connected with an urban regeneration project, the purchaser may reasonably be expected to consider how those contracts might aid the regeneration project, perhaps by providing training opportunities for the unemployed.(http://www.scotland.gov.uk/Resource/Doc/.pdf).

Potential Benefits of Green Public Procurement (GPP)

Each year European public authorities spend the equivalent of 16% of the EU Gross Domestic Product on the purchase of goods, such as office equipment, building components and transport vehicles; services, such as buildings maintenance, transport services, cleaning and catering services and works. Public procurement can shape production and consumption trends and a significant demand from public authorities for *"greener"* goods will create or enlarge markets for environmentally friendly products and services. By doing so, it will also provide incentives for companies to develop environmental technologies.

A more sustainable use of natural resources and raw materials would benefit the environment as well as the overall economy, creating opportunities for emerging *"green"* economies. Such a shift could also boost the competitiveness of European industry by stimulating innovation in eco-technologies – which have been recognised as a high-growth sector where Europe is already a world leader. Studies have confirmed that there is considerable scope for cost-effective green public procurement (GPP) - in particular in sectors where green products are not more expensive than the non-green alternatives. As *"greener"* goods are defined on a life cycle basis, GPP will affect the whole supply chain and will also stimulate the use of green standards in private procurement.

Benefits and Objectives of Sustainable Procurement

By integrating environmental and social considerations into procurement decisions, valuable contribution can be made to improve environmental and social outcomes. Integrating sustainable practices and principles into procurement is seen as integral in achieving value for money.

By considering sustainability issues, along with other government priorities, other non-cost and cost factors on a whole-of-life basis, there is opportunity to achieve improved economic, social and environmental procurement outcomes.

Some specific benefits of sustainable procurement include:

- Reduced adverse environmental impacts arising from government procurement.
- More efficient use of public resources.

- Improved value for money in procurement decisions, as it offers a more comprehensive consideration of the costs and outcomes associated with procurement decisions.
- Stimulus to local and global markets to innovate and produce more sustainable products and services for public and private organisational purchasers and consumers.
- Expands the market for more sustainable products and services with potential for local businesses, which should lead to an increase in the availability of more sustainable products and services.
- Improves the level of information available to buyers about the sustainability performance of products and services thus facilitating procurement choices.
- Provides government leadership to the community in demonstrating social and environmental responsibility.
- Reduces the potential negative publicity associated with the use of products, services and suppliers with poor environmental and social responsibility records.
- Improves working conditions for employees.

The Situation in Turkey

There is no direct green or social provision in our Public Procurement Law now. But, Turkey has a draft Public Procurement Law, which is fully align with the EU procurements rules, it will be sended to the Parliament soon. This draft law contains environmental and social considerations parallel to EU directives. Also, the government firmly believes that, green and social procurement is an urgent necessity for companies and contracting entites both.

Pursuant to Turkish Public Procurement Law (Law No.4734), “In accordance with the related legislation, for the works requiring an Environmental Impact Assessment (EIA) Report, a positive EIA report must be obtained before the initiation of procurement proceedings. However, in works procurements to be made urgently due to natural disasters, EIA report shall not be required”.

For consulting services in technical, financial, legal or similar fields which are comprehensive and complex in nature and which require special expertise and experience, such as preparation of Environmental Impact Assessment Reports, plan, software

developing, design, preparation of technical specifications or supervision can be procured from consultancy service providers.

Also, it is possible to put some social and green provisions into the technical specifiaction, which are comply with EU legislation and Turkish domestic rules (e.g.pursuant to a Turkish law, 2% of all workers have to be disabled persons).

EU LEGISLATION ON GREEN PUBLIC PROCUREMENT (GPP)

In 2004, the Council and the European Parliament adopted two directives aimed at clarifying, simplifying and modernising existing European legislation on public procurement.

Directive 2004/18/CE (Consolidated version of 15.09.2008)

Directive 2004/17/CE (Consolidated version of 15.09.2008)

In our study, we mostly would like to talk on the Directive 2004/18/CE rather than Directive 2004/17/CE.

Regulation on the Directive 2004/18/EC

Under the provision of Article 6 of the Treaty Establishing the European Community (Rome, 25 March 1957), environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive (the Directive 2004/18/EC) therefore clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.

The Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.

Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide

that Member States may reserve the right to participate in award procedures for public contracts to such workshops or reserve performance of contracts to the context of sheltered employment programmes.

Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and/or specific environmental effects of product groups or services. They can use, but are not obliged to use appropriate specifications that are defined in ecolabels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties. Contracting authorities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting authority cover.

Public Procurement Directives (the Directive 2004/18/CE, and the Directive 2004/17/CE) provide a common framework for public purchases, by procedurel rules on “how to buy”, e.g.on the procedure to be followed, and the criteria to be used fort he selection of the contractors. Their purpose is to ensure that contracting authorities apply fair and transparent procedures and use objective criteria whatever the subject-matter of the contract is.

Those rules do not impose obligations on what kind of goods/services have to be procured, but let the contracting authorities free to define the characteristics of the works, products, or services that the best fit their needs.

Therefore, Public Procurement Directives (the Directive 2004/18/CE, and the Directive 2004/17/CE) provide contracting authorities with large possibilities to take into account considerations relating to environmental protection, social inclusion or innovation, but they do not oblige them to make use of those possibilities. Public purchasers can therefore determine the level of ambition towards societal objectives they want to achieve, and decide accordingly, the requirements and the criteria to be included in a tender procedure, within the EU public procurement legal framework.

Two recent European legislative measures have introduced obligations on contracting authorities to require a certain level of

energy efficiency or to take into account energy or other environmental impacts in their public procurement decisions (1- EU Regulation 106/2008/so called EU Energy Star Regulation; 2- Directive 2009/33/EC on promotion of clean and energy-efficient vehicles).

National Measures and Policies in Member States

In 2003, the European Commission adopted a Communication on Integrated Product Policy (IPP). This outlined its strategy for reducing the environmental impact caused by products. In this Communication, the Commission decided on several actions to stimulate continuous improvement in the environmental performance of products throughout their complete life-cycle.

In the relevant chapter on Green Public Procurement, the Commission encourages Member States to draw up publicly available National Action Plans (NAPs) for greening their public procurement. These should contain an assessment of the existing situation and ambitious targets for the next three years. The NAPs should also clearly state what measures will be taken to achieve this. They should be drawn up for the first time by the end of 2006 and then revised every three years.

The NAPs will not be legally-binding but will provide political impetus to the process of implementing and raising awareness of greener public procurement. They will also allow Member States to choose the options that best suit their political framework and the level they have reached. At the same time, they will enable an exchange of best practices in facilitating greener public procurement.

Some Member States have developed national action plans and policies, through which they not only encourage their contracting authorities to use the opportunities offerde by the Public Procurement Directives, but in some cases make it mandatory to integrate green considerations in their procurement strategies. For instance, in Denmark, environmental requirements are mandatory for central government purchasing of certain products. Again, in the UK it is an obligatory requirement that all central governments departments incorporate environmental criteria into the purchase of some products.

Action at the European Level

The basic concept of GPP relies on having clear and ambitious environmental criteria for products and services. A number of national criteria and national approaches to GPP have been

developed. However, as the use of GPP increases, the criteria used by Member States should be compatible to avoid a distortion of the single market and a reduction of EU-wide competition. Having a single set of criteria would considerably reduce the administrative burden for economic operators and for public administrations implementing GPP. Common GPP criteria would be of a particular benefit to companies operating in more than one Member State as well as SMEs.

Environmental criteria do exist at the European level – for e.g. under the EU Eco-label; the Energy Star Regulation; the Eco-design for energy-using products Directive. Some recent proposals also aim at setting criteria which will be useful for GPP, such as the proposal for a revision of the Ecodesing for energy-using products Directive, which provides for the setting of both minimum requirements and advanced performance benchmarks, the proposal for a Directive on the promotion of clean and energy efficient vehicles which establishes a harmonised methodology for calculating the lifetime cost of pollutant emissions and fuel consumption and the proposal for a Directive on the promotion of the use of energy from renewable sources which includes sustainability criteria for biofuels and bioliquids and may involve –in future- the setting up of sustainability criteria for biomass, including forest biomass.

The more in-depth development and setting of environmental criteria and their interrelation and potential use for GPP are core elements of the Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy. The Action Plan aims, in particular, to establish a dynamic framework to improve the energy and environmental performance of products and foster their uptake by consumers. This will include setting ambitious standards throughout the market, ensuring that products are improved by a systemic approach to incentives and innovation and ensuring that demand underpins this policy. The specific elements of relevance for public procurement will be discussed in more detail below.

