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Green Procurement

White Paper Conference - 27 September 2023

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Agenda

- 1. What are the relevant Public Procurement Rules?**
- 2. Relevant Case Law**
- 3. Guidance**
- 4. Incorporation and application of Green Procurement and Social criteria and requirements**

Regulations S.I. 284 of 2016

- Definition of “Technical Specification” includes “environmental and climate performance levels”
- Reg. 43 – Labels “specific environmental, social or other characteristics”
- Reg. 62 – Quality Assurance standard and environmental management standards

Regulations cont.

- Reg 67 (3) – Award Criteria
 - may include “social, environmental and innovative characteristics”
- Reg. 68 – Life Cycle Costing
- Reg. 70 – Conditions for Performance of Contracts
 - may include economic, innovation related, environmental, social or employment related considerations

Regulations cont. 2

Regulation 43 Labels

“Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics the authority may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, where the following conditions are fulfilled:”

Regulations cont. 3

Regulation 43 Labels

PROVIDED THAT :

- (a) Linked to the subject-matter of the contract;
- (b) Based on objectively verifiable and non-discriminatory criteria;
- (c) Established in an open and transparent procedure;
- (d) Accessible to all interested parties; and
- (e) Set by a third party over which the EO applying for the label cannot exercise a decisive influence.

Leading Cases

- C-448/01, EVN AG and Wienstrom GmbH v Republik Österreich (2003) – *Verification of renewable electricity*
- C-513/99, Concordia Bus Finland Oy Ab, formerly Stagecoach Finland Oy Ab v Helsingin kaupunki and HKL-Bussiliikenne – *Use of environmental criteria*
- C-368/10, European Commission v Kingdom of Netherlands – *Dutch coffee case*

Useful Guidance and Reports

- Green Public Procurement – published by the Department of the Environment, Climate and Communications in December 2021
- Green Public Procurement – Guidance for the Public Sector, Published by the EPA in 2021
- GPP – Monitoring and Reporting by Government Departments, published annually by the EPA

Useful Guidance and Reports contd.

- GPP Criteria – published by the EPA
- Buying Green! A Handbook on Green Public Procurement published by the European Commission, 2016
- Circular 20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement
- Climate Action Plan 2023

Social Criteria

- OGP – Incorporating Social Considerations Information Note – 2018
- Promotion of the engagement of long term unemployed
 - Need to avoid:
 - discriminating in favour of long term unemployed in Ireland
 - “churn” of employed and unemployed by contractors
- GCCC Contracts
 - Clause 5.3 – Pay and Conditions of Employment
 - Pressure on Contracting Authorities to engage third parties to check compliance (to supplement the work of the National Employment Rights Authority)
- Reserved Contracts (Regulation 20)

Practical Examples

- Replacement of conventional lighting with LED lighting
 - significant cost reductions over time - grant savings
- Procurement of printing services and supplies
 - Paper to be sourced from sustainably managed forests or 100% recycled – certification by Forestry Stewardship Council (FSC) etc.
 - Provision of a print solution on an all inclusive basis
 - Reduces paper usage and use of consumables
 - Reduces energy consumption

Practical Examples

- Energy Supply Contracts
 - Guarantee of origin for renewable energy
- ICT Procurement
 - Compliance with Environmental Standards
 - Recycled and recyclable materials
 - Battery life
 - Power Consumption
 - Equipment lifespan

In Summary

- Regulations, Guidance and Government Initiatives support use of GPP and ESG Criteria
- Ensure criteria and/or requirements are:
 - Proportionate - balance green requirements with quality, suitability and price;
 - Linked to the subject-matter of the contract;
 - Based on objectively verifiable and non-discriminatory criteria;
 - Established in an open and transparent procedure; and
 - Accessible to all interested parties
 - Prudent to consult the market/conduct research

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Questions?

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