

www.greenspec.co.uk

EU Procurement Rules

Local Purchasing
A chink in the armour
2003 Case Law

History

- 1957 Treaty of Rome
- Irish Case law Drains
- 1992 Construction Products Directive
- EU Procurement Rules
- 2003 Case Law Bus Services
- EU Procurement Rules 2
- WTO GPA World Agreement on Government Procurement
- 2006 EU Procurement OGC Guide Updated
 - 2006 Public Contracts Regulations
 - 2006 Utilities Contracts Regulations
- OGC Office Of Government Commerce Guide
- GPP Green Public Procurement

IEMA Institute of Environmental Management and Assessment

- Social and environmental criteria can be taken into account for public contracts
- Date 10 December 2003 09:43 pm
- Topic Procurement
- <http://www.iema.net/article.php?id=2977>

The Chink

- A conciliation deal reached between Council and Parliament allows for social and environmental aspects to be considered in awarding public procurement contracts.
- Council and Parliament representatives (under the conciliation procedure) reached agreement on 2 December 2003 on the public procurement legislative package.

- The package is designed to simplify and modernise the public procurement directives in order to adapt them to the needs of modern administrations.
- The most controversial point of the debate between Council and Parliament lay in determining how much weight should be given to social and environmental factors in allocating public contracts.

The 4 Ground Rules

- The parties now agreed that social and environmental criteria should be taken into consideration in the following circumstances:
- if they were expressly mentioned in the contract documents or the tender notice;
- if they are connected with the subject matter;
- if they do not give the contracting authority an unrestricted freedom of choice;
- if they comply with all the fundamental principles of Community law.

- The agreement reached by the conciliation committee will now need to be ratified by the Parliament in a plenary session and by the Council.
- The European Commission has welcomed the agreement reached in Brussels on 2nd December by representatives of the European Parliament and the EU's Council of Ministers, after a successful conciliation procedure, on the legislative package simplifying and modernising the public procurement Directives.

IP/00/461 May 2000

- The Directives impose competitive tendering for public contracts, transparency and equal treatment for all tenderers to ensure that the contract is awarded to the tender offering best value for money.
- The package of amendments was proposed by the Commission in May 2000 (see IP/00/461).
- The main point at issue was the circumstances in which contracting authorities could take social and environmental criteria into account in attributing contracts.
- This has now been resolved, on the basis of recent case law from the European Court of Justice.
- Conciliation procedures take place when the European Parliament, the Council and the Commission have been unable to reach full agreement on a Commission legislative proposal but where enough common ground exists to suggest that such agreement might be achievable.
- The agreement reached by the conciliation committee will now need to be ratified by a plenary session of the Parliament and by the Council.

Issues connected with the works

- The compromise reached over award criteria is an acceptable one which allows national authorities to use appropriate and objective environmental and social criteria transparently for the public good, without creating scope for arbitrary and unfair contract awards based on issues unconnected with the works or services to be provided.“

Objectives of the legislative package

- The legislative package, which was based on extensive consultations with contracting authorities and businesses, has two main objectives.
- The first is to simplify and clarify the existing Directives.
- The second is to adapt them to modern administrative needs,
- for example by facilitating electronic procurement and,
- for complex contracts, by introducing more scope for dialogue between contracting authorities and tenderers in order to determine contract conditions.

Case law: Social and environmental criteria

- The text agreed takes current law as interpreted by the Court of Justice in particular in the "Finnish buses" case (C/513/99, see European Court of Justice press release CJE/02/73) as its starting point.
- The Court ruled that the contracting authority must award a contract to the tenderer whose tender is the most economically advantageous,
- but that it may nevertheless take environmental criteria
- (in the Finnish buses case, exhaust emissions and noise levels)
- into account when deciding which bids to take into consideration
- (i.e. the award criteria),

- The text would also allow contracting authorities to require specific environmentally friendly production methods - such as organic production for foodstuffs for schools.
- Under the compromise text agreed, similar conditions would be attached to the use of social criteria in practice,

- that would mean, for example, that contracting authorities could take into account, for the construction of a public building, accessibility criteria for people with disabilities.
- In addition the text provides the possibility of reserving contracts for sheltered workshops or sheltered employment programmes for disabled people

Exclusion from Tenderers list

- The text would allow companies who have not complied with EU legislation in economic, social or environmental fields to be excluded from tendering processes.