“Buying Green!”: A Handbook on Environmental Public Procurement

European Commission has published a Handbook on Environmental Public Procurement in 2004.

According to this handbook, public authorities are major consumers in Europe, spending some 16 % of the EU’s gross domestic product. By using their purchasing power to opt for goods and services that also respect the environment, they can make an important contribution towards sustainable development. Green public

procurement covers areas such as the purchase of energy-efficient computers and buildings, office equipment made of environmentally sustainable timber, recyclable paper, electric cars, environment-friendly public transport, organic food in canteens, electricity stemming from renewable energy sources, and air conditioning systems complying with state of the art environmental solutions.

Green purchasing is also about setting an example and influencing the market place. By promoting green procurement, public authorities can provide industry with real incentives for developing gren technologies. In some product, works and service sectors, the impact can be particularly significant, as public purchasers command a large share of the market (in computers, energy-efficient buildings, public transport, and so on).

This handbook is designed to help public authorities successfully launch a green purchasing policy. It explains the possibilities offered by European Community law in a practical way, and looks at simple and effective solutions that can be used in public procurement procedures. For practical reasons the handbook follows the logic and structure of a procurement procedure. It also gives many practical examples of green purchasing by public authorities across the EU.

This handbook is produced chiefly for public authorities, but it will also inspire corporate purchasers. It should also help suppliers, service providers and contractors-particularly the smaller companies-to understand and meet the environmental purchasing requirements imposed on them. (http://europa.eu.int/comm/environment/gpp/).

Obstacles of Green Public Procurement

To date, the potential of GPP has only partially been exploited. At the beginning of 2008 only 14 Member States had adopted national action plans. The main obstacles to increased take-up are:

- Limited established environmental criteria for products / services – and where these do exist there are often insufficient mechanisms, such as databases, to publicise them.
- Insufficient information on life cycle costing of products and the relative costs of environmentally friendly products / services.
- Low awareness of the benefits of environmentally friendly products and services.
- Uncertainty about legal possibilities to include environmental criteria in tender documents.

- The lack of political support and resulting limited resources for implementing / promoting GPP (improved training is particularly necessary).
- The lack of a coordinated exchange of best practice and information between regions and local authorities.
- Perception of financial burden
- Lack of training

The Communication: A Common Approach to GPP

The Interpretative Communication of the European Commission, which dates from before the adoption of the new legal framework, clarified how former Community law offered numerous possibilities to public purchasers who wish to integrate environmental considerations into public procurement procedures. As the former legal framework did not contain any reference to environmental requirements, the Communication explained how environmental concerns may be taken into account at each separate stage of the contract award procedure. Although 'overruled' by the new public procurement directives, the Communication may still be of interest and offer guidance on certain aspects, for instance on the possibility of asking from bidders to demonstrate their capacity to take environmental management measures during the performance of the contract.

Public procurement is essentially a process and for the purpose of this Communication, GPP can therefore be understood as:

"…a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured."

The Communication seeks to cover all public procurement procedures, above and below the thresholds defined by the European public procurement Directives. In all cases, environmental specifications, selection and award criteria and contract clauses would need to be formulated in full compliance with EU public procurement legislation and other relevant EU or national legislation.

The process-oriented definition of GPP is insufficient to allow objective benchmarking and target setting. For this to be possible it needs to be linked to compliance with clear GPP criteria. A preliminary set of common GPP criteria has already been established for a series of product and service groups. As explained above, the Commission now proposes to formalise this process with a view to

endorse the existing and establish further common GPP criteria for more product groups, in close cooperation with the Member States and relevant stakeholders. Common GPP criteria have the advantage of avoiding market distortions and reduced competition which could arise as a result of differing national GPP criteria.

In order for a procurement procedure to qualify for GPP, GPP criteria will, in principle, be formulated as minimum technical specifications that all bids have to comply with. Some of the GPP criteria may also be formulated as environmental award criteria, to stimulate additional environmental performance without being mandatory and therefore without foreclosing the market for products not reaching the proposed level of performance. Award criteria, if given a significant weighting, may however give an important signal to the market place. Depending on the type of product and the number and importance of the other –non environmental- award criteria, a weighting of 15 % or more could be considered "significant".

