



Green Public Procurement

How can environmental considerations be built into public procurement practice?

There is no doubt that climate change is becoming the defining issue of our time. International public policy, financing and trade is being forced to adapt to the reality that our environment is under serious threat.

In Ireland, the transition to a carbon-neutral economy is high on the political agenda and steps are being taken to ensure that our national, EU and international climate goals and obligations are achieved. Public sector bodies have a significant role to play in this regard. In particular, they have an opportunity to lead the way by promoting sustainability through their purchasing activities.

It is clear that policy is changing fast and in the future public bodies will be more accountable for their procurement activities than they ever have been. Contracting authorities therefore need to understand what they can and cannot do to advance the green agenda.

What is appropriate will vary from one authority to the next, and from one contract to the next. We have set out below a number of ways in which public procurement process can be used to promote environmental objectives.

Subject Matter

The most direct and transparent way to practice green procurement is to simply choose to buy products and services which have a clear sustainable and environmental purpose. By selecting the subject matter of the contract, buyers can easily achieve better environmental outcomes. For example, authorities can choose to purchase electric, hybrid or low-emission vehicles (instead of a petrol or diesel fuelled fleet); they can opt to purchase electricity produced from renewable energy sources or they can decide to buy energy-efficient computer systems.

Procurement law does not generally restrict the subject-matter of a contract, leaving authorities with a wide discretion in determining what they want to buy in order to meet their needs.

Contract Terms

Procurement legislation requires contractors and service providers to comply with those

environmental law obligations that apply at the place where works are carried out or the services are provided. Contracting authorities must ensure that such obligations are complied with, so these should be reinforced in the contract terms.

Sector-specific environmental legislation may also be relevant to certain contracts, depending on what is being procured. This may be applicable to both awarding authorities and suppliers. Although the law will generally apply whether it is referred to in the contract or not, it is good practice to draw attention to particular environmental legislation that relates to the works, products or services being purchased. Not only does this help to ensure compliance but it can also provide a contractual remedy for the authority where there is a breach.

Contract Performance Clauses

Procurement law allows authorities to set special conditions relating to the performance of a contract, but only where such conditions are linked to the subject matter of the contract in question. These conditions may include environmental considerations. For example, suppliers could be required by the contract to take back, recycle or reuse product packaging or contractors could be obliged to use water and electricity efficiently on site. Transparency requires that such conditions be flagged in the contract notice or in the procurement documents in order to ensure that tenderers are aware of these obligations and are able to factor them into their bids.

Specifications, Standards and Labels

Contract specifications offer an effective way to build in sustainable and environmental considerations to a contract. Specific requirements can be set out in the technical specifications and published with the tender documents. Contractors are then obliged to perform in a way which complies with these specifications. These might specify what a

product is made of, how it is produced, or how a service or work is to be performed.

Industry standards also have role in influencing the design of products and service/works processes; direct reference to particular standards in a specification can help to define the subject matter in a clear way. However, such standards must be linked to the subject matter of the contract. It is also generally not permissible to insist upon a production process which is proprietary or otherwise only available to only one supplier. Equal access must be afforded to all tenderers and unjustified obstacles to competition must not be created by stipulating certain standards.

Labels can help when drawing up technical specifications as they can define certain characteristics of the goods or services being purchased. A specific label can be required as proof that works, services or supplies correspond to certain sustainable and environmental characteristics. However, there are certain conditions that must be fulfilled prior to the use of a label - for example, they must:

- only concern criteria which are linked to the subject matter of the contract;
- be based on objectively verifiable criteria; and
- be accessible to all interested parties.

Other labels which meet equivalent underlying requirements must also be accepted. It is considered good practice to always refer to the requirements underlying any specified label in the tender documents, in order to afford tenderers who cannot offer the requested label the opportunity to satisfy those requirements in a different way.

Selection Criteria

Selection criteria focus on an operator's technical experience and ability to perform the contract they are tendering for. Contracting authorities may seek general experience of performing contracts of a similar nature, scale or complexity as that which is being procured. They may also take into account specific experience of addressing sustainable and environmental issues, provided this is relevant to the subject matter of the contract. Authorities may ask if candidates have access to the certain technical equipment or facilities for ensuring compliance with sustainable and environmental objectives. Where evidence of adherence to specific standards (e.g. ISO) is requested, this must also be related to the subject matter and there should be an option to propose equivalent standards.

Authorities have a discretion to exclude operators from the competition where it can be demonstrated that they have violated environmental laws. This is subject to the caveat that a candidate must be given an opportunity to demonstrate their reliability notwithstanding any violation and they cannot be excluded if more than 3 years have elapsed since that violation.

Award Criteria

A wide range of qualitative and cost factors may be used to determine which tender is best for the

contracting authority. This can include sustainable and environmental award criteria provided these are linked to the subject-matter of the contract. Award criteria are considered to be so linked where they relate to the works, supplies or services to be provided under that contract at any stage of their life cycle. This means that environmental factors can be tested that do not form part of the 'material substance' of what is being purchased, and which are not visible or discernible in the final product or service.

It is also important to consider what weighting environmental award criteria should carry. If there are strong environmental or sustainable requirements in the specifications, they may be given a lower weighting in the award criteria, and vice versa. The appropriate weighting will vary according to the subject matter of the procurement, market conditions and the authority's own targets.

Claims made by tenderers in response to environmental award criteria should be objectively verifiable. Authorities should consider what proofs they can seek to demonstrate that what they are being told is correct. Procurement legislation requires that, in cases of doubt, authorities must verify effectively the accuracy of the tenders they receive. This suggests that it is not necessary to always verify tenderers' claims, however it may be particularly important to ensure that promised levels of environmental performance will be provided.

Life-cycle costs are also now permitted to be taken into account in public procurement. Although, purchase price is one of the most influential factors to be evaluated, the costs incurred during production, use and disposal may also be highly significant. Energy consumption costs, maintenance costs and disposal costs can all be evaluated. However, it is critical for the evaluation mechanism to be set out transparently and for the authority to be able to assess and verify the information requested.

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