GreenSpec
Building
Specifications

A90/117 Environmental Purchasing Policy: Transport

- Minimise the distance that materials are transported throughout the whole extraction, transport, manufacturing processes and delivery to the site for installation in order to minimise the CO2 emissions from burning fossil fuel, exhaust pollution and congestion associated with transport.
- Wherever possible specification of local, county, regional, national and EU products and manufacturers over wider sources, has occurred in this Specification for the above reasons.
- Exceptions: Where the method of construction is not available locally this clause will not apply.
- If the contractor proposes to offer alternatives for consideration the issue of equivalency is first priority but transport energy, emissions and congestion must also be addressed. See A90/116.
- On the issue of transport alone, locally sourced materials will be given priority.
- In the event a material offered being sourced from outside of and shipped to the UK, marine miles and land miles at both ends of the journey shall be taken into account.

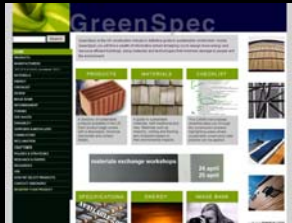
A90/117A Environmental Purchasing Policy: Transport

- Purchase materials, products and/or systems from within [_____] [miles/km.] of the site.
- Provide evidence in the form of delivery tickets indicating the starting point of the delivery and the distance.
- Where products are not available within the distance inform the CA and provide comprehensive information on the following and seek instruction to suit the Programme:
 - Equivalent products available within the distance.
 - Equivalent products available outside the distance and state the distance.
- See A90/116.

A90/117B Environmental Purchasing Policy: Transport

- Employer's requirement: Local sourcing.

2010 update



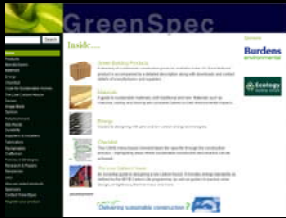
OGC Specifications

Specification Writing

http://www.ogc.gov.uk/briefings_specification_writing_.asp

OGC Office of Government Commerce

- Quick Wins Best Practice Voluntary Specifications
- Buy Sustainable - Quick Wins
 - need upgrading
- E.g. UK Government Timber Procurement policy:
 - CPET
 - FSC = PEFC (and we all know it does not)
 - FLEGT Forest Law Enforcement Governance and Trade



Green Public Procurement

GPP Toolkit

http://ec.europa.eu/environment/gpp/index_en.htm

Buying **green!**

A handbook on
environmental public procurement



European Commission

GPP Green Public Procurement

- EU Green Public Procurement rules
 - to replace current UK system
 - EU Procurement Rules + Revisions apply
- UK interpretation:
 - Central Government setting higher standards than GPP
 - OGC will adopt GPP for Local Government
- E.g. Nordic Swan
- E.g. EU Ecolabel
- Indoor air quality: addressed, could do better

EUPR and GPP4 rules match

- The 4 rules that follow
- Apply to both GPP and EU Procurement rules
- So some consistency

GPP 4 rules apply

Environmental & Social criteria

- 1. Award criteria must have a link to the subject matter of the contract
- 2. Award criteria must be specific and objectively quantifiable
- 3. Award criteria must have been advertised previously
- 4. Award criteria must respect Community law

WAG Welsh Assembly Government

- **Projects to comply with:**
 - Code for Sustainable Homes
 - ‘or Equivalent’
 - Following EU Procurement Rules
- **Materials to comply with:**
 - BRE Green Guide to Specification
 - ‘or Equivalent’
 - Following EU Procurement Rules
- **GreenSpec is accepted as ‘or Equivalent’**

2011 Update

2011 CPD at AHMM

- Wren PII insurance providers
- For Government Funded work
- Require 'Or Equivalent' after every product is mentioned in the clauses
- NBS 'Or Equivalent' in the Preliminaries is no longer enough for them.
- So I argue that the specification has be all the better a 'robust specification' to avoid substitution for inferior products.