Common GPP Criteria

A preliminary set of common GPP criteria has been established in the framework of a recently developed Training Toolkit on Green public procurement. Criteria have been developed for product and service groups in 10 sectors which had been identified as most suitable for implementing GPP. The criteria have been based on existing European and national ecolabel criteria where appropriate, as well as on information collected from stakeholders of industry and civil society. An expert group which brings together Member State representatives who are active in the field of GPP has been set up and has closely cooperated with the Commission services in the criteria setting exercise.

The Commission proposes to formalise this process of consultation with the aim of achieving more and better GPP based on common GPP criteria and a common measurement method, based on the principles of the open method of coordination. Therefore, Member States will be invited to formally endorse the already developed GPP criteria, after their endorsement by the Commission services and following a final consultation round with the Member States and with stakeholders from industry and civil society, in accordance with the Minimum Standards for Consultation. The formal endorsement by Member States would imply that the common GPP criteria would be included in the national action plans and guidance on Green public procurement which Member States have set up or are in the process of setting up in the light of the Communication on Integrated Product Policy of 2003.

The established GPP criteria distinguish between "core" and "comprehensive" criteria. The core criteria are designed to allow easy application of GPP, focussing on the key areas of environmental performance of a product and aimed at keeping administrative costs for companies to a minimum. The "comprehensive" GPP criteria take into account more aspects or higher levels of environmental performance, for use by authorities that want to go further in supporting environmental and innovation goals. Since "core" criteria form the basis of the "comprehensive" criteria, this distinction between "core" and "comprehensive" will reflect differences in terms of ambition and availability of green products whilst at the same time pushing markets to evolve in the same direction

Priority Sectors

The Commission has identified ten "priority" sectors for GPP. These have been selected on the basis of the importance of the relevant sector in terms of the scope for environmental improvement; public expenditure; potential impact on the supply side; example setting for private or corporate consumers; political sensitivity; existence of relevant and easy-to-use criteria; market availability and economic efficiency.

The priority sectors are:

1. Construction (covering raw materials, such as wood, aluminium, steel, concrete, glass as well as construction products, such as windows, wall and floor coverings, heating and cooling equipment, operational and end-of-life aspects of buildings, maintenance services, on-site performance of works contracts)

2. Food and catering services

3. Transport and transport services

4. Energy (including electricity, heating and cooling coming from renewable energy sources)

5. Office machinery and computers

6. Clothing, uniforms and other textiles

7. Paper and printing services

8. Furniture

9. Cleaning products and services

10. Equipment used in the health sector

GPP and Innovation

GPP is a powerful instrument for stimulating innovation and encouraging companies to develop new products with enhanced environmental performance. The Commission will seek to fully tap into this potential of GPP through various actions:

- EU-wide dissemination of the recent guide on "Public Procurement for Research and Innovation" and of the guidance for contracting authorities included the Communication on pre-commercial procurement;
- Establishing an EU voluntary system for third party verification of the performance claims of new technologies which would ease the verification of compliance with environmental specifications set out in tender documents;
- Identifying "lead markets" and using GPP to foster the development and market take-up of new products and services. The Lead Market Initiative aims to create favourable framework conditions in order to stimulate innovation which is crucial for competitiveness, through a mix of public policy actions.

Greening Private Procurement

The definition and criteria used for identifying and promoting "greener" goods are based on a life cycle approach and cover elements which affect the whole supply chain, ranging from the use of raw materials and production methods to the types of packaging used and the respect of certain take-back conditions. These criteria can equally inform private procurement practices. Member States and Community Institutions are encouraged to strengthen this link between Green public and private procurement.

Action Plan for Green Public Procurement in the EU

The Commission Communication: "An Action Plan for more and better Green public procurement in the EU: a cost-effective way to reduce the environmental impact of public expenditure and stimulate eco-innovation" sets the baseline for renewed EU wide action on Green public procurement (GPP) and refers to a series of actions to be taken by both the Commission and the Member States to ensure an EU wide harmonised uptake of GPP and radically increase the quality and quantity of GPP.

The Communication addresses general policy issues, establishing objectives and setting targets, indicators and monitoring mechanisms, calling for co-operation with the Member States to endorse common GPP criteria which have already been established, as well as to establish new common GPP criteria, and to increased efforts in the field of awareness raising and dissemination of GPP training through existing regional and local networks, linking the use of GPP with the implementation of EU funding mechanisms.

