Background

This provides a submission to the Productivity Commission on Waste Generation and Resource Efficiency. It is being submitted on behalf of the Strategic Initiatives; an environmental management consultancy.

In working through the Issues Paper we noticed that the question of the role Government Procurement is specifically addressed. The following comments pertain to this question within the context of the work of the PC.

Procurement Policies

Our basic stance is that procurement policies of government and industry represent systemic barriers to the consideration and adoption of new sustainable technology. In the following we aim to provide an explanation of some of the considerations and evidence of this phenomena.

This is a complex topic that cannot be comprehensively treated without thorough research. The Warren Centre (www.warren.usyd.edu.au) is examining ways to raise a project for this purpose. In the mean time we aim to identify the major issues that warrant examination. Our **objective at this time is to highlight the need for thorough examination of the field.**

Our central thesis is as follows:

1. Innovation (in waste generation and efficient resource use) is about commercialisation of new and new sustainable technology. The two are effectively the same thing and will become increasingly so as regulations and public interest calls for all products to have environmentally sustainable development (ESD) credentials.

2. Government has a leadership role in getting the settings right. By settings we mean all of the factors that influence the rate of innovation - primarily the economic incentives and regulatory requirements but also leadership in new technology demonstration, validation, accreditation, even promotion.

3. That the most central determinant of ESD is how moneys are spent in favour of ESD but with recognition of the need to be commercially efficient.

4. Procurement Systems determine how moneys are spent.

5. Procurement systems have yet to catch up with ESD requirements - in part because the settings do not present commercial incentives and regulatory requirements in favour of ESD.

Why is the field complex:

We propose to deal with the concept of Environmentally Sustainable Development (ESD) rather than waste generation and management. Obviously there is a high degree of overlap. Waste management policy will affect almost all ESD considerations. The higher-level question that the Commission is effectively addressing is - what role does waste generation and resource management policy have in this context how and can we achieve ESD in part by way of improved waste and resource management policy.

1. Environmentally sustainable development spans a broad range of topics some of which are at cross-purposes. Whilst the Productivity Commission is primarily concerned with waste management there is clearly a broader agenda that includes matters like:

    a. Resource Depletion and Resource Recovery

    b. Climate Change

    c. Bio Diversity and Maintenance of the Natural Environment

    d. Economic Development

    e. Pollution Control

    f. Soil and Water Policy

    g. Waste Management and Recycling

2. The science is far from solid

3. Each of the many industries involved in waste generation and management and resource use has a unique structure that may call for a particular solution. For instance highly concentrated industries can be handled differently from highly fragmented and competitive industries.

4. The role of various levels of Government and their differing capabilities and political considerations.

Within this context there are reasons Government Procurement Policy is important and there is evidence that Government Procurement Policy is not supportive of new environmentally sustainable technology. Whilst our comments focus on Government Procurement Policy we do not suggest that Industry procurement policies are more or less resistant to new sustainable technology.

We do however see a need for leadership from Government procurement policies and the procurement authorities that use these policies

Some basic principles:

1. We propose to deal with the concept of Environmentally Sustainable Development (ESD) rather than waste generation and management. Obviously there is a high degree of overlap. Waste management policy will affect almost all ESD considerations. The higher-level question that the Commission is effectively addressing is - what role does waste management policy have in this context how and can we achieve ESD.

2. Virtually all of the ESD sub topics are concerned with the nature and impact of economic activity on the environment. We typically use GDP or GNP or a similar statistic as a measure of economic activity. So the question becomes how can we cause continued GNP growth and achieve ESD in all its manifestations.

3. Clearly Government has a role in three important ways:

    a. In determining the settings that will determine GNP growth.

    b. In determining the settings that will determine ESD

    c. As a direct participant in GNP (by way of government spending).

The point here is that Government spending is a significant part of GNP. Government spending is a significant part of the economic activity that determines ESD.

Expressed another way - Government procurement policy has a significant influence on the economic activity that determines ESD.

- We are referring to all levels of Government
- We are not asking if Government Procurement is better or worse than Industry in addressing ESD. We are postulating that Government has a leadership role in selecting the settings that affect ESD and through its procurement policies Government can adhere to these settings and thereby show leadership or not do so.
- Our central hypothesis is that there is a lack of connection between Government Procurement Policies and Government ESD policies.

What is the evidence for this hypothesis.

1. There is a lack of recognition of ESD objectives in Government Procurement Policies. We have not conducted a comprehensive survey but we are confident that neither Federal nor State procurement policies make ESD mandatory or even desirable within procurement policy.

2. Whilst Federal and State governments promote ESD they do not cause such promotion and related policies to flow through to procurement policy. We understand this matter is under review at many levels but the fact remains that ESD has little presence in procurement policy

3. A related phenomenon is that procurement policies make no provision for the encouragement of new technology. Environmentally sustainable technology is a subset of new technology. If there is not a role for new technology in procurement policies then there may not be a context that ESD can be considered in procurement policy.

4. We suspect one could conduct a historical survey of procurement policy that would show that procurement policy has evolved towards a stance that is focussed on value above all else and that the definition of value is a combination of low price and low risk without direct consideration of sustainability factors. The concept of risk reduction used here incorporates the principle of functional and technical performance. Procurement authorities show a strong preference for the proven and reliable solutions rather than having mechanisms for incorporating new technology and new sustainable technology that may be less proven then conventional technology regardless of the cost implications or the ESD implications.

We consider it inaccurate to say that government procurement favours lowest price. There are many examples and we believe a thorough study would show that the primary directive is risk minimisation as a basis for delivering value (in concert with a focus on price).

5. There are structural trends that have led to this outcome including:

a. outsourcing of many functions including product assessment (new technology assessment). In the absence of product assessment systems within procurement authorities – new technology suppliers are less able to gain validation, demonstration and threshold levels of demand.

b. reliance on major suppliers and accreditation of major suppliers as the basis for supply to procurement authorities including the consideration of the use of new technology. Major suppliers operate with an understanding of the aversion to new technology within government procurement authorities and are themselves therefore resistant to consideration of new technology. An example of this is the high cost of submitting non conforming tenders to government procurement authorities that call for the use of conventional technology.

c. the use of tenders that are themselves risk averse.

d. devolution of purchasing to the field as opposed to centralised purchasing. Devolution has the effect of lowering the expertise available for consideration of new technology.

e. corruption avoidance policies that have the effect of constraining the use of Best Demonstrated Practices systems. As a result when a new technology is proven by any government procurement agency the results are not made available to other procurement agencies or even branches within the successful user organization.

f. down grading of the role of leadership in the purchasing function as transparency increases risk aversion and constrains the role of leadership in the absence of a new technology assessment methodology.

Any one of these trends may not lead to a conservative non-innovative stance but together they give rise to procurement policies that resist change and rely on proven conventional solutions.

6. A further aspect of our research has been to talk to many industry suppliers of new sustainable technology and their related NGOs. The vast majority recognise the phenomena we are describing and take it as self-evident.

The Barton Group is leading organisation in the development of Environmentally Sustainable Development Policy. The Barton Group indicates support for this stance and has in their structure and policy guidance called for a focus on innovation in part by way of Government Procurement and collaboration between Government and industry.

Please see the Environment Industry Action Agenda within the DITR industry development programs.

Another interesting commentator is the work of the Australian Ecolabeling Association on the State Of Green Procurement. Basically this report says there is a lot of good intentions supporting ESD but little action - little action in the form of procurement policies that favour ESD.

7. It is important to recognise the impact of complexity on procurement policy. Procurement Policy calls for certainty or at least a minimisation of ambiguity. The state of environmental science and the many environmental sub topics do not lend themselves to the certainty and simplification required in procurement policies.

An example of this is the failure of Government to adopt Ecolabelling. Ecolabelling is environmental claims verification. It is fundamental to ESD purchasing and yet it has not been adopted by Government.

Closing Thoughts

A closing thought is that procurement policy may not have caught up with ESD. There is a need for ESD to be incorporated in procurement policy but this is much easier said then done.

The starting point is for Government Procurement to recognise that it has a direct role in ESD:

1. To research the impact of procurement systems on waste generation and resource efficiency.

2. To stimulate consideration of, and where validated, adoption of new sustainable technology.

3. To show leadership in procurement policy

4. To contribute to the validation and accreditation of ESD technology and promotion to industry.

5. To adopt Ecolabeling

6. To support development of economies of scale in new ESD technology.

An international Example

Enclosed with this submission is a Handbook for Green Public Procurement produced by the EU under an appropriate authority. Also a conceptual description of the process of innovation as it relates to new sustainable technology – “EU Perspective”

This work is indicative of the role of Green Public Procurement in ESD. To the extent the EU has resolved these positions one would expect a similar development to be relevant in Australia.

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Buying **green!**

A handbook on environmental public procurement

European Commission

Important notice

This handbook is an indicative document of the Commission services and cannot be considered binding to this institution in any way. It should also be noted that the handbook is subject to the evolution of Commission practice and case-law of the Court of Justice.

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It can be accessed through the Europa server (http://europa.eu.int).

Cataloguing data can be found at the end of this publication.

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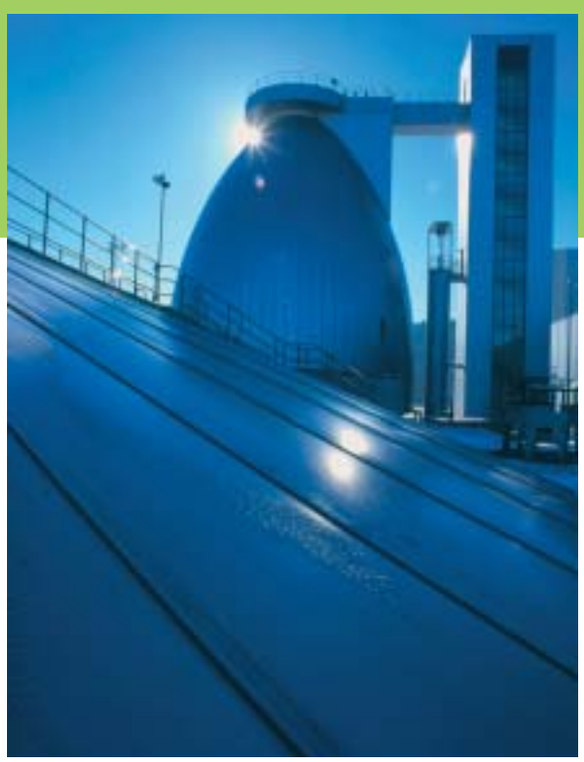
Green procurement: *the essentials*



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Green public procurement is a step-by-step process. Here are the steps.

- **Consider which products, services or works are the most suitable** on the basis both of their environmental impact and of other factors, such as the information you have, what is on the market, the technologies available, costs and visibility (Chapter 1).

- **Identify your needs and express them appropriately.** Choose a green title to communicate your policy to the outside world, ensuring optimum transparency for potential suppliers or service providers, and for the citizens you are serving (Chapter 2).

