

Buying Green doesn't cost the Earth

Environmental Procurement Policy Supplementary Guidance I – Specifying Contracts

The Environmental Procurement Policy will ensure that the Council optimises the environmental benefits of procurement decisions, in accordance with the principle of Value for Money.

Implicit in the concept of 'value for money' is the idea that environmental benefits are worth paying for, provided the financial cost is not excessive.

By making a commitment to this policy, the Council will help to conserve energy and resources, and reduce waste and pollution. Furthermore, through the Environmental Procurement Policy, the Council will contribute to greening the supply-chain by supporting, and participating in, the trading of more environmentally sustainable supplies, services and works.

This guidance covers the specifying of contracts, for 'Supplies', Services and 'Works'

It outlines Council Policy and opportunities which all 'procurers' are expected to follow, from Specifying the Subject Matter of the Contract, through to Contract Execution

There is additional, more detailed guidance covering the purchase of products and equipment:

*Environmental Procurement Policy
Supplementary Guidance II – Supplies, services and works*

Contact the Environment and Sustainability Team (Environmental Management Officer – 020 8760 5768 x3849) for support/advice on what the options are for green procurement in your area.

1. How to Use this Guidance

This guidance should be used for all contracts. It sets out some of the opportunities available for incorporating environmental criteria into contracts at each of the following stages of the procuring process:-

- Specifying the subject matter (including possible use of 'variants')
- Specifying the technical specification (including possible use of 'variants')
- Selecting contractors who meet the technical specification
- Awarding contracts
- Contract clauses

It illustrates the opportunities through a few examples. For input on the environmental criteria for any particular contract, contact the Environmental Management Officer – x3849.

For small contracts, (below £154,477 for supplies and services, and below £3,861,932 for works, for 2003-04), this document specifies the *minimum* opportunities which should be taken to achieve environmental benefits through contracts. European legal constraints do not apply to small contracts.

For large contracts, to which EU legislation applies (above £154,477 for supplies and services, and above £3,861,932 for works), all the guidance in this document (both constraints and opportunities) should be followed.

2. Specifying the Subject Matter of contracts – Area to maximise environmental content

This is the key area for describing environmental features of your products/ services/ works. The technical specification (see Section 5) needs to follow from the Subject Matter.

2 EU Restrictions, for large contracts only:

- Rule of 'Non-Discrimination' – we can not specify a contract in a way in which the objective or result is to limit the contract to domestic/local companies. (However, community benefits can be specified as a core part of the contract, provided this restriction is met. The community benefits must be put in contract notices.)
- Principle of 'Proportionality' – Environmental content can not be more detailed than is necessary for achieving reasonable environmental benefit. (For instance 'green electricity' can be required, but 'electricity from wind' would be considered a disproportionate specification.)

Within these restrictions, there are substantial freedoms to specify environmental characteristics, in the design stage, the product itself, and the execution of the contract. Examples below give an indication of the freedom available.

Opportunities for specifying environmental criteria:

Works contracts – where the local authority defines the design, execution and final product of the works

- Can ask for e.g. a low energy-consuming and low water-consuming building, sustainable construction materials, incorporation of renewable energy and/or CHP, with limited use of lifts and maximising natural light.
- Can also ask for works to be carried out in such a way as to minimise energy and water use, and impose requirements about waste management
- Can ask for products to be made from recycled material. (London Remade (a non-profit making firm with a remit to promote use of recycled materials) have an extensive list of products for which recycled options exist – TEL: 020 7665 1437)

Service contracts

Can prescribe, for instance (i) a specific method of cleaning, using products that are least harmful to the environment, (ii) public transport services are to be carried out by electric buses, (iii) method of collection of household or office waste

Supply contracts

Can prescribe environmentally sound products – e.g. ‘*recycled paper which is not bleached*’ ‘*re-use of containers*’, use of other recycled materials (N.B. London Remade: 020 7665 1437 can advise). Can take into account full life cycle analysis issues, but can’t discriminate against non-local tenderers, so transport implications can’t be taken into account fully. (Although it can be specified that deliveries are organised in such a way as to minimise the need to travel.)

N.B. – can also use variants in specifying Subject Matter – see section 6

Information should be included on the method to be used for assessing the bidders’ ability to deliver the Subject matter.