Its chapter 4 describes a process of co-operation with the Member States to identify and endorse useful common GPP criteria and refers, by way of example, to already established common GPP criteria for 4 product groups. Its chapter 7 refers to operational and legal guidance. This operational and legal guidance and the examples of environmental criteria are aimed at contracting authorities who wish to apply GPP policies within their organisation.

They could be used as building blocks for national GPP policies. As such, they are included in a separate Commission Staff working document, accompanying the Communication.

Production Process Related Criteria

The principles of transparency and equal treatment of bidders, best value for money and the free movement of goods and services form the basis of the Public Procurement Directives. The technical specifications by which contracting authorities define the subject matter of the contract, and the award criteria on the basis of which they compare offers in view of choosing the bid offering best value for money, have to characterise and be relevant for the product, service or work subject of the purchase.

Taking a life cycle approach, production process related criteria contribute to characterising the product or service purchased. In the case of paper for instance, an important environmental impact occurs during the production phase, through emissions to air and water.

The EU eco-label for paper therefore includes certain limitations to these emissions. All production process related criteria can be considered as appropriate for defining a product in a tendering procedure, provided that the conditions laid down hereunder are satisfied, whereas all general environmental management. The new European legal framework for public procurement, Directives 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC 18 of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the

award of public works contracts, public supply contracts and public service contracts, have clarified how public purchasers can include environmental considerations into their procurement procedures. A Handbook on environmental public procurement, adopted August 2004, provides additional guidance measures under such schemes should not be included as technical specifications or award criteria.

Production related criteria should ensure that:

(1) the criteria, as well as the way in which they are being applied, are compliant with community law, in particular with the principles regarding nondiscrimination and equal treatment; this implies, amongst other things, that the criteria have to be measurable/verifiable so as to treat bidders (economic operators) in the same way and allow effective verification of bids against tender documents;

(2) the criteria concern the production of the products which are to be supplied to the purchasing authority.

Verification of Compliance with Environmental Criteria

When formulating environmental technical specifications or award criteria, one can also specify the relevant test methods and conformity assessment procedures which should allow for the verification of claims by suppliers regarding compliance with certain environmental requirements as stipulated. Considering the complex and detailed character of certain environmental criteria, the assessment and verification requirements may include testing by independent laboratories.

If the specifications are based on eco-label criteria, the relevant eco-label shall be recognized as proof of compliance. However, other types of proof should also be accepted by the contracting authority. It is up to the tenderer to prove by whatever appropriate means, that the proposed solutions satisfy in an equivalent manner the environmental criteria and corresponding test/conformity assessment methods defined by the technical specifications. An appropriate means may be constituted by a technical dossier of the manufacturer or a test report from a recognized body. In general, public purchasers should seek to leave as wide a choice as possible to the manufacturer or supplier of the product and avoid imposing unnecessary burdens related to testing of compliance. A self-declaration or test report could only be refused if the contracting authority can justify that it cannot be considered appropriate for attesting compliance with criteria and verification requirements.

The public procurement directives exhaustively list a series of selection criteria that bidders can be asked to comply with. When setting selection criteria, contracting authorities need to take into account the proportionality principle and therefore the nature, quantity or importance and use of the purchased works, supplies or services.

In the case of supply contracts, the Directives refer to samples, descriptions or photographs, as well as to certificates drawn up by official quality control institutes or agencies of recognized competence attesting the conformity of products clearly identified by references to specifications or standards. In the latter case, contracting authorities shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

In the case of services and works contracts, the Directives state that, in appropriate cases, the contracting authority may ask from the economic operator to indicate the environmental management measures that it will be able to apply when performing the contract. In that case, reference shall be made to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. Contracting authorities also have to accept other evidence of equivalent environmental management measures.

Taking the example of a cleaning service contract with environmental features, a contracting authority could require from bidders to demonstrate their capacity to perform such contract properly through an EMAS or equivalent certificate or by other evidence of equivalent environmental management measures, such as a detailed description of the measures taken and appropriate quality control.