- **Draw up clear and precise technical specifications,** using environmental factors where possible (pass/fail conditions) (Chapter 3):

  - look for examples of environmental characteristics in databases/eco-labels;

  - build upon the 'best practices' of other contracting authorities; use networking as a way of obtaining and spreading information;

  - take a scientifically sound 'life-cycle costing approach'; do not shift environmental impacts from one stage of the life cycle to another;

  - use performance-based or functional specifications to encourage innovative green offers;

  - consider environmental performances, such as the use of raw materials, sustainable production methods (where relevant for the end product or service), energy efficiency, renewable energies, emissions, waste, 'recyclability', dangerous chemicals, etc.;

  - if you are uncertain about the actual existence, price or quality of green products or services, ask for green variants.

- **Establish selection criteria** on the basis of the exhaustive list of criteria mentioned in the public procurement directives. Where appropriate include environmental criteria to prove technical capacity to perform the contract. Tell potential suppliers, service providers or contractors that they can use environmental management schemes and declarations to prove compliance with the criteria (Chapter 4).

- **Establish award criteria:** where the criteria of the 'economically most advantageous tender' is chosen, insert relevant environmental criteria either as a benchmark to compare green offers with each other (in the case where the technical specifications define the contract as being green) or as a way of introducing an environmental element (in the case where the technical specifications define the contract in a 'neutral' way) and giving it a certain weighting. Consider the life-cycle costing (Chapter 5)!

- **Use contract performance clauses** as a way of setting relevant extra environmental conditions in addition to the green contract. Where possible, insist on environment-friendly transport methods (Chapter 6).

- **Always make sure that everything you ask of potential bidders and their offers relates to the subject matter of the contract.**

Introduction

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What is the connection between public purchasing and the environment?

Public authorities are major consumers in Europe, spending some 16 % of the EU's gross domestic product (which is a sum equivalent to half the GDP of Germany). 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 green 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).

Finally, if you consider life-cycle costs of a contract, green public procurement allows you to save money and protect the environment at the same time. By purchasing wisely, you can save materials and energy, reduce waste and pollution, and encourage sustainable patterns of behaviour.

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Potential environmental benefits

The European Commission has co-funded a research project — called Relief ([1]) — to scientifically assess the potential environmental benefits if green public procurement were to be widely adopted across the EU. The findings produced the following conclusions.

- If all public authorities across the EU demanded green electricity, this would save the equivalent of 60 million tonnes of CO^2, which is equivalent to 18 % of the EU's greenhouse gas reduction commitment under the Kyoto Protocol. Nearly the same saving could be achieved if public authorities opted for buildings of high environmental quality.
- If all public authorities across the EU were to require more energy-efficient computers, and this led the whole market to move in that direction, this would result in a saving of 830 000 tonnes of CO_2.
- If all European public authorities opted for efficient toilets and taps in their buildings, this would reduce water consumption by 200 million tonnes (equivalent to 0.6 % of total household consumption in the EU).

([1]) This project has been financed by the Key Action 'City of tomorrow and cultural heritage' under the fifth framework programme for RTD. It has published a guidebook for helping local authorities to green their purchasing decisions. For further information on the Relief project, see the Internet (http://www.iclei.org/europe/ecoprocura/info/politics.htm).

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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 ([1]).

We have produced this handbook chiefly for public authorities, but we hope that 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.

The handbook is available on the Europa website of the Commission on green public procurement, which contains further practical information, useful links and contact information for contracting authorities who want to make their purchases greener (http://europa.eu.int/comm/environment/gpp/).

([1]) **Important notice:** Although the information in the handbook has been carefully checked, the European Commission accepts no liability or responsibility with regard to the specific cases mentioned in the handbook or the linked websites.

Political and legal context

For many years, purchasing authorities did not really take account of the environmental value of goods, services or works.

However, the global economic and political background has changed, with the emergence of the **concept of sustainable development** — 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' — and the need to take environmental considerations into account in all other policies (alongside economic and social concerns).

Since its inclusion in the Treaty in 1997, sustainable development is recognised as an overarching goal of the EU. At **Lisbon** in 2000, EU leaders stated their objective of making the EU 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' by 2010. The Lisbon strategy was supplemented by a third, environmental, pillar following the adoption of the **EU sustainable development strategy** at the Gothenburg European Council in 2001 ([1]). This strategy marked a turning point. The aim was to promote economic growth and social cohesion while paying due regard to environmental protection. Conversely, it implies that environmental objectives will need to be weighed against their economic and social impacts so that 'win–win' solutions should as far as possible be devised for the economy, employment and environment. In 2002, the Council and European Parliament adopted the **sixth environment action programme** ([2]), setting out the EU environmental roadmap for the next 10 years and identifying four priority areas where action is urgently needed: climate change, nature and biodiversity, resource management, and environment and health.

The implementation of the EU sustainable development strategy and the sixth EAP in the enlarged Union will be particularly challenging.

At **international level,** the EU has played a leading role in developing and promoting key international environmental agreements and conventions. For example, in ratifying the Kyoto Protocol on Climate Change in 2002, the EU committed itself to reducing its greenhouse gas emissions by 8 % between 2008 and 2012 (compared with 1990 levels).

Achieving sustainable development at all levels of governance cannot be established if there is no **integration of the environmental dimension** into all other policy areas, through the proper implementation of environmental policies by increasing the use of market-based instruments and through information of the public with a view to foster the necessary behavioural changes ([3]). At worldwide level, green public procurement is specifically mentioned in the 'Plan of implementation' of the **World Summit on Sustainable Development,** held in Johannesburg in December 2002, which encourages 'relevant authorities at all levels to take sustainable development considerations into account in decision-making' and to 'promote public pro-

([1]) COM(2001) 264 final.

([2]) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the sixth Community environment action programme (OJ L 242, 10.9.2002).

([3]) It should be noted that the present guide will confine itself to the environmental aspect of sustainable development. As far as the social aspect of sustainable development is concerned, reference is made to the Commission interpretative communication of 15 October 2001 on the possibilities for integrating social considerations into public procurement and to the new public procurement directives which make explicit reference to these possibilities.

curement policies that encourage development and diffusion of environmentally sound goods and services' ([1]).

In the framework of the Organisation for Economic Cooperation and Development (OECD), **OECD** member countries agreed on a Council recommendation 'to improve the environmental performance of public procurement' ([2]).

In its **interpretative communication** of 4 July 2001 ([3]), the European Commission set out the possibilities offered by Community law to integrate environmental considerations into public procurement procedures. The Court of Justice further clarified those possibilities ([4]).

The **public procurement directives** ([5]) adopted on 31 March 2004 consolidate and complement the legal context. They specifically mention in their recitals and provisions the possibilities for adopting environmental considerations in technical specifications selection and award criteria, and contract performance clauses.

Although the directives apply only to public procurement contracts whose estimated value is above certain thresholds (as mentioned in the directives), the Court of Justice has ruled that the EC Treaty principles of equal treatment and transparency, as well as the free movement of goods, the freedom of establishment and the freedom to provide services, also apply to contracts under these thresholds.

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([1]) For more information, see the Internet (http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm).

([2]) See the text on the Internet — 23 January 2002 — C(2002)3 (http://webdomino1.oecd.org/horizontal/oecdacts.nsf/Display/875330FE889EC528C1256F040032D313?OpenDocument).

([3]) Commission interpretative communication of 4 July 2001 on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement (COM(2002) 274 final).

([4]) Judgments of the Court of Justice of 17 September 2002 in case C-513/99 and of 4 December 2003 in case C-448/01.

([5]) Directive 2004/18/EC 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 (hereinafter: Directive 2004/18/EC) and Directive 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 (hereinafter: Directive 2004/17/EC).

Chapter 1
Green purchasing strategies

In principle, it should be fairly easy for all public authorities to take the political decision to buy green. Indeed, they should be encouraged to do this as it will not only benefit the environment but also the contracting authority by improving its public image. In fact, a green purchasing policy does not normally require any structural changes by the contracting authority.

But putting the policy into practice will first require some strategic planning: organising appropriate training for purchasing staff, ensuring access to environmental information, and setting priorities when choosing the contracts most suitable for 'greening'. Once this is in place, contracting authorities will then be able to proceed with the proper organisation of a green public procurement procedure (Chapter 2).

1.1. Assessing training needs and ensuring access to environmental information

The staff making the purchases should be given the legal, financial and environmental knowledge they need to decide to what extent and where environmental factors can best be introduced into the procurement procedure, whether they are set at the right level to get best value for money and whether they match the environmental priorities of the contracting authority.

An environmental practice guide in Barcelona

The local authority in Barcelona has produced for its 12 000 employees a good environmental practice guide, covering green purchasing information and other environmental issues ([1]).

([1]) More information is available on the Internet (http://www.bcn.es/agenda21/A21_text/guies/GreenOfficeGuide.pdf).

It is important to communicate a green purchasing policy to a wide range of stakeholders, including present and future suppliers, service providers or contractors, so that they can take account of the new requirements.

Cooperation between purchasing authorities is another way of increasing access to environmental expertise and know-how and of communicating the policy to the outside world.

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Guidelines for eco-purchases in Voralberg

The Austrian *Land* Voralberg consists of 96 small municipalities, spread over a relatively sparsely populated area. Most of the municipalities do not have full-time purchasers, let alone environmental specialists. For green purchasing to be successful in this environment, it was necessary to cooperate and to relieve purchasers of as much of the technical work of setting criteria as possible. In order to do this, Voralberg produced eco-guidelines on the purchasing of construction services, and of office products and materials. These are now available on the Internet ([2]).

([2]) See the Voralberg website (http://www.vorarlberg.at/)

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1.2. Setting general priorities for greening your procurement

- **Adopt a step-by-step approach.** Start with a small range of products and services where the environmental impact is clear or where greener alternatives are easily available and not more expensive (e.g. recycled paper, energy-efficient office equipment). Alternatively, start by ensuring that contract specifications do not have a negative impact on the environment (e.g. by excluding the use of recycled components).

Step by step in Dunkirk and Lille

The town of Dunkirk in France adopted a step-by-step approach with its first efforts at green public procurement in 1999. Beginning with one product, and building up confidence through testing and working closely with users, it created the right climate for a move to more systematic green purchasing and consideration of greener alternatives for other products.

The City of Lille has set up an office to train its purchasers to look for substitute products that limit environmental impact. They are starting with six products: paper, paint, printing ink, cleaning products, street lighting, and wood. They will then try to define a procedure to start introducing other products.

- **Consider environmental impact.** Select those products (i.e. vehicle fleet) or services (i.e. cleaning services) which have a high impact on the environment.

- **Focus on one or more environmental problems, such as climate change or waste.** Introduce general requirements on energy efficiency or recyclability.

- **Consider availability and cost of environmentally superior alternatives.** Are there green(er) products on the market, will they meet your requirements, and can you afford them?

- **Consider availability of data.** Can you find the scientific and environmental data you need to set criteria for this product? How complicated will it be to decide what you want technically, and to express it in a call for tender?

