

14 April 2008

BUSINESSEUROPE POSITION ON GREEN PUBLIC PROCUREMENT

Executive Summary

Following the mid-term review of industrial policy, which called for actions in the fields of sustainable industrial policy and sustainable consumption and production, the Commission is expected to release two Action Plans in May 2008 in these two areas. They are expected to propose the use of Green Public Procurement (GPP) as a tool for fostering sustainability.

BUSINESSEUROPE's view on the work in progress is that, in principle, GPP can be used within a toolkit aimed at meeting certain environmental policy goals but that its use must balance the environmental benefit with the overall effect on the economy. In addition, we have the following remarks:

- The adoption of the new public procurement directives in 2004 provides sufficient legal certainty on how to use GPP and allows for a wide range of environmental aspects to be considered. Therefore, further legislation on GPP is unnecessary and would even be counterproductive.
- What is needed is a better understanding of how to integrate GPP into the existing procedures and the exercise of skill in specifying the requirements.
- GPP is not simple: whole-life cost is an essential but complex consideration. An element of lateral thinking needs to be applied during the project definition phase.
- Whilst appropriate standards may have a part to play in specifying a GPP, simply citing a "green" label in the award criteria is inappropriate. The public purchaser should instead be more precise about the part of the label requirement that is to apply in relation to the object of the contract.
- We are concerned about the idea of imposing GPP targets on the Member States' public administrations. Crude targets, applied without consideration, are at best useless and at worst damaging to the economy.
- GPP is concerned with the characteristics of the work, supply or service being procured and should not look up the supply chain to consider the environmental impact of the supplier's activities, which are already covered by national legislation.
- Delivery transport is also outside the scope of GPP as if it were to be taken into account the result would be harmful to the operation of the single market.
- BUSINESSEUROPE underlines the need for the Commission to have broad consultations with industry when developing policies and standards for the use of GPP, particularly in the creation of sector-specific standards.

I. BACKGROUND

At the European Council on 8-9 March 2007 the EU Heads of State and Government committed to setting targets for greenhouse gas reduction, energy efficiency and an increased proportion of renewable energy. This was followed by a mid-term review of industrial policy, which called for actions in the fields of sustainable industrial policy and sustainable consumption and production. In May 2008 the European Commission is expected to release two Action Plans: one on sustainable consumption and production and one on sustainable industrial policy. These are scheduled to be presented together as the Sustainability Package and to be accompanied by legislative proposals. The Action Plans are expected to put the use of Green Public Procurement (GPP) – as a tool for fostering sustainable development – on the agenda. The Commission is also expected to propose further guidance to strengthen GPP.

BUSINESSEUROPE, in this paper, sets out its viewpoints on the work in progress by the Commission, namely:

- A communication on national action plans for the use of GPP in Member States. The communication will propose a common definition for GPP, targets, benchmarks and monitoring.
- A training toolkit for public purchasers with recommendations on how to set “green” criteria in public procurement. The toolkit covers a range of sectors, including construction, cleaning and transportation.

BUSINESSEUROPE is in principle supportive of the view that GPP can be used as part of a toolkit for meeting policy goals in the environmental field.

However, any new policy initiative aimed at reducing negative environmental effects of an economic activity must be based on a balanced evaluation of the expected gains and consequences. Legislators, both at an EU level and in the member states, must take into account the effects both on competition, job creation and the economy in general, and on the environment. Legislators must also ensure that GPP does not cause unnecessary administrative burdens, especially for European small and medium-sized enterprises (SMEs).

II. PUBLIC PROCUREMENT IN THE INTERNAL MARKET - LINK TO GREEN PUBLIC PROCUREMENT

Public procurement is about procuring a work, product or service at the best value compared to the required quality. The core of public procurement is to get economic value for taxpayers' money through a competitive tendering process. Public procurement is not meant to be an instrument for the pursuit of policy objectives other than safeguarding a fair, transparent and efficient purchasing procedure and the proper furtherance of the internal market. Such other policy objectives could include innovation, social cohesion, regional development or reduction of energy use but these are pursued separately.

With the adoption of the new public procurement directives in 2004¹ Member States were bound to implement new public procurement procedures. The use of the "economically most advantageous" award criterion, consistent with relevant case-law from the European Court of Justice, leaves room for public purchasers to include green criteria provided that these are directly linked to the object of the contract. Such direct green criteria may be used both in the specifications of the contract as well as in the award criteria.

In BUSINESSEUROPE's view, the existing legal framework for public procurement provides sufficient legal certainty on how to use GPP. Therefore, further legislative initiatives to promote GPP are unnecessary and would even be counterproductive.

The Commission, in line with its better regulation efforts, should instead shift its attention towards developing a better understanding of how to include environmental aspects in procurement procedures.

III. HOW TO CARRY OUT GREEN PUBLIC PROCUREMENT

"Green" criteria in procurement concern the environmental impact of the work, supply or service being procured both during its operational life and on final disposal at the end of its life. These criteria have to be looked at in economic terms and the award of the contract made on the basis of "the most economically advantageous tender"².