Contract clauses are linked to the execution phase of the contract but are announced at the beginning of the procedure, to allow purchasers to consider those conditions when establishing an offer. In the case of supply contracts, they may for instance relate to the mode of transport of the products (by train, by ship, by truck) or to the need to assure that the products delivered are compliant with certain legal requirements, such as respect of ILO (International Labour Organisation) conventions. In the case of services and works contracts, performance may involve appropriate environmental management measures.

In the case of environmental service or works contracts, the contracting authority may specify, by way of a contract clause, that the contractor should implement an environmental management system, in order to ensure correct implementation of required environmental management measures.

Life Cycle Costing and GPP

We can say that, environmental qualities of a product are only one aspect determining their purchase price. Other, often more important aspects are the brand, quality, technical merit, aesthetic or functional characteristics as well as the price deduction schemes related to different purchase volumes. Furthermore, eventually higher purchase prices are in many cases compensated for by lower operating costs.

To ensure efficient public spending, life cycle costing should be included in the award procedure. In the case of heating installations for instance, approximately 95 % of the total costs of heating pumps are determined by operating costs. Public procurement decisions solely based on the purchase price are likely to cause misinvestment. Purchasing decisions are only cost-effective if full account has been taken of all significant expenditure of resources which is likely to arise as a result of the purchase.

Life cycle costing implies that the contracting authority identifies the full cost of ownership related to the procurement of a product or service.

Technical Specifications

The technical specifications shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements, they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or national eco labels, or by and any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,

- the requirements for the label are drawn up on the basis of scientific information,

- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and

- they are accessible to all interested parties.

Contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

Social considerations can be included in specifications where they are directly relevant to the subject matter of the contract. Core requirements are essential parts of a contract, reflected in both the specifications and in the conditions of the contract. A social issue can be a core requirement and reflected in the specifications provided it is central to the subject of the procurement and consistent with the public procurement regulations.

Selection Stage

This is the point at which suppliers are selected for the next stage of the procurement process. The procurement regulations contain an exhaustive list of references or evidence that potential supplier can be required to provide in order to demonstrate their technical capability in relation to the nature, quantity and purpose of the contract in question.

If a contract requires specific know-how in the “social” field, specific experience may be used asa criterion to prove the suitability of potential suppliers in regard to technical and/or professional ability. Contracting authorities can ask potential suppliers for relevant evidence of technical and/or Professional ability, for example, language skills or cultural awareness.

Award Stage

A contract should be awarded to the tenderer offering “the best value for money”-that is, the optimum combination of whole- life costs and quality to meet the authority’s requirements. “Value for money” in this context equates to ‘most economically advantageous’ for the contracting authority.

The contracting authorities can use to identify which tender would be the most economically advantageous. These award criteria include price, delivery or performance dates, running costs, cost-

effectiveness, quality, aesthetic and functional characteristics, after-sales service and technical assistance.

Criteria involving social considerations may be used to determine the most economically advantageous tender where they provide an economic advantage for the contracting authority which is linked to the product or service which is the subject matter of the contract.

Where there are two or more bids which are equal on value for money grounds, it is possible to use ‘additional social award criteria’ to determine between them; legal advice should be sought first, as it is very rare for bids to be equal in this way.

Environmental Management Standards

Should contracting authorities, require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or internationalstandards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

'Environmental Friendly' Products

Certain categories of purchase are more suitable for greening than others. Professional services such as advertising, general management, research and auditing services seldom contain environmental criteria whereas furniture construction and IT equipment often do. The different levels of GPP between product categories can therefore be considerable.

We can say taht the following product groups as suitable for in the framework of green public procurement, based on the financial and environmental impact and the availability of *'environmental friendly'* products in the market place:

- Cleaning products and services
- Medical devices – pharmaceuticals, chemical products, rubber, plastic
- Electrical machinery, communication equipment, office machinery (computers/monitors/printers/copiers)
- Energy

- Food products and beverages, restaurant services
- Architectural, construction, installation and related consultancy services
- Sewage- and refuse-disposal services
- Sanitation and environmental services
- Construction products (including heating/cooling/lighting appliances)
- Furniture and other manufactured goods
- Paper, printed matter, printing services
- Transport and communication services

THE INTERNATIONAL AGREEMENTS

Some Background on Public Procurement

Today, the officially stated general purpose of public procurement is to serve the best interests of government by acquiring goods and services on the most advantageous terms, considering price and other factors deemed to be important to the purchasing agency. Public procurement law accordingly sets out a legal framework for this, and also gives potential purchasers assurances of transparency, due process and equal opportunities for bidding in a procurement process that is articulated in government regulation.