Commission product and service database

The Commission of the European Communities has developed a database that contains simple environmental information on around 100 product and service groups. It provides basic information to corporate and public purchasers, such as the eco-labels available for a given product, or its key environmental impacts. It can be consulted via the Internet (http://europa.eu.int/comm/environment/green_purchasing).

- **Look for visibility.** How visible will the green policy be to public and staff? Will they realise that we are making an effort to improve our environmental performance? High-profile changes like the type of vehicles used by the authority, or a change to organic food in the school canteen, can help build awareness of the policy and link it to other environmental projects.

- **Consider the potential for technological development.** If green purchasing can target products and services at an early stage in their development and marketing, this may be more successful than trying to change the environmental characteristics of mature sectors.

German model project on solar heating for swimming pools

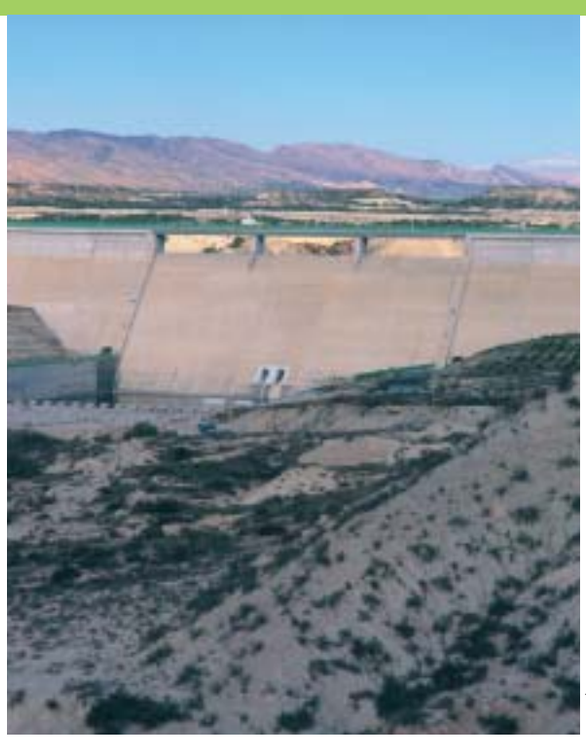
In 1983, the European Commission and the German Ministry of Research and Technology initiated a model project to substitute conventional pool water heating with solar heating. The financial push that public procurement has given to this innovative product has helped bring the price down and has made the product more attractive to private purchasers.

Adopt a scientifically sound life-cycle approach. Avoid shifting environmental impact from one phase of the life cycle of a product to another. Look for relevant information in underlying specifications of eco-labels or in websites and databases aimed at informing consumers.

Chapter 2
Organising public procurement

Summary

- Public purchasers have a stricter obligation than private purchasers to get the best value for money and to be fair in procurement procedures. Best value for money can include environmental considerations. Being fair means providing equal opportunities and guaranteeing transparency.
- The preparatory stage is crucial. Thorough analysis and planning is essential before launching a tender if environmental goals are to be achieved.
- It is particularly important to analyse exactly what it is you need, before deciding on a solution.



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2.1. Introduction

To make an environmental policy work it is essential to look at the public procurement procedure itself. A green procurement policy can, if it is not carefully implemented, founder on practical issues such as when to ask for it, who to ask for it and what criteria to use.

2.2. The nature of the public procurement procedure

Public procurement is in essence a question of matching supply and demand, just as with any private procurement procedure, the only difference being that contracting authorities have to exercise special caution when awarding contracts. This is because they are public entities, funded by the taxpayer's money.

This special caution can be translated into two main principles:

- getting the best value for money
- acting fairly

Best value for money

Contracting authorities have the responsibility to get the best value for taxpayers' money for everything they procure. Best value for money does not necessarily mean going only for the cheapest offer. It means you have to get the best deal **within the parameters you set.** The protection of the environment can be one of these parameters and can therefore act as an equal factor amongst the others for the award of the contract. So value for money does not exclude environmental considerations.

Acting fairly

Acting fairly means following the principles of the internal market, which form the basis for the public procurement directives and the national legislation based on these directives. The most important of these principles is the principle of **equal treatment,** which means that all competitors should have an equal opportunity to compete for the contract. To ensure this level playing field, the principle of **transparency** must also be applied.

Examples of provisions that embody the principle of equal treatment in the procurement directives are the time limits for the receipt of tenders and requests for participation and the common rules on technical specifications.

Examples of application of the principle of transparency can be found in the different provisions on the publication of notices and the obligation for contracting authorities to inform the tenderers concerned why their tenders were rejected.

2.3. The different stages of the procurement procedure

The preparatory stage of any procurement procedure is crucial. Any mistakes at this stage will adversely affect every successive stage, and ultimately the end result, as all stages build upon each other. Therefore, before starting a tendering procedure, you should set aside enough time for defining the subject of the contract and the instruments to be used to reach the end result. Another factor underlining the importance of the preparatory stage is that the early stages of the procurement procedure offer relatively the best possibilities for taking into account environmental considerations.

The general structure of a public procurement procedure is essentially no different from a private one. They both follow roughly the same stages: defining the subject matter of the contract, drawing up the technical specifications and the contractual parameters for the product/work/service, selecting the right candidate and determining the best bid.

The rest of this handbook devotes a chapter to each stage, looking at ways of taking the environment into account at each stage, and giving practical examples and recommendations.

2.4. The importance of assessing your actual needs

There is one crucial step that you need to do at this preparatory stage even before defining the subject of the contract. You need to assess your actual needs.

For example, you need to disseminate information to the public. You may decide to purchase printed flyers, posters, brochures and newspaper ads. However, if you think in terms of possible solutions rather than in terms of actual needs, you may decide on more environment-friendly solutions, such as dissemination of information by electronic means, using websites or e-mails.

Therefore, in order to be effective, you should rather describe your needs in a functional manner, so as not to exclude any possibilities available on the market. Once you have properly analysed your need, you may even conclude that there is no need for a contract at all.

Buying less in Pori

Green purchasing is not always about buying greener products. It may simply mean buying less. In Pori, a Finnish city on the Baltic coast, they created an internal reuse service, by means of a web-based noticeboard. Employees who were no longer using a piece of office equipment could offer it to other departments or staff who needed it ([1]).

([1]) More information at: *Local Sustainability Case Description 61* (http://www3.iclei.org/egpis/egpc-061.html)

Chapter 3
Defining the requirements of the contract

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Summary

- When defining the subject matter of a contract, contracting authorities have great freedom to choose what they wish to procure. This allows ample scope for including environmental considerations, provided that this is done without distorting the market, i.e. by limiting or hindering access to it.
- Market analysis can provide essential information about the environmental options available and about general commercial rates and conditions.
- The underlying technical specifications of eco-labels may prove very useful for the drafting of technical specifications; however, it is not allowed to require tenderers to have registered under any eco-label scheme.
- Specific materials and environmental production methods may be specified, if relevant.

3.1. Defining the subject matter

The 'subject matter' of a contract is about what product, service or work you want to procure. This process of determination will generally result in a basic description of the product, service or work, but it can also take the form of a performance-based definition.

For environmental considerations, a performance-based definition appears preferable, since in this case the contracting authority does not need to meticulously stipulate all the characteristics that the product/service/work should possess, but only the desired effect it should have.

3.1.1. The right to choose

In principle you are free to define the subject of the contract in any way that meets your needs. Public procurement legislation is not so much concerned with **what** contracting authorities buy, but mainly with **how** they buy it. For that reason, none of the procurement directives restrict the subject matter of a contract as such.

However, freedom to define the contract is not unlimited. In some cases the choice of a specific product, service or work may distort the level playing-field in public procurement for companies throughout the EU. There have to be some safeguards.

These safeguards lie, first of all, in the fact that the provisions of the EC Treaty on non-discrimination, the freedom to provide services and the free movement of goods apply in all cases, and therefore also to public procurement contracts under the thresholds of the directives or to certain aspects of contracts which are not explicitly covered by the directives. In practice, this means that you have to ensure that the contract will not affect access to your national market by other EU operators.
A second safeguard is that, according to public procurement rules, the technical specifications used to define the contract must not be defined in a discriminatory way.

3.1.2. Choosing a green title for the contract

This makes it easier for tenderers to quickly identify what is wanted and conveys the message that the environmental performance of the product or service will be an important part of the contract.

A green title from the Brussels Institute for Management of the Environment

The Brussels Institute for Management of the Environment ([1]) entitled their call for tender for cleaning services: 'Environmental cleaning contract'. Other suitable titles might include 'Organic catering contract' or 'Energy-efficient building'.

([1]) http://www.ibgebim.be

Using promotional titles sends out a message not only to potential suppliers, but also to the local community and other contracting authorities.

3.1.3. Conducting a market analysis

In the process of determining what to buy, it is essential to have some understanding of the market. It is very difficult to develop a concept for a product, service or work, without knowing what is available. Green alternatives are not always obvious or well advertised.

So you need to do some research. This research could take the form of a market analysis. A market analysis is a general survey of the potential in the market that could satisfy your defined need. In order to be successful, this analysis has to be conducted in an open and objective manner, focusing on what general solutions are available on the market and not on preferred or favoured contractors. It will then show environment-friendly alternatives, if there are any, and the general price level of the options available.

Looking for the right product

A community planning to purchase fences and street furniture might investigate materials available in the market such as wood from environmentally sustainably managed forests or synthetic materials made from recycled raw material.

3.1.4. Recommendations regarding work contracts

In the works sector, a lot of attention is being paid to what is called 'sustainable construction'. Governments, in their role as contracting authorities, often join with building companies and architects to develop environment-friendly building methods.

A French test for more environmental housing

The French government has launched plans to apply HQE (haute qualité environnementale), a method of achieving high environmental quality in the building sector, to social housing and urban planning. This method focuses on designing buildings that use less water and energy and require less maintenance ([2]).

([2]) More information can be found on the Internet (http://www.logement.equipement.gouv.fr/alaune/dossiers/presse_030102.pdf).

For certain public and private projects, it is obligatory to carry out an Environmental Impact Assessment (EIA). This obligation does not derive from the procurement directives, but it may have an effect on the definition of the subject matter of the contract

or the performance clauses ([1]). The environmental impact analysis provides national authorities with relevant information which enables them to take a decision in full knowledge of the environmental impact of their decision. In the process of defining the subject matter of the contract, carrying out an environmental impact assessment can lead to a more balanced decision.

In the same way, Directive 2002/91/EC on the energy performance of buildings ([2]), which obliges Member States to lay down minimum requirements on the energy performance of new buildings and of large existing buildings that are subject to major renovation, will have an effect on the definition of the subject matter and technical specifications of the works contract for the construction or renovation of those buildings.

([1]) The environmental impact assessment was introduced in 1985 by Directive 85/337/EEC (OJ L 175, 5.7.1985, p. 40), as amended by Directive 97/11/EEC (L 73, 14.3.1997, p. 5).