Works, supplies and services can all result in varying levels of environmental pollution. However, green solutions cannot be seen as simply identifying the option that would consume the least energy or produce the least waste³, although these aspects may well be important. Purchasers need to be prepared to take a wider view as sometimes the traditional approach to a particular need may not yield the most efficient solution whereas a radical approach, even though it may be more expensive in the short term, could offer substantial long-term advantages.

¹ Directive 2004/17/EC (Utilities) and Directive 2004/18/EC (Classical sector)

² Directive 2004/18/EC Article 53 1 (a)

³ Sometimes, so-called frontrunners are excellent in one environmental aspect, but not necessarily so in all aspects

By way of example, a traditional approach to urban transport might be to seek buses with lower exhaust emissions. However, maybe a better solution would be to expand and improve the transport system in general. This could prove to be expensive in initial capital cost, especially if it were to involve building an underground metro system, maybe connected to out-of-town car parks. However, it may be worth doing if the economic value of the reduced level of pollution, coupled with the improvement in service yielded by the new transport system were to exceed the cost of the system over the long term. This would be a successful procurement with sound green credentials.

End-of-life cost also needs to be considered. Services may have little impact at the end of their lives but works and supplies (products) certainly do. It is not just the disposal of toxic materials that needs to be considered as every disposal carries with it an economic cost and an environmental effect. One way of reducing the impact is to seek works and supplies that are more durable: if a 10% increase in initial cost produces a 20% increase in useful life, that is extra money well spent. Of course, obsolescence needs to be considered but a “throw-away” mentality is conducive neither to economic value nor to environmental responsibility.

As the market for intelligent green solutions grows, industry will respond. The economy will therefore benefit through the development of companies, products and services that are not just environmentally but also economically better.

One further clarification is needed. Except as an indirect result of the improvements discussed in the above-mentioned paragraph, purchasers should not look up the supply chain to dictate the environmental or other behaviour of their suppliers. To do so would involve the purchaser in potential liabilities if the changes demanded caused damage, and purchasers are generally in no position to accept such risks.

IV. ISSUES OF CONCERN FOR INDUSTRY

BUSINESSEUROPE has a number of concerns in relation to the use of GPP:

- 1) GPP must respect existing European procurement law but there is no need for any new legislation
Any new initiative on GPP should ensure that GPP is carried out in a competitive and transparent manner and should work within the existing framework of the 2004 Public Procurement directives which allow for a wide range of environmental aspects to be considered. We would urge the Commission not to introduce any new *legislative* initiatives on GPP.
- 2) Environmental element of delivery
Delivery of products – and, possibly, of works and services – entails a cost, both economic and environmental. Purchasers need to avoid introducing environmental criteria into the cost of delivery because this would discriminate against more distant suppliers and thus be counterproductive in the completion of the single market. Section 4) below addresses this aspect further.

3) More innovation in procurement

Public purchasers need to make room for innovative solutions by describing their needs as functions and avoiding specifications that are too prescriptive. It is for public purchasers to inform suppliers about the problem – and to explain any “interface” requirements – and leave the supplier to propose a solution.

4) Green criteria must be related to the object of the contract

As a general principle business believes that GPP should be based on objective, science-based and verifiable criteria which allow for fair and transparent procedures. There is no place for ideas unsupported by reasonable evidence and an economic rationale. The criteria should take the whole life-cycle of the product into account and must be related to the direct performance of the object of the contract and not used as a vehicle to pursue unrelated environmental objectives.

This topic is worth elaborating on further. The public procurement directives and associated jurisprudence require that green criteria must be linked directly to the object of the contract. If, for example, environmental aspects of delivery transportation were to form part of the award criteria for a contract then they would almost certainly favour national suppliers with local production. This would be discriminatory and counterproductive to the strengthening of the European economy and to benefiting consumers (unless, of course, it is the transportation itself that is being procured).

One must also consider that excessive demands for green requirements may come into conflict with WTO rules, particularly those of its Government Procurement Agreement.

To give an example, for good reasons a purchaser is at present not allowed to ask for the energy-efficient manufacture of a product and environmental criteria for manufacturing are covered by national regulations. However, it would of course be permissible to ask for the final product to be energy efficient, in line with the “Energy Star” criteria.

5) Requirements for documentation must be limited

BUSINESSEUROPE is concerned about the extensive use of unnecessary or too far-reaching requirements for documentation supporting compliance with green criteria. It is of the utmost importance that EU legislators take into consideration the effects that this could have on European business and industry, namely increased – and costly – administrative burdens.

6) Targets for GPP

BUSINESSEUROPE is also concerned about the idea of imposing targets for GPP on Member States’ public administrations. The use of GPP must be based on a case-by-case evaluation. Crude targets that are to be applied indiscriminately are at best useless and at worst damaging to the economy. Some procurements will have major environmental effects which, if well handled, can be beneficial; others will have no such effect at all.

- 7) The use of “green” labels as award criteria and reference to Eco labels
When environmental requirements are used as award criteria it is of the utmost importance that such criteria would not be merely to meet the requirements of a particular “labelling”. The public purchaser should instead be more specific about the part of a label requirement that is to apply for in relation to the object of the contract. In this context it is necessary to remember the restrictions on the use of labels that are contained in the procurement directives.