National and subnational priorities are very apparent in government procurement law and regulation. In the United States, for instance, such priority is given to purchases of goods and services from small business, from minority-owned business, and for "green" products. The "Buy America Act" also governs many kinds of procurement. In the European Union, concurrent directives requiring devolution and direction to purchase environmentally preferable products have encouraged "green" procurement on many sub-central levels.

Importantly, international trade agreements will not pose serious barriers to green procurement.

Green Procurement in Trade Policy

Existing International Instruments – The GPA, NAFTA and the FTAA

The most relevant international instruments affecting procurement of "green" products are the WTO agreements. Neither the General Agreement on Tariffs and Trade (GATT) nor the WTO agreements

specifically cover public procurement in their general provisions. In fact, public procurement is specifically exempted from the market access commitments negotiated in the Uruguay round. However, the WTO's Government Procurement Agreement applies directly and other WTO agreements, including the Sanitary and Phytosanitary Agreement (SPS), and the Agreement on Technical Barriers to Trade (TBT), are relevant to definitional aspects of gren procurement.

The WTO's Government Procurement Agreement

The WTO's Government Procurement Agreement (GPA) is the predominant international instrument disciplining government procurement. It was first negotiated during the Tokyo Round, entering into force on 1 January 1981, then renegotiated in the Uruguay Round, which expanded its coverage. It is intended to increase global access to the internal procurement processes and practices of each signatory country, pursuant to rules providing that these processes and practices must be conducted in ways that are 1) transparent, 2) subject to due process, and 3) do not discriminate against foreign goods and services.

The GPA is very different from other WTO agreements in that it only applies to those WTO members who elect to become GPA signatories. It has two kinds of obligations; general rules, most of which concern tendering procedures, and coverage of specific entities that are individually described in the agreement.

Among GPA members, the GPA extends basic WTO disciplines-national treatment and mostfavored nation treatment-to those procuring entities that it covers. It also prohibits discrimination against locally-based suppliers in favor of foreign affiliation and ownership or country of production of goods or services provided (if the country is a GPA member). These are among the most important WTO disciplines, and they are only applied to procurement contracts covered by the GPA since procurement is otherwise excluded from those WTO and GATT obligations.

The GPA only applies to the procuring entities specified by each country in the "schedule" of goods and services listed in the agreement and, further, it applies only to procurement contracts exceeding a given "threshold limit." The United States uses a "negative" list to define coverage of goods and services under the GPA—meaning that it lists in its schedule the goods and services that are not covered by the Agreement. Other countries use a "positive list," listing entities that are covered.

The GPA covers two categories of procurement not covered before—services and sub-central entities—and it is much more

inclusive than its predecessor, but it does not cover food. The reasons for not including food are thought to be historical: food was not considered suitable to be globally traded, and fungible goods would not stand up to the rigors of a full-blown procurement process – often taking 40 to 60 days to complete. However, in reality, government purchases of food take place for many different reasons: as a subsidy to local or national producers, for redistribution as aid to domestic populations unable to purchase adequate supplies of food at market prices, and as foreign assistance.

The North American Free Trade Agreement (NAFTA)

The obligations set forth in the North American Free Trade Agreement (NAFTA) follow essentially the model provided by the GPA. NAFTA is a more detailed agreement, covering processes and practices not elaborated in the GPA, but it does not apply to many sub-central entities and, like the GPA, it does not cover food. NAFTA has only three signatories (Canada, Mexico and the United States). Legislation implementing NAFTA in the United States specifies that the agreement is not self-executing and that it cannot be used to override other federal statutes.

The Free Trade Area of the Americas (FTAA)

The intent of FTAA negotiators is to negotiate in the FTAA an extension of the NAFTA procurement agreement. This would also ideally contain enhanced disciplines for "offsets," which are agreements to grant goods or services of value to the procuring entity "offered" by the recipient of certain kinds or values of contract awards. However, coverage is unknown at this time since the negotiation is still proceeding.

Effect on "Green" Procurement of These Agreements

Overall, none of the three agreements have much effect on "green" procurement. Food is not covered, and threshold limits are high. Moreover, state and local entities are not covered in the NAFTA, will not likely be covered in the FTAA, and only some kinds of state and local procurement are covered in the GPA. Overall, "green" procurement can be encouraged at federal, state and local levels and will not likely be seen to contravene any international procurement rules, but, as discussed below, WTO rules governing how "green" products are defined could pose problems for controversial products.