([2]) Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 (OJ L 1, 4.1.2003), to be transposed into national law by 4 January 2006 at the latest

3.1.5. Recommendations regarding supply and service contracts

The environmental benefits of green supply and service contracts come with the end result: the final product or service.

An important consideration is to improve general energy use by, for example, higher energy efficiency. This will help the environment and will save money at the same time.

Another point to consider is the environmental impact of the green product or service at the stage where waste is disposed. A market analysis may reveal large differences in terms of:

- disposal **volume,**
- the harmful **impact** of materials, and
- the amount of materials that can be **recycled.**

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Another important feature is the durability of the product; whether it is built to last. In some cases it seems very attractive to buy the cheapest product, but in fact it could prove more expensive in the long run and also detrimental to the environment. Products of inferior quality (regardless of their environmental characteristics) tend to have a shorter lifespan. If a cheaper product has to be replaced more often than a more expensive product, this will result in higher costs, extra energy consumption, and more waste. More generally, and especially with regard to service contracts, the primary environmental focus should be on performance, so you can choose a less environmentally damaging way of performing the contract by taking account of the equipment or materials used.

3.2. Drawing up the technical specifications

3.2.1. Technical specifications

Once you have defined the subject of the contract, you have to translate this into measurable technical specifications that can be applied directly in a public procurement procedure. This is like turning a sketch into a picture. Technical specifications have two functions.

- They describe the contract to the market so that companies can decide whether it is of interest to them. So they determine the level of competition.

- They provide measurable requirements against which tenders can be evaluated. They constitute minimum compliance criteria. If they are not clear and correct, they will inevitably lead to unsuitable offers. Offers not complying with the technical specifications have to be rejected.

3.2.2. Performance-based specifications

The procurement directives (2004/17/EC and 2004/18/EC) explicitly allow contracting authorities to choose between specifications based on technical standards or on performance-based requirements ([1]). A performance-based approach usually allows more scope for market creativity and in some cases will challenge the market into developing innovative technical solutions. If you use this approach, you do not need to express the technical specifications in too much detail.

([1]) See Article 23 of Directive 2004/18/EC and Article 34 of Directive 2004/17/EC.

Specifying the end result, but not how to achieve it

If you want to keep offices in a building at a certain temperature you could do this by setting very detailed specifications for a central heating system. Alternatively you could state that the offices must have a constant temperature of 20 °C and leave it to suppliers to come up with different options. The suppliers could then opt for natural heating and ventilation systems, instead of burning fossil fuels.

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However, when setting performance-based specifications, you have to be even more careful than when setting conventional technical specifications. As the options available on the market can vary considerably, you should make sure your specifications are clear enough to allow you to make a proper and justifiable evaluation.

3.2.3. Environmental technical standards

Technical standards can take a number of forms. These extend from full European standards (ENs), through European technical approvals and international standards to national standards and national technical specifications. Standards are useful in public procurement specifications as they are clear, non-discriminatory and developed on a consensus basis. At European level, they are prepared by the European standards organisations: the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec) ([1]) and the European Telecommunications Standards Institute (ETSI) ([2]). The process of European standardisation includes the participation of a wide range of stakeholders, including national authorities, environmental organisations, consumer associations, and industry.

This gives a broad acceptability to the technical solution provided by the European standard.

Some technical standards include clauses that cover the environmental characteristics of products or services. If these specifications are used in public procurement, companies have to provide proof either that they can comply with the standards or, if they do not follow the same methods, that they meet the performance levels set by the standards. If they cannot provide this proof, they will have to be eliminated.

On specific points, you can define a higher level of environmental protection than laid down in a standard, provided this does not discriminate against potential tenderers.

The European standards organisations are promoting environmental considerations. For example, CEN now has a special environmental helpdesk that gives advice and assistance to the technical committees ([3]).

The European Commission itself is also committed to 'greening' technical standards. It has adopted a communication on the integration of environmental aspects into European standardisation ([4]).

([1]) More information can be found on the Internet (http://www.cenelec.org).

([2]) More information can be found on the Internet (http://www.etsi.org).

([3]) More information can be found on the CEN website (http://www.cenorm.be/cenorm/index.htm).

([4]) Communication adopted on 25 February 2004 (COM(2004)130 final); more information is available on the Europa website (http://europa.eu.int/comm/environment/standardisation/index_en.htm).

3.2.4. Use of variants

It is possible that, even after conducting a market analysis, you are not sure whether any green alternatives to the products, services or works you want to purchase exist, or that you remain unsure about their quality or price.

If this is the case, it may be interesting to ask potential bidders to submit green variants. This means that you establish a minimal set of technical specifications for the product you want to purchase, which will apply to both the neutral offer and its green variant. For the latter, you will add an environmental dimension. When the bids are sent in, you can then compare them all (the neutral ones and the green ones) on the basis of the same set of award criteria. Hence, you can use variants to support the environment by allowing a comparison between standard solutions and environment-friendly options (based on the same standard technical requirements). Companies are free to provide offers based on the variant or the initial tender, unless indicated otherwise by the contracting authority.

To be able to accept variants in a public procurement procedure ([1]), you need to indicate in advance in the tender documents:

- that variants will be accepted,
- the minimum environmental specifications the variants have to meet (e.g. better environmental performance),
- specific requirements for presenting variants in bids (such as requiring a separate envelope indicating variant or indicating that a variant can only be submitted combined with a neutral bid).

3.3. Eco-labels

3.3.1. In general

A wide range of eco-labels have been developed to communicate information on the environmental credentials of a product or service in a standardised way, with a view to helping consumers or other businesses to select greener products or services.

Eco-label criteria are not based on one single parameter, but rather on studies that analyse the environmental impact of a product or service throughout its life cycle, the 'cradle to grave' approach, based on valid scientific information. This provides useful information on the inherent costs of a product, from extraction of the raw materials in the pre-production stage, through production and distribution, to final disposal.

You can use the information from eco-labels in different ways:

- to help you draw up your technical specifications in order to define the characteristics of the supplies or services you are purchasing;
- for checking compliance with these requirements, by accepting the label as a means of proof of compliance with the technical specifications;
- as a benchmark against which to assess offers at the award stage (see the example below);
- by using different types of labels for different purposes, for example, single-issue labels can be useful for a step by step approach.

However, you can never require tenderers to be registered under a certain eco-label scheme.

([1]) See Article 24 of Directive 2004/18/EC and Article 36 of Directive 2004/17/EC.

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Using EU eco-labels for light bulbs

The EU eco-label criteria for light bulbs require that they should have an average life-span of 10 000 hours. When reflecting this in a call for tender for light bulbs, 10 000 hours could be set as the technical specification for the minimum life span, and a bonus point could be given in the award criteria for every 1 000 hours over and above 10 000.

3.3.2 Legal guidance on how to use eco-labels and their underlying specifications in the procurement procedure

The public procurement directives (2004/17/EC and 2004/18/EC) ([1]) explicitly allow you to use the underlying specifications of eco-labels when defining performance-based or functional environmental requirements, provided that:

- the specifications are appropriate for defining the characteristics of the supplies or services covered by the contract;
- the requirements for the label are based on scientific information;
- the eco-labels are adopted with the participation of all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations;
- they are accessible to all interested parties.

Those products and services which bear an eco-label are presumed to comply with the technical specifications. It is, however, not permitted to set a requirement for companies to possess a certain eco-label or to be (fully) compliant with a certain eco-label. You must always accept other suitable evidence as well, such as a test report from a recognised body or a technical dossier from the manufacturer.

([1]) See Article 23 of Directive 2004/18/EC and Article 35 of Directive 2004/17/EC.

3.3.3. Eco-label categories

Public, multi-criteria eco-labels (Type I, ISO 14024)

These are the most common types of label and also the most commonly used in green procurement. They are based on a number of pass/fail criteria that set the standard for the label in question. Different sets of criteria are established for each product or service group covered by the scheme. These criteria will normally define the environmental performance that the product must reach and may also set standards ensuring that the product is fit for use.

Some interesting European and national eco-labels

The best known multi-criteria eco-labels are the European label (the flower) ([2]), the Scandinavian label (the 'Nordic swan') ([3]) and national labels (like the German 'Blue angel') ([4]). All of these labels are voluntary and life-cycle based, and they involve certification of the product by a third party (i.e. not by the producers themselves). They meet high standards of transparency and scientific rigour in terms of setting criteria and are non-discriminatory.

([2]) For more information, see the Internet (http://europa.eu.int/comm/environment/ecolabel/index_en.htm).

([3]) For more information, see the Internet (http://www.svanen.nu/Eng/default.asp).

([4]) For more information, see the Internet (http://www.blauer-engel.de/englisch/navigation/body_blauer_engel.htm).

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In the case of the EU eco-label, for example, the criteria for all product and service groups can, where appropriate, be cut and pasted directly from the EU eco-label website ([1]) into the technical specifications or the award criteria.

However, this is not the case with all eco-labels. Some labels contain criteria that:

- relate to the general management practice of the company making the product or offering the service;
- deal with ethical and other similar issues.

These criteria do not qualify as technical specifications as defined in the public procurement directives and so should not be used for contracts falling under these directives. Indeed, in order for criteria to be applicable to public procurement they have to relate to the subject matter of the contract.

Public, single-issue labels

Single-issue labels are labels that relate to one particular environmental issue like energy use or emission levels. There are two different types of single-issue labels.

([1]) For more information, see the Internet (http://europa.eu.int/comm/environment/ecolabel/).

The first type is based on one or more pass/fail criteria linked to a specific issue, e.g. energy efficiency. If a product meets those criteria, then it may display the label. Examples of this type of label are the EU organic label or the 'Energy star' label for office equipment.

A US success with 'Energy star'

In 1993 the US Federal Government decided to purchase only 'Energy star'-compliant IT equipment. The federal government is the world's largest single computer purchaser, and it is estimated that this decision played a significant part in the subsequent move to compliance with 'Energy star' standards for the vast majority of IT equipment on the market. The environmental benefits of the move to 'Energy star' by the federal administration have been calculated at 200 billion kWh of electricity saved since 1995, which equates to 22 million tonnes of CO^2 ([2]).

([2]) For more information, see the Internet (http://www.energystar.gov/).

The second type of label works by grading products or services according to their environmental performance on the issue in question. Examples of the second type include the EU energy label, which grades household goods according to their energy efficiency, with A* as the most efficient and G as the least efficient.

Single-issue labels can be very useful if you are following a step-by-step approach to greening procurement because they allow for gradual improvement. Using energy efficiency standards would be an excellent first step towards a wider green purchasing programme. The different grades allow you to decide easily how far you want to go.

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Private labels

In addition to the major public labels, there are a number of private labels, run by NGOs, industry groups, or combinations of stakeholders. These include labels on forestry certification schemes (see Chapter 3.4.5), such as the FSC (Forest Stewardship Council) ([1]) or PEFC (Pan European Forest Certification Council) ([2]) schemes, organic labels such as the IFOAM scheme ([3]), or multiple-criteria labels such as the Swedish label 'Bra miljoval' ([4]).