3. Technical Specifications

EU Restrictions for large contracts

- Content of the Technical Specification must follow from the subject matter of the contract
- Can not mention specific products or specific makes
- Can only mention trade marks, patents, types, origins or production when this helps to clarify meaning, and is accompanied by the term *or equivalent* (e.g. with respect to FSC timber – for details on the Council’s timber purchasing policy, see Supplementary Guidance II – Products and Equipment)
- Can not require (but can recommend) features which do not relate to production process (e.g. use of recycled paper in offices, waste disposal methods of contractors used, equal opportunities practices)

Opportunities for all contracts, even under EU Directives, provided the specification is non-discriminatory, the technical specification can:-

- Prescribe the materials which are to be used (e.g. wood/recycled materials)
- Prescribe for features of the production method, even if this doesn’t change the appearance of the product, (e.g. can require that electricity used is green electricity, though can’t specify ‘solar’ or ‘wind’ electricity, and can require use of organic foodstuffs)
- Prescribe that products must meet Eco-Label criteria, but must accept other forms of proof that label standard is met

Information should be included on the method to be used for assessing the bidders’ ability to deliver the Technical Specification.

4. Use of variants:-

Variants involve setting a standard definition for the contract, and an alternative definition. Tenders are invited for both definitions. The Council can make a decision based on all tenders received. Variants should be used to help find the balance between environmental and financial objectives of procurement, when the environmental objectives might entail excess costs. Variants need to be applied in both the subject matter and the technical specification.

(For example, Councils have used variants in specifying for weed control in street cleaning contracts, and opted for slightly more expensive but less environmentally damaging chemicals.)

5. **Selection of Candidates** – (Ensuring potential contractors can deliver the environmental aspects of the Specification)

- A potential contractor can be excluded from a contract if the contractor has been convicted of an offence concerning professional conduct or is guilty of grave professional misconduct proven by any means, including non-compliance with environmental legislation.
- Compliance with an Environmental Management System accreditation scheme (eg EMAS/ISO 14001) can be taken as evidence that the environmental aspects of a contract's technical capacity can be met, if there are direct links between the scheme and the technical specification. But for large contracts, non-accreditation can not be grounds for exclusion if other proof of meeting the environmental aspects of the technical specification is available.
- If fulfilment of the contract requires specific know-how in the field of the environment, specific experience is a legitimate criterion of technical ability and knowledge, even for large contracts.

6. **Award of Contract**

At this stage, opportunities to impose environmental criteria are limited for large contracts, under European Law. The most '*economically advantageous*' tender which is still in the running must be selected. **Therefore it is critical that environmental criteria are incorporated at the subject matter and technical specification stage.**

The only environmental criteria which can be relevant at this stage relate to environmental issues with an economic implication. These issues are still reasonably wide.

The relevant environmental criteria include running costs such as:-

- energy and water consumption associated with the contract (but only as far as their financial implications are concerned); as well as direct energy costs, these can include indirect costs such as air conditioning equipment working harder due to heat from less energy efficient equipment
- repair and maintenance costs, based on financial savings associated with the potential to re-use/repair/refurbish old parts
- waste disposal costs, and the potential to avoid these through durability or products, maintenance and recycling
- administration costs (e.g. if a more expensive, but less harmful chemical is used, this may reduce the time spent by staff in complying with Control of Substances Hazardous to Health (COSHH) Regulations

In considering what is most economically advantageous, authorities can also factor in risks, the significance of which is a matter of judgement. These include:-

- the advantages of reducing their risks under COSHH and the Duty of Care on Waste Management. e.g. by choosing benign rather than hazardous materials
- the risk of investing in redundant plant and equipment as increasingly stringent environmental standards are imposed through EU and UK legislation, and enforcement of these standards
- the risk of accepting a contract with lower environmental standards when future legislation is likely to require tighter environmental standards (e.g. legislation on reducing and re-using packaging)

Most of the information above is taken from *Environmental Issues in Purchasing – Note by the Treasury and DETR* (date not available)

New addition: Following a European court decision (C-513/99), the ‘economic advantage’ criterion can be applied to benefits to the wider community; the ‘economic advantage’ need not necessarily accrue to the Council. (So, e.g. the advantage to the local economy of having low emission vehicles, stemming from the cleaner, more attractive and distinctive environment created, is an appropriate economic implication that can be considered at the award of contract stage.)

7. Execution of the Contract

Contract Clauses fall outside the EU Public Procurement Directives. They must relate to the execution of the contract and not be disguised selection criteria or technical specifications. They must be announced in advance to applicants. They can impose extra environmental conditions.

The following are examples of specific additional conditions, which have a bearing on the performance or execution of the contract and which ultimately meet general environmental objectives, which are sufficiently specific, observe Community law principles and are in conformity with the Directives:

- Delivery / packaging of goods in bulk rather than by single unit
- Recuperation for re-use of packaging material and the used products by the supplier
- Delivery of goods in re-usable containers
- Collection, take-back recycling or re-use of waste produced during or after use or consumption of a product by the supplier
- Transport and delivery of chemicals (like cleaning products) in concentrate and dilution at the place of use.

A mode of environmentally sound transport can also be specified in a contract clause if, in the specific circumstances of the contract, it does not lead to discrimination.

Legal guidance behind this policy is taken from:- *Commission Interpretative Communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement – 4.7.2001*