

Screening meeting with Croatia and Turkey

Presentation on
social and green procurement

7th of November 2005

By Linda de Bie

The information in this presentation is solely for the purpose of this meeting.

On social and green public procurement

- **Social and green goals are put down in policies or legislation by Member States and/or the Community.**
- **Public procurement is not concerned with WHAT is bought but HOW it is bought. It is the tool which needs to be used to reach social and green goals in project ^{above} the thresholds.**

Social and green considerations now and in the future

- **Current public procurement directives contain no explicit references to green or social considerations**
- **2 Communications have been released in 2001 to explain the use of the directives for green or social considerations. A handbook on Buying green was released in 2004.**
- **The ‘social and green’ cases by the European Court of Justice have been incorporated in the new Directive.**

Different stages of public procurement procedure

- **Defining requirements of the contract**
- **Selecting suppliers, service providers or contractors**
- **Awarding the contract**
- **Contract performance clauses (not regulated by public procurement dir.)**

Defining requirements of the contract

- **Social and green requirements can be part of the request. Also the request for social and green specifics can be added as a variant. Possibility of variants have to be indicated in advance in the tender documents.**
- **Freedom to define the contract is not unlimited. It is limited when it distorts the level-playing field.**

Selecting suppliers, service providers or contractors (1)

Exclusion:

- Possible exclusion of tenderer who has been convicted of an offence concerning his professional conduct by a judgement (res judicata)
- Possible exclusion of tenderer guilty of grave professional misconduct (latter as laid down in national legislation)

Selecting suppliers, service providers or contractors (2)

Requirements:

- **Economic and financial standing cannot be proven by social and green information.**
- **To prove technical standing: use the exhaustive list of selection criteria (e.g. past experience).**
- **Ensure setting out clearly what type of information is considered relevant and what means of proof needs to be provided. E.g. environmental management audit systems can serve as a basis for the proof. However, this is non-exhaustive proof (art.50 new Directive).**
- **Requirements have to have a link to the subject matter of the contract.**

Awarding the contract

- **Not on price, but to the most economically advantageous tender**
- **Explicitly mention the (green and social) award criteria in the contract notice.**
- **They need to be objective, linked to the subject matter, non-discriminatory and have to comply with the fundamental principles of EC law**

Green and social award criteria

Green:

All costs incurred during the whole life cycle of a product

Social:

Use of quotas for a certain category of suppliers is NOT acceptable, since they are unrelated to the subject matter of the contract.

Contract performance clause

- **The contract clauses are not covered by the public procurement directives.**
- **The formulated clauses have to observe Community law principles most notably non-discrimination.**
- **They need to be advertised and then the contractor is obliged to respect all the performance clauses in the contract.**
- **It must be clear that they are contract clauses and are not hidden criteria on the suitability of tenderers or criteria on the award of the contract.**

Examples of green and social contract performance clauses

Green:

Way goods are supplied or method of transport

Social:

Obligation to recruit unemployed persons during the performance of the contract.

Relevant information sources on social and green procurement

http://europa.eu.int/comm/internal_market/publicprocurement

Communications and Handbook(key documents):

Interpretative communication of the commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement (15.10.2001)

Commission's interpretative communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement (05.07.2001)

Handbook Buying Green: how public authorities can help save the environment and taxpayer's money (26.10.2004)

Public procurement legislation:

Current Directives

Directive 2004/18/EC (31.03.2004) on the co-ordination of procedures for the award of public works, supply and service contract.

European Commission 
Internal Market & Services DG

Questions?