Depending on their accessibility and the way they are adopted these labelling schemes may or may not conform to the guidelines on appropriate environmental labels for public procurement as set out above.

3.4. Purchasing specific materials and taking into account production and process methods

What a product is made of, and how it is made, can form a significant part of its environmental impact. Under Directives 2004/17/EC and 2004/18/EC, production methods can explicitly be taken into account when defining the technical specifications ([5]), but this is also possible under the previous directives.

3.4.1. Purchasing specific materials

As a contracting authority, you have the right to insist that the product you are purchasing be made from a specified material, provided the Treaty principles of non-discrimination, and the free movement of goods and services are respected.

You can also indicate the range of materials you would prefer, or alternatively specify that none of the materials or chemical substances should be detrimental to the environment. A common approach for the green procurement of cleaning products, for example, is for the contracting authority to give an indicative list of hazardous substances harmful to the environment or public health (on the basis of an objective risk assessment) that it does not wish to be present in the product.

The right to specify materials or the content of a product also includes the right to demand a minimum percentage of recycled or reused content where possible.

([1]) For more information, see the Internet (http://www.fsc.org/fsc).

([2]) For more information, see the Internet (http://www.pefc.org/internet/html/).

([3]) For more information, see the Internet (http://www.ifoam.org).

([4]) For more information, see the Internet (http://www.snf.se/bmv/english.cfm).

([5]) Annex VI of Directive 2004/18/EC and Annex XXI of Directive 2004/17/EC.

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Green procurement codes in Gothenburg (1) and in London (2)

Choose products that damage the environment as little as possible, both when they are manufactured and when they are used. The whole process from production via consumption to final disposal must be taken into consideration.

- Choose products that are not harmful to the consumers or users (taking into account the working environment of the employees).
- Choose products that are biologically degradable or can be reused.
- Choose products that do not consume energy and natural resources unnecessarily, either when they are manufactured or when they are used.

The Mayor of London has launched a green procurement code where both corporate and public purchasers have signed up to purchase goods containing recycled materials where possible.

(1) For more information, see the Internet (http://www3.iclei.org/egpis/egpc-056.html).

(2) For more information, see the Internet (http://www.lecf.org.uk/procurement/index.htm).

3.4.2. Process and production methods

As we said earlier, both Directives 2004/17/EC and 2004/18/EC and the previous directives allow you to include requirements on production methods in the specifications for green procurement.

However, since all technical specifications should bear a link to the subject matter of the contract, you can only include those requirements which are related to the manufacturing of the product and contribute to its characteristics, without necessarily being visible.

You can for example ask for electricity produced from renewable energy sources (see Section 3.4.3 for more details), although green electricity is not physically different from electricity produced from conventional energy sources, and makes the lights work in exactly the same way. However, the nature and value of the end product has been modified by the process and production method used. For example, electricity produced from a renewable source will in principle be more expensive, but cleaner, than electricity from a conventional source.

In conclusion, you can include all requirements which are linked to the subject of the contract. To the contrary, you may not impose environmental requirements on issues which are unrelated to the product in question.

A clear example of an unacceptable requirement might be, when purchasing furniture, to insist that the furniture manufacturers use recycled paper in their offices.

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3.4.3. The case of renewable energy

Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources provides a definition of renewable energy sources and of electricity produced from renewable energy sources ([1]).

Because electricity produced from renewable energy sources is physically indistinguishable from electricity produced from conventional sources, the method of proof is crucial in ensuring that the public authority is getting value (including environmental value) for money. Directive 2001/77/EC requires Member States to ensure that the origin of electricity from renewable energy sources can be guaranteed according to objective, transparent and non-discriminatory criteria by no later than 27 October 2003. Accordingly, Member States have to ensure that a guarantee of origin for green electricity is issued whenever requested.

([1]) See definitions in Article 2 of Directive 2001/77/EC, under (a): 'Renewable energy sources shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydro-power, biomass, landfill gas, sewage treatment plant gas and biogases)' and under (c) 'Electricity produced from renewable energy sources shall mean electricity produced by plants using only renewable energy sources as well as the proportion of electricity produced from renewable energy sources in hybrid plants also using conventional energy sources …'.

Purchase of renewable electricity by British and Dutch local authorities

At the beginning of 2002, Sheffield Hallam University in the United Kingdom decided to cover 5 % of its electricity demand with green electricity and awarded the contract to a green electricity supplier. The purchase of 5 % of its electricity has enabled the university to lower its carbon emissions by approximately 1.5 to 2 % a year. Further energy efficiency measures will bring this figure to 3 %, which is the annual target of the university ([2]).

Nearly all public buildings and street lighting in South-East Brabant in the Netherlands are powered by green electricity. In March 2002, 21 municipalities in the Eindhoven Cooperation Region signed a contract with a supplier to obtain green electricity for 75 % of their consumption, representing about 29 million kWh. The municipalities banded together in order to obtain a better price from the utility. As well as the environmental improvement, the negotiated contract offers a cost saving of EUR 620 000 over previous contracts.

([2]) For more information, see the Internet (http://www3.iclei.org/egpis/egpc-059.html).

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3.4.4. Food from organic agriculture

The production of organic food is a specialised process.

For a food product to be marketed as organic in the EU it must fulfil certain requirements and be certified by an approved inspection body. These requirements are laid down by Council Regulation (EEC) No 2092/91 on organic production of agricultural products ([1]).

As a contracting authority, you can make the requirements of your technical specifications even stricter than those in Council Regulation (EEC) No 2092/91. You can require that a service contract for a canteen provides a certain percentage of organic food or that certain foodstuffs are organically produced.

Finally, it is obviously possible for public authorities to reduce environmental impact through seasonal purchasing, i.e. by providing in their canteens only those varieties of fruit and vegetables that are in season in the area at the time.

([1]) Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ L 198, 22.7.1991).

Organic food in school canteens in Italy and hospital canteens in Vienna

There are over 300 examples of organic school meals services in Italy — some of them use only organic fruit and vegetables, whereas others offer whole meals based on 80 %, 90 % or even 100 % organic ingredients. The City of Ferrara in northern Italy took a structured approach to going organic. It started in 1994 by commissioning a feasibility study and then established a list of foods that could be used without significantly increasing costs. In 2003, 50 % of the food offered in public canteens was organic, rising to 80 % for nurseries ([2]).

A similar approach was adopted in Vienna, with a focus on those foodstuffs that are easily available from organic farming without supply problems. These now include cereals, dairy products, fruit and vegetables (according to season) and meat. Organic food is offered in hospitals, old peoples' homes, schools and kindergartens. The share of organic food differs depending on the kind of institution: e.g. 30 % in kindergartens with the plan to increase this percentage to 50 % within the next two years ([3]).

([2]) For more information, see the Internet (http://www.comune.fe.it).

([3]) For more information, see the Internet (http://www.wien.gv.at/ma22/oekokauf/).

3.4.5. The case of sustainable and legally logged timber

Timber ([4]), and particularly timber from rainforests and other old-growth forests, has received considerable public concern and media attention lately.

([4]) Timber includes for example round wood, sawn wood, wooden construction elements and wooden furniture.

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'Sustainable' and 'legal' timber are complex concepts and difficult to define. It is broadly agreed that sustainable forest management implies management with a view to, amongst others, sustaining biodiversity, productivity and vitality and also taking into account social aspects such as worker welfare or the interests of indigenous or forest-dependent people. The notions 'sustainable' and 'legal' thus refer to social and environmental, as well as economic conditions.

The majority of EU timber trading is with countries with effective enforcement of forest legislation; however, illegal logging is a serious problem in some countries and regions from which the EU imports forest products. This has led to efforts by States and international organisations to tackle the problem of unsustainable and illegal logging through a number of actions, including through public procurement. Indeed, as public authorities are important consumers of timber-based products, notably as construction products and for furniture, they could have a significant impact in reducing the demand for illegally logged timber.

When drawing up the technical specifications, you can specify environmental requirements for the timber to be purchased. Various governments, trade-sponsored bodies and organisations have set up detailed standards and certification schemes, with technical specifications designed to promote sustainable forest management.

These forest certification schemes, such as the FSC (Forestry Stewardship Council) or PEFC (Programme for the endorsement of forest certification schemes), include criteria regarding aspects of environmental sustainability of the harvesting of the wood. These criteria can be used in technical specifications to define exactly what sustainable timber means from an environmental point of view, without, however, the requirement to comply with any particular forest certification scheme.

Some useful technical specifications for timber purchase

For example, the following criteria can be used in the technical specifications of a contract that is sustainable in environmental terms:

- the assurance that the rate of harvesting of timber does not exceed levels that can be permanently sustained;
- use of environment-friendly non-chemical methods of pest control, and the avoidance of use of chemical pesticides.

As with all technical specifications, you can only include those specifications which are related to the subject matter of the contract. So you cannot include specifications of a scheme on, for example, the protection of forest-dependent people.

However, you can, as a purchasing authority, indicate in the contract notice or tender documents that a forest certification scheme will be accepted as a possible means of proof of fulfilment of these requirements. You must, of course, accept equivalent means of proof too.

Since such forest certification schemes often also include other requirements concerning the legality of the harvesting of the timber not linked to the tender in question the promotion of such schemes will indirectly also increase the chances of the wood being harvested from legal sources.

Chapter 4
Selecting suppliers, service providers or contractors

Summary

- It is possible to exclude companies that have acted against environmental legislation or regulations if this is affecting their professional conduct.
- In the technical capacity criteria, the past experience of a company and the professional qualifications of its personnel offer good opportunities for including green considerations.
- In order to check whether tenderers can perform the environmental management measures prescribed by the contract, contracting authorities may ask them to demonstrate their technical capacity to do so.
- Environmental management systems, such as EMAS, can serve as a (non-exclusive) means of proof for that technical capacity.
- Setting requirements to comply with any particular environmental management system is not allowed.

4.1. Introduction

Selection criteria focus on a company's ability to perform the contract they are tendering for. In this chapter we will show how to use the scope available under the public procurement directives to apply environment-friendly criteria at the selection stage. We shall look in turn at the different categories of selection criteria, i.e. exclusion criteria, financial capacity criteria and technical capacity criteria. Special attention is paid to how tenderers can use the European management and audit scheme (EMAS).

4.2. Exclusion criteria

The exclusion criteria deal with circumstances in which a company can find itself that normally cause contracting authorities not to do any business with it ([1]).

The cases where a contracting authority **can** exclude a tenderer are listed in full in the public procurement directives. In some particularly serious criminal cases, it may even be mandatory to exclude tenderers ([2]).

Concerning the professional conduct of a company, two provisions in the exclusion criteria **can** be used to take into account companies' behaviour to the detriment of the environment, i.e. where the economic operator has been convicted by a final judgment affecting his professional conduct or has been guilty of grave professional misconduct ([3]).

Therefore, according to the procurement Directives 2004/17/EC and 2004/18/EC, it is considered that,

([1]) For example, if the company:
— is bankrupt or has been wound up,
— has committed serious professional misconduct,
— has not paid taxes or social security contributions.