Defining “Green” Products – The WTO and its Agreements

A procurement manager who wants to purchase “green” products must be able to define those products without running into problems. Sometimes problems are created for products by the way they are defined by standards organizations. Procurement managers do not want to make standards, but sometimes they must choose between them, and they should be aware that not all standards are created equal. Procurement commitments are available at made with recycled content, products that are more species-friendly, products that are more energy-saving, products that use fewer pesticides, involve less harmful effluents, or fewer toxic chemicals in the production process, or other intrinsic or extrinsic factors. Some standards define how a product is made or how it performs, and others define product characteristics. In the environmental field, many standards are provided by ecolabeling programs, some of which are connected to governments and many of which are not.

The WTO standards disciplines govern how standards are made. These are among the international trade rules relevant to the procurement process. They are not likely to pose a problem to procurement of “green” products, except when those products are controversial-such as food with or without genetically modified content -or unless a product standard effectively constitutes a barrier to market access in a broad context-including but not limited to procurement.

CONCLUSION

It can be said taht; GPP is not a cost-efficient environmental policy tool. All potential entrepreneurs considering a public tender under GPP face the same set of specified environmental criteria, although most of them have different types of production technology. Consequently, the outcome of GPP represents an equal reduction in pollution by all firms, which contravenes the cost-efficiency condition.

One of the possible advantages of GPP is that economic tools are typically limited by national boundaries. Taxes, for example, are generally decided at the national level and only target firms located within the nation’s geographical boarders. GPP, on the other hand is borderless. Within the EU, for example, public contracts are open for firms in any of the Member States recognizing the single market. Indeed, this option to create incentives for firms to invest in sustainable production technology is not limited by the EU boundaries.

It is important to note that, the effect of GPP on the degree of competition is separate from the effect on price. Implementing GPP could deter as well as stimulate entry. However, meeting the environmental criteria can demand investment costs and if so result in higher bids. As a consequence the outcome could be that bids are higher although more bids may be placed.

Pursuing environmental policies via the implementation of GPP is a complex task. Although GPP is politically appealing as a policy measure and has some advantages, it is likely to be more efficient to use economic tools, such as taxes, subsidies, fees or emission permits. Decisions about the implementation of GPP, as with any other policy tool, should be based on a welfare analysis, in which gains and losses are compared and only implemented when the net effect is beneficial.

On the other hand, the variety of social procurement initiatives raises several questions.

First, there remain tantalising issues concerning how similar 'green' procurement is to social procurement, including the extent to which these two sets of initiatives complement or cut across each other. This will clearly affect the extent to which acceptance of international or regional standards in the area of social procurement will be possible in the context of sustainable procurement.

Second, there are uncertainties about the extent to which social procurement raises different legal and policy issues regarding their compatibility with international and regional legal frameworks. To the extent that there are legal differences in the treatment of each, then discussions of sustainable procurement will be made more complex.

There are several areas that need further attention in the coming years to continue fostering green, social and sustainable procurement:

• Continuing education and awareness on the business case, success stories and best practices for green, social and sustainable procurement, including networking between practitioners, and between private and public sector organizations.

• Further international cooperation to share standards and procurement criteria between labelling and standards organizations. This would help to promote mutual recognition and equivalency of labels and standards.

• Explore and focus education and discussion on how to "green, social and sustainable" procurement activities can be integrated into

existing environmental and sustainable quality management systems by private and public sector organizations.

• Providing simple tracking and measurement techniques to quantify and help communicate the benefits of green, social and sustainable procurement activities. There is a need for measuring and reporting that enables products and services to be compared and enables private and institutional investors.

As the final word, we can say that, green, social and sustainable procurement is the way of the future. A range of resources and organizations exist to assist both the public and private sector in adopting green and social procurement practices. Those procurement practices often vary and depend on the service, product, resource, material, substance or commodity being purchased. Integrating environmental, health and safety aspects of products/services into the procurement process, alongside the traditional criteria of cost, quality, safety and technical performance continues to be the major challenge with both public and private sector organizations. While several challenges remain, they continue to be identified and addressed.

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