([2]) See Article 54 of Directive 2004/17/EC and Article 45 of Directive 2004/18/EC.

([3]) Article 45 of Directive 2004/18/EC and Articles 53 and 54 of Directive 2004/17/EC.

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if national law contains provisions to this effect, a case of non-compliance with environmental legislation, which has been the subject of a final judgment or a decision having equivalent effect, may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct, permitting to exclude the party concerned from competing for the contract.

Exclusion from tenders for repeated breach of environmental law

For example, on the basis of the public procurement Directives 2004/17/EC and 2004/18/EC, a waste disposal company that has repeatedly breached environmental provisions under administrative law, resulting in several administrative fines, can be excluded on grounds of grave professional misconduct.

4.3. Technical capacity

4.3.1. Environmental technical capacity criteria in general

The procurement directives contain an exhaustive list of selection criteria which can be prescribed by the contracting authority with a view to checking the technical capacity of the tenderers to execute the tendered contract ([1]).

Contracts where environmental technical competence could be particularly relevant include waste management contracts, construction, building maintenance or renovation contracts, and transport services.

Environmental technical competence could include technical competence in minimising waste creation, avoiding spillage of polluting products, reducing fuel costs, and minimising disruption of natural habitats. In practical terms, it concerns questions such as the three listed below.

- Does the tendering company employ or have access to technicians with the required knowledge and experience to deal with the environmental issues of the contract?
- Does the tendering company own or have access to the necessary technical equipment for environmental protection?

([1]) Article 48 of Directive 2004/18/EC and Articles 53 and 54 of Directive 2004/17/EC

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- Does the tendering company have the relevant research and technical facilities available to cover the environmental aspects?

In the criteria concerning the technical capacity, a useful instrument for integration of environmental criteria is the **records of contracts carried out.** When the contract tendered is a green one, you can use this criterion to ask for past experience of companies in such contracts. In doing so you should ensure setting out clearly what type of information is considered relevant and what means of proof will have to be provided.

Ensuring the environmental-friendliness of the builders

For example, if a contracting authority wants to ensure that a new public building is built to a high standard in terms of its environmental performance, it makes sense to ask the tendering architects to provide proof of previous experience in designing buildings to a high environmental quality.

Equally if a municipal facility needs to be built in an environmentally sensitive area, the contracting authority could ask for proof that the tenderer has previous experience of managing construction projects in such conditions.

In other cases, environmental aspects can be adopted in the e**ducational and professional qualification.** These qualities are especially important in contracts that can only achieve their environmental objectives through proper training of the personnel.

Ensuring the professional competence of asbestos removers

Asbestos insulation can still be found in many buildings across Europe. When maintenance work is carried out on these buildings, it is important that qualified contractors remove the asbestos safely. In order to provide proof of competence, some Member States maintain licensing schemes for contractors that specialise in such work. Requiring in the selection criteria that contractors have the appropriate experience for such work as evidenced by the licence issued by the appropriate authority or by an equivalent form of proof of technical competence is important to minimise the health, safety and environmental risks associated with such work.

4.3.2. Environmental management schemes

Any organisation (government or company) wishing to improve its overall environmental performance can decide to run an environmental management scheme.

There are two main environmental management schemes in use in the EU. These are the 'Eco-management and audit scheme' (EMAS) ([1]), and the European/international standard on environmental management systems (EN/ISO 14001) ([2]). The EMAS scheme is open to organisations with a site in the EU or in the European Economic Area, whereas the ISO scheme is open to organisations across the globe. There are around 13 500 ISO 14001-certified and around 4 000 EMAS-registered sites and organisations in Europe.

Environmental management schemes are organisation-related tools, aimed at improving overall environmental performance of the committing organisation. They allow organisations to have a clear picture of their environmental impacts, help them to target those that are significant and manage them well, in a sense of continuously improving their environmental performance. Relevant areas for improvement may be the use of natural resources, such as water and energy; training and information of employees; the use of environment-friendly production methods; the green purchasing of office materials; the manufacturing of green products, etc.

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4.3.3. The use of environmental management schemes in public procurement

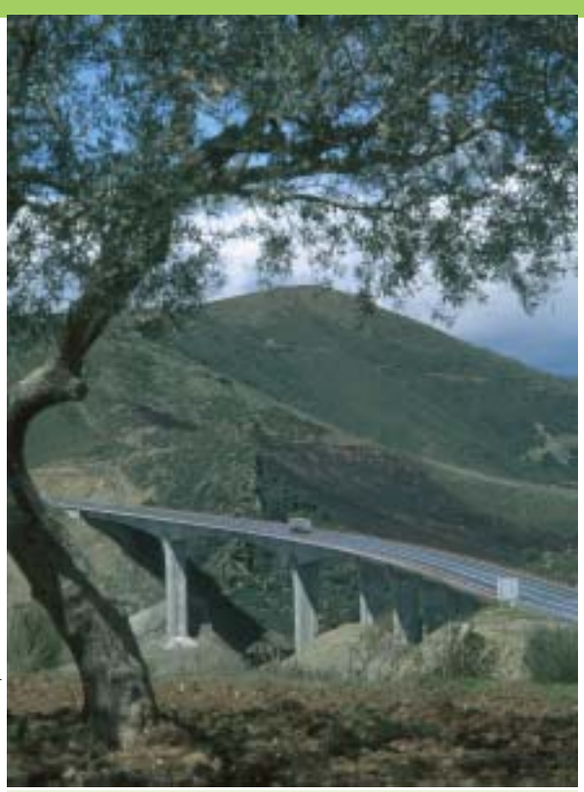
The public procurement directives (2004/17/EC and 2004/18/EC) allow contracting authorities, in 'appropriate cases', to ask from bidders to demonstrate their technical capacity to meet requirements set by the contract to put into place certain environmental management measures for public works and services contracts ([3]).

Under 'appropriate cases' one should consider contracts, the execution of which could endanger the environment and therefore call for measures to protect the environment during their execution. Naturally, those measures are directly linked to the performance of the contract.

([1]) Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

([2]) European/International Standard EN/ISO 14001:1996 on environmental management systems.

([3]) According to Article 48(2)(f) of Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts 'for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract', may be used by the contracting authority as a selection criterion.



Building a bridge in a protected area

An example of such specific environmental management measures would be a contract for building a bridge in a protected area, therefore requiring the establishment of a series of specific management measures aimed at ensuring effective protection of fauna and flora in the area whilst building the bridge.

It is not permissible to ask for compliance with selection criteria that are unrelated to the contract to be performed. Therefore, the management measures do not need to be established at the moment of bidding for the contract, nor do they need to be continued after the duration of the contract, as this is not considered relevant for the contract.

Directives 2004/17/EC and 2004/18/EC explicitly recognise that EMAS certificates can serve (if relevant) as a possible means of proof for companies to demonstrate their technical capacity to perform these environmental management measures. Of course, contracting authorities should also recognise equivalent certificates issued by bodies conforming to Community law or the relevant European or international standards concerning certification and based on relevant European and international environmental management standards. They should also accept all other means of evidence provided by the company that can prove this technical capacity.

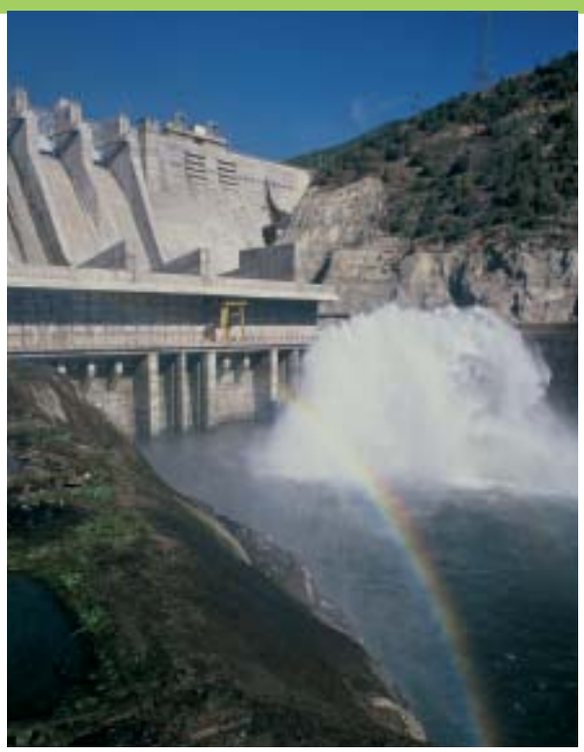
This means that contracting authorities can never require companies to possess an EMAS registration or comply (fully) with the requirements of an EMAS registration.

Finally, it should be noted that the use of an EMAS registration is not limited to providing proof of the technical capacity to perform environmental management measures. In case a contracting authority sets other environmental selection criteria as mentioned in Section 4.3.1 (for example requirements regarding technical equipment or personnel training) the EMAS registration could, if it contains relevant information on the particular requirements, serve as a means of proof as well.

Chapter 5
Awarding the contract

Summary

- It is possible to apply environmental award criteria, provided those criteria:
  - are linked to the subject-matter of the contract,
  - do not confer unrestricted freedom of choice on the contracting authority,
  - are expressly mentioned in the contract notice and tender documents,
  - comply with the fundamental principles of EU law.
- Adopting a 'life-cycle costing' approach reveals the true costs of a contract. The use of this approach in preparation of the award criteria will improve both the environmental performance and the financial position.
- Total cost of ownership and minimised life-cycle cost (LCC) criteria are widely used in many private and public procurement bodies. As a consequence of this, LCC analysis and guidelines are available that can facilitate the task of developing specifications for defining requirements in the tendering and contracting process ([1]).



5.1. General rules for awarding a contract

5.1.1. Award criteria

Awarding the contract is the last stage in the procurement procedure. At that stage, the contracting authority evaluates the quality of the tenders (the offers) and compares prices.

When you evaluate the quality of tenders, you use predetermined award criteria, published in advance, to decide which tender is the best. Under the public procurement directives, you have two options: you can either compare offers on the basis of lowest price alone, or you may choose to award the contract to the 'economically most advantageous' tender, which implies that other award criteria will be taken into account, including the price.

Since the criterion of the 'economically most advantageous tender' always consists of two or more sub-criteria, these can include environmental criteria. Indeed, the non-exclusive list of examples in the directives to allow contracting authorities to determine the most economically advantageous tender include: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period, and period of completion.

As the best offer will be determined on the basis of several different sub-criteria, you can use several techniques for comparing and weighing up

([1]) A distinction is sometimes made between 'whole-life costs' (or 'total cost of ownership') and 'life-cycle cost', the latter often being a somewhat more narrow concept that does not always include such costs as end-of-life and waste-removal costs. It would be up to the contracting authorities to apply the concept that is most appropriate on a case-by-case basis (on the basis of available information for instance).

the different sub-criteria. These techniques include matrix comparisons, relative weightings and bonus/malus systems. It is the responsibility of contracting authorities to specify and publish the criteria for awarding the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders.

The different criteria that will determine the most economically advantageous tender will need to be formulated in such a way that:

- they relate to the subject matter of the contract to be purchased (as described in the technical specifications);
- they allow the tenders to be assessed on the basis of their economic and qualitative criteria as a whole in order to determine the tender that offers the best value for money ([1]).

This means in practice that it is not necessary for each individual award criterion to give an economic advantage to the contracting authority, but that taken together (i.e. economic and environmental) the award criteria must allow for determining the best value for money.

5.1.2. Linking award criteria with technical specifications

There may be a link between the requirements in the technical specifications and the award criteria. The technical specifications define the required level of performance to be met. But, as a contracting authority, you can decide that any product/service/work performing better than the minimum level can be granted extra points, which can be distributed at the award stage. Therefore, it should be possible to translate all technical specifications into award criteria.

([1]) See recital 46 of Directive 2004/18/EC and recital 55 of Directive 2004/18/EC.

Rewarding for energy efficiency in equipment cleaning

A contracting authority has prescribed in the technical specifications that cleaning equipment must not use more than 3 kW/h of electricity. The contracting authority can then reward better performing equipment by stating in the award criteria that, when evaluating the tenders, extra points will be awarded for equipment that uses less kW/h than the minimum amount.

5.2. Using the award criteria

5.2.1. General guidelines

The procurement directives (2004/17/EC and 2004/18/EC) explicitly allow environmental considerations to be included in award criteria. This legislation builds on Court of Justice case-law. The basic rule on environmental award criteria was laid down in Case C-513/99 (Concordia Bus) ([1]).

([1]) Judgment of the Court of Justice in Case C-513/99.

The Concordia Bus case

In 1997; the Community of Helsinki, Finland, decided to put their bus services out to tender. They used award criteria such as overall price, quality of the bus fleet and operational quality.

Under one award criterion, companies could score extra points if they could comply with certain emission and noise levels. On the basis of these extra points, the contract was awarded to HKL, which is the municipal transport company.

Concordia Bus, a competitor who did not get the contract, opposed this decision, arguing that the emission and noise levels could not be used as award criteria as they did not bring any economic advantage to the contracting authority.

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It follows from the Court ruling in this case, and from Directives 2004/17/EC and 2004/18/EC, which specifically refer to this ruling in their first recital, that all award criteria should meet four conditions.

1. Award criteria must have a link to the subject matter of the contract

This is essential. It ensures that award criteria relate to the needs of the contracting authority, as defined in the subject of the contract.

The presence of a link in the Concordia Bus case

In the Concordia Bus case, the Court considered that award criteria relating to the level of nitrogen oxide emissions and the noise level of the buses, to be used to provide the transport service, did meet the requirement of being linked to the subject matter of the contract.

In a further judgment the 'Wienstrom case' ([2]), the Court of Justice provided some further information on how the link with the subject of the contract should be interpreted.

([2]) Judgment of the Court of Justice in Case C-448/01.

The absence of a link in the Wienstrom case

In this case, the Court of Justice ruled that in a tender for the supply of energy a criterion relating solely to the amount of electricity produced from renewable sources in excess of the expected consumption of the contracting authority (which was the subject of the contract) could not be considered as being linked to the subject matter of the contract ([1]).

([1]) It should be noted, however, that the Court has at the same time recognised the possibility of an award criterion related to the amount of electricity stemming from renewable energy sources (as part of the electricity effectively supplied to the contracting authority). Further, it has also stated that a weighing of 45 % attributed to this criterion would not prevent the contracting authority from making the necessary synthetic evaluation of the award criteria in order to identify the economically most advantageous offer.

2. Award criteria must be specific and objectively quantifiable

The Court of Justice ruled that, based on its previous judgments, award criteria must never confer unrestricted freedom of choice on contracting authorities. They must restrict this freedom of choice by setting specific, product-related and measurable criteria, or, as the Court of Justice put it, 'adequately specific and objectively quantifiable' criteria.

The specificity and measurability of the award criteria in the Concordia Bus case

In the Concordia Bus case, before evaluation of the tenders, the Community of Helsinki had specified and published a system for awarding extra points for certain levels of noise and emission ([2]). This system was considered by the Court of Justice to be adequately specific and measurable.

([2]) In this case, extra points were awarded among other things, for 'the use of buses with nitrogen oxide emissions below 4 g/kWh (+ 2.5 points/bus) or below 2 g/kWh (+ 3.5 points/bus) and with external noise levels below 77 dB (+1 point/bus)'.

The Court of Justice provided further clarification in the Wienstrom case.

The clarity and objectivity of the award criteria in the Wienstrom case

In the Wienstrom case, the Court of Justice found that, in order to give tenderers equal opportunities in formulating the terms of their tenders, the contracting authority has to formulate its award criteria in such a way that 'all reasonably well-informed tenderers of normal diligence interpret them in the same way' ([3]). Another element of the necessary clarity and measurability of the award criteria as formulated by the Court of Justice was that the contracting authority should only set criteria against which the information provided by the tenderers can actually be verified.

([3]) In this case, the contracting authority did not determine the specific supply period during which the tenderers should state the amount that could be supplied by them.

3. Award criteria must have been advertised previously

According to all the procurement directives, contract notices will have to mention whether the contracting authority will award the contract on the basis of 'lowest price' or 'economically most advantageous tender'. In the latter case, the criteria used to identify the economically most advantageous tender shall be mentioned in the notice or, at least in any case, in the tender documents.

4. Award criteria must respect Community law

This last condition deriving from the EC Treaty and the mentioned procurement directives is that award criteria must comply with all the fundamental principles of Community law. The Court of Justice has explicitly mentioned the importance of the principle of non-discrimination, which is the basis of other principles, such as the freedom to provide services and the freedom of establishment.

The distinction between specificity and discrimination in the Concordia Bus case

The issue of discrimination was expressly raised in the Concordia Bus case. One of the objections of Concordia Bus was that the criteria set by the Community of Helsinki were discriminatory because the Community's own bus company HKL was the only company with gas-powered vehicles that could comply with these emission levels. The Court of Justice ruled that the fact that one of the award criteria set by the contracting authority could only be satisfied by a small number of companies did not in itself make this discriminatory. Therefore, when determining whether there has been discrimination, all the facts of the case must be taken into account ([1]).

([1]) One of these facts in this case was that the complainant, Concordia Bus, was awarded a different lot in which the same requirement of gas-powered vehicles was applied.

5.2.2. Using life-cycle costing

At the award stage of a procurement procedure, the price of a tender is always one of the most influential factors. But how do you define the price?

When you buy a product, service or work, you always pay a price. But the purchase price is just one of the cost elements in the whole process of procuring, owning and disposing. To assess the whole cost of a contract, you need to look at all the different stages. This is known as the 'life-cycle costing' approach. It involves including in the purchasing decision all the costs that will be incurred during the lifetime of the product or service.

A life-cycle costing assessment does not need to be difficult or time consuming. Although there are many special techniques for making elaborate life-cycle costing calculations on the private market, you can start with a simple comparison of obvious and measurable costs.

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Life-cycle cost: a suggestion by the UK Chartered Institute of Purchasing ([2])

([2]) More information is available on the CIPS homepage (http://www.cips.org/).

The UK Chartered Institute of Purchasing and Supply suggests that whole life costing should cover:

- purchase and all associated costs (delivery, installation, commissioning, etc.),
- operating costs, including energy, spares, and maintenance,
- end-of-life costs, such as decommissioning and removal.

These costs should be factored in the award stage to ensure that they are taken into account when determining the most economically advantageous tender. This will help you get a product with a better environmental performance, as the process will reveal costs of resource use and disposal that may not otherwise have received proper attention.

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5.2.3. How to use total life-cycle costing to promote environmental considerations

The policy of saving costs – and the environment at the same time – by using the 'life-cycle costing' approach can be put into practice in a number of ways. The following list gives some examples.

A. Savings on use of water and energy

The easiest step towards cost-effective and environment-friendly procurement is in the saving of water, electricity and fossil fuels. The advantage is that these savings clearly benefit both the financial situation of the contracting authority **and** the environment. Being easy to calculate and having a clear economical aspect, the costs of water and energy can easily be used as award criteria in public procurement procedures. From an environmental point of view, the importance of use of water and energy is also undisputed, particularly for example the effect of fuel use on CO^2 emissions, or waste production.

B. Savings on disposal costs

Disposal costs are easily forgotten when procuring a product or tendering for a construction project. Costs of disposal will eventually have to be paid, although it sometimes takes considerable time to take effect. Not taking these costs into account when you buy can in some cases turn a bargain into an expensive purchase. Disposal costs can range from the cost of physical removal to paying for secure disposal. Frequently, disposal is governed by very strict regulations.

Planning the disposal phase intelligently: the example of the building sector

One of the areas where a lot of waste is produced is the building sector. The demolition of old buildings means not only removing a large quantity of debris, but also managing hazardous materials, like asbestos. So in your call for tenders you could ask builders how much hazardous waste they expect to produce during demolition and the cost of removing it. In some cases, e.g. road building, it should also be possible to calculate the profits to be made from using recycled waste materials, such as used asphalt.

The examples show that including in the award criteria the amount and composition of the waste can save you money and help the environment. And once the approximate cost of waste disposal has been calculated, it should be possible to translate the environmental criterion of waste reduction into an economic one.

Chapter 6
Contract performance clauses

Summary

- Contract clauses can be used to include environmental considerations at the performance stage.
- The contracting authority can specify the way the goods are to be supplied and even the method of transport.
- The contractor is obliged to respect all the performance clauses in the contract.

Contract performance clauses are used to specify how a contract must be carried out. It is recognised that environmental considerations can be included in contract performance clauses, provided they are published in the contract notice or the specifications and comply with Community law ([1]).

6.1. Rules governing contract clauses

- Contract clauses should not play a role in determining which tenderer gets the contract, which means that any bidder should, in principle, be able to cope with them. They should not be disguised technical specifications, award or selection criteria. Whereas tenderers must prove that their bids meet the technical specifications, proof of compliance with contract clauses should not be requested during the procurement procedure. For example, you may not use contract clauses to require a particular production process (for supplies), or staff with particular experience (for services), since these are conditions that relate to the selection of the contractor. These aspects should be handled within the relevant stage of the procedure laid down in the public procurement directives.
- Even though contract clauses are considered to be outside the procedure of the award of contracts they still need to be set out clearly in the call for tenders. Indeed, tenderers should be aware of all the obligations laid down in the contract and be able to reflect this in the price of their bids.
- Contract clauses should be linked to performance of the contract.
- Contract clauses may not result in discrimination in favour of contractors from any particular Member State.
- A contractor is obliged to respect all the performance clauses set out in the contract documents, when carrying out the work requested or supplying the products covered by the call for tender.

UK Defra example — In my building, you follow my environmental policy!

The UK Environment Department (Defra) guidelines on green procurement specify that all contractors working on their site must follow the environmental policy of the department. This includes rules on smoking, putting waste into the appropriate bins, complying with parking restrictions and generally following the rules on environmental protection that apply to staff ([2]).

([2]) More information can be found on the Defra (UK Department for Environment Food and Rural Affairs) homepage (http://www.defra.gov.uk).

6.2. Contract performance clauses for the provision of works or services

Examples of possible contract performance clauses for works or service contracts include:

- transport of products and tools to the site:
  - delivery of products to the site in concentrated form and then dilution on site,
  - use of reusable containers to transport products to the site;

([1]) Article 26 of Directive 2004/18/EC and Article 38 of Directive 2004/17/EC.

- **how the service is performed:**

  use of dosage indicators to ensure that appropriate quantities of cleaning product are used;

- **disposal of used products or packaging from products:**

  products or packaging taken away for reuse, recycling or appropriate disposal by the contractor;

- **training of contractor staff:**

  staff trained in the environmental impact of their work and the environmental policy of the authority in whose buildings they will be working.

6.3. Contract performance clauses for the supply of goods

Since the performance of a supply contract consists merely in the delivery of goods, the main opportunity for the use of environmental contract clauses is to specify how the goods will be delivered. Simple ways to improve the environmental impact of the contract include:

- having the product delivered in the **appropriate quantity** (in general terms this means a bulk delivery, as this will be more environmentally efficient in terms of transport impact per item than having smaller quantities delivered more often; specifying a maximum number of deliveries per week or month can also be another way of achieving the same result);

- requiring that goods be **delivered outside peak traffic times** to minimise the contribution of deliveries to traffic congestion;

- requiring that the supplier **takes back (and recycles or reuses) any packaging** that comes with the product (this has the double advantage of centralising packaging prior to reuse or recycling and encouraging the supplier to cut down on any unnecessary packaging).

6.4. The impact of transport

You can use contract clauses in some cases to **specify the method of transport** that should be used to deliver the goods, but make sure that this is not discriminatory.

For a major works contract it could be appropriate to require that goods be shipped to a dedicated rail or inland waterway facility. The mere fact that one tenderer may have better access to the rail or inland waterway network than another would not automatically render such a contract performance clause discriminatory. This would only be the case if, for example, only one tenderer would actually be able to use the rail or inland waterway network. The clause would then be discriminatory and, in fact, would constitute a disguised exclusion criterion, since it would automatically exclude from participation all tenderers who do not have access to the specified mode of transport. The same would be true for a contract clause penalising contractors solely on the basis of the distance they travel to deliver the goods.

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Eco efficient innovations will bring a competitive edge to Europe

At the Spring Council of March 2005, eco efficient innovation was recognized as a potential economic driver in the revised Lisbon Strategy. The Dutch Presidency's 'Clean, Clever Competitive Project", pointed to the fact that there is much attention for the supply (R&D) of innovations. The demand side seemed to be neglected. State Secretary van Geel was mandated by the Council to start a dialogue with business and other relevant stakeholder organizations.

The stake holder organizations (UNICE, EPE, EEB, UEAPME, EUCETSA, WBSCD and Euro Chambres) and governments (The Netherlands and Austria) nominated personalities, predominantly from business circles and ngo experts, on the basis of their knowledge and experience to serve in an independent advisory group. They were asked to formulate recommendations for the European leaders. Politicians and ceo's.

Executive summary of the Advice

Eco efficient innovation (doing more with less) bridges the seemingly opposite objectives of *more economic growth and jobs and less environmental pressure.*

For Europe, eco efficient innovation as a trademark is a strong opportunity to define its competitive edge in the world. Eco efficient innovations represent a window of opportunity for Europe, but urgent action should be taken since our competitors are not resting idle.

Eco efficient innovation as an economic driver, enhancing competitiveness, is a key factor in Europe to achieve sustainable development as defined in the revised Lisbon Strategy and the Guiding Principles for Sustainable Development. The process will be difficult and there are no short cuts. It needs perspective, a shared will and common action.

Profitability main driver, barriers to market introduction should be tackled.

The move to eco efficient innovations is not spontaneous. Several barriers to market introduction still exist:

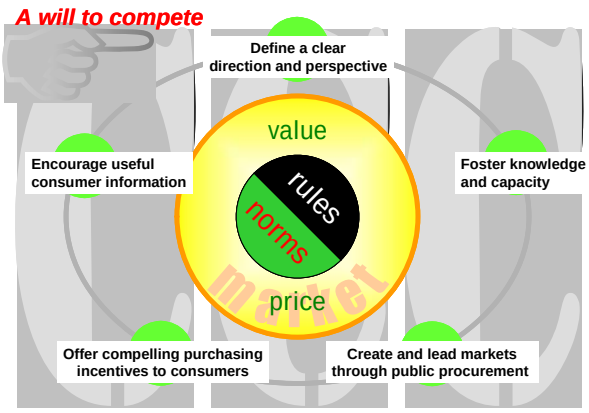
- Familiarity with and perceived lower risk of mainstream products and services;
- Difficulties to raise venture capital and credit for the market introduction;
- Uncertainty about the consistency of middle/long term government policies;
- The failure of the market to value the environment and resources correctly.

Overcoming barriers will encourage business and improve competitiveness of Europe.

Since many initiatives in the EU and its member states focus on the supply of (eco) innovations, this advice concentrates on the demand side. If market failures and related barriers are addressed properly, business will grasp the opportunity and the competitive position of Europe will improve.

The market entry barriers addressed in a competitive improvement circle.
In order to improve the market prospects of eco efficient innovations five courses of government action are advocated.

1. Define a clear and shared direction and perspective;
2. Foster knowledge and capacity;



3. Create and lead markets as a launching customer;
4. Offer compelling incentives to end users;
5. Encourage useful consumer information.

A smoothly functioning market model is central.

Shaping a framework for a sustainable and competitive market is ultimately a political responsibility. Market failures should be addressed, since voluntary action alone cannot produce the desired results. Transitional measures should help laggards to adapt..

The Competitive Improvement Cycle proposes a smart regulatory process that combines on the one hand the power of private sector initiatives, output oriented incentives and learning processes, with, on the other hand, the shaping of norms and regulations.

Perspective: The end goals should be clear, common scenario's and directions will provide perspective to invest and innovate.

The convergence and coherence of the goals for competitiveness, job creation and resources efficiency should be prioritized. Public authorities and private stakeholders should develop common sector scenario's, based on integrated impact assessments, defining the best measures and actions for sectors such as energy, water, housing and transport.

The European Union and its member states must clarify the direction and perspective of a competitive, clever and clean Europe. Together with developers, suppliers and consumers they should develop shared scenarios for relevant sectors with specific ambitions and milestones and well defined roles and responsibilities for the different stakeholders.

Foster knowledge and capacity.

A major bottleneck is the lack of interaction between knowledge, R&D, institutions and the industry (particularly SMEs) that could introduce innovations to specific market applications. Another bottleneck is the lack of awareness of the installation and service sector. Existing information, matchmaking schemes and vocational training programs should be tested on their effectiveness and efficiency. Besides this, a European Patent will considerably improve the coverage of information exchange.

The European Union and its member states must foster more concerted action between the information, training and matchmaking institutions and networks that can bring new developments to the market and improve their effectiveness. There is a need for a European Patent and the creation of clusters of competences around important societal needs and innovation themes.

Create and lead markets as a launching customer.

Green Public Procurement would be a straightforward sign of commitment of public authorities to eco efficient innovations. There is a series of practical proposals to overcome in-built conservatism of some procurement agents, that also are applicable to the business community, i.e.: a pre-tender screening process; life cycle analyses; accreditation schemes for innovative SMEs; guarantees for pilot purchases; benchmarking of progress; publication of procurement initiatives.

The European Commission and other public authorities at all levels must show the lead with public procurement objectives that favour eco-efficient and innovative products/services and secure market entry to innovative SMEs. This will encourage the business community to follow.

Offer compelling incentives to end users.

The ultimate driver for most end users is the actual price for a comparable product. Surprisingly, even if life costing would indicate net savings. The tax system can provide positive economic signals. Such signals should be phased out, once the innovative products and services have succeeded in gaining a certain market share. Also the technology lock-in factor of existing investments should be addressed, by increased availability of venture capital, financing from green investment funds, supported by government guarantee systems, and accelerated fiscal depreciation schemes.

The EU and its member states must improve the comparative purchasing advantages of innovative products and services if they also procure tangible societal and environmental advantages.

Encourage useful consumer information.

Price signals remain the most important driver for consumers. But specific information on verified performance can influence consumer decisions. In this respect the EU energy labelling framework presents a number of advantages. They should be extended to all energy-consuming and -saving goods.

The European Union and its member states must push for more coverage and relevant eco-efficiency consumer information within the already existing product and services information schemes.

The Importance of Government Procurement
In New Technology and New Sustainable Technology Commercialisation

Defining Terms

Public Procurement means the purchasing activities of Local, State and Federal government organisations. I don't know the volume of expenditure but it must be in the order of 30 - 40% of GDP. It is therefore many hundreds of billions of $ PA.

New Technology Commercialisation means the assessment and trial use / independent validation of new Australian developed / owned technology (by government agencies).

The Issue

Public Procurement is not supportive of new technology commercialisation and in some segments is a significant barrier to the assessment and use of new technology.

Why is this a problem:

- Because new technology and new sustainable technology are virtually the same thing and for lack of leadership in the adoption of new sustainable technology public procurement fails to show leadership in sustainable development. It is a misconception that private industry will show this leadership in the absence of a parallel initiative from government procurement and in some categories regulatory requirements.

- Because in some industries public procurement dominates the market. For lack of access to this important segment new technologies develop slowly and fail to gain independent validation or reach threshold volumes.

- Because the Federal and State government development agencies (eg DSRD) investment in new technology companies / programs is undermined by the lack of support for new technology by public procurement agencies.

- Because new technology is an important source of cost savings and by impeding new technology procurement agencies are by definition delaying and missing out on cost savings.

- Because public procurement agencies are often important commentators on the value of new technology and without their recognition (not endorsement) new technologies are considered to have less value then they may in fact have.

- Because it is very expensive for new technology providers to cause public procurement to consider new technology. The devolution of purchasing has made marketing to public procurement agencies expensive both because of the numbers and decentralised nature of decision making and the relative lack of expertise available in decentralised procurement officers.

- Because public procurement would reduce the need for Public and Private investment in new technology commercialisation. Many companies would rather engage in a public procurement trial of their technology than receive an R&D grant.

- Because it is very expensive for new technology companies to commercialise their technology in international markets if the technology has not been commercialised in domestic / Australian markets - a major credibility gap. This causes excessive capital development to afford commercialisation.

- Because the need to invite off shore development causes dilution of Australian ownership of new technology value to the Australian developers.

What can be done

There are many elements to the solution but the key issue is that Federal and State Governments need to recognise the issue and take action to address it.

So long as governments take the view that their procurement agencies do not have a role in this regard Australian invention will go off shore and be far less successful than it could. At the same time the cost to tax payers will be greater than it needs to be and sustainable development will be delayed regardless of the source of the new technology.