

CARPE guide to responsible procurement



CARPE

CITIES AS RESPONSIBLE PURCHASERS IN EUROPE



The CARPE Guide to Responsible Procurement

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For further information consult the CARPE web site at <http://www.carpe-net.org>

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Responsible Procurement: Cities make a difference!

Cities daily spend large sums on buying goods, purchasing services, and commissioning works to run the local administration and deliver services to citizens. Research shows that more than fifty percent of public purchasing in the European Union is carried out on regional and local levels. Cities clearly are major consumers, representing a market force which they can use to make a difference: they can act as responsible consumers that take into account the social, environmental, and ethical issues along the life cycles and supply chains of the products and services they buy.

Make a green difference!

Research on green procurement has shown that public buyers can not only substantially reduce environmental impacts of consumption, but can also drive the market towards finding and offering more sustainable solutions to customers. In the long-term, many green purchases result in financial savings as potentially higher investment costs are set off by longer life spans of products, lower energy consumption, and less costs for disposal.

Make a social difference!

Cities strive to spend their budgets in ways that ensure a good quality of life for all citizens, maximising benefits for the local community. By purchasing services from companies that provide jobs to the long-term unemployed, by making accessibility a key criterion in works contracts, or by requiring good working conditions in the companies they contract, administrations can support social cohesion policies and possibly realise savings in social benefits spending.

Make a fair difference!

Many local authorities today are concerned with the impacts of their actions in other parts of the world. Starting to change purchasing habits is a credible way of assuming this global responsibility. By buying products that have been manufactured under acceptable working conditions and are sold at fair prices, these cities support small scale producers in developing countries.

Cities make the difference

The EUROCIITIES campaign on responsible consumption aims at spreading the word and making more cities aware of the possibilities they have to become conscious consumers. The CARPE project is a first building block of this campaign: it has brought together 12 EUROCIITIES members in exploring opportunities for responsible procurement. This guide presents the CARPE findings and demonstrates how cities can make a difference in local, European and global markets while at the same time respecting the rules of international trade.

We hope you enjoy exploring these opportunities and use your chance to make a difference!



Catherine Parmentier
Chief Executive Officer
EUROCIITIES

Introducing responsible procurement

This chapter sets out the context for responsible procurement practices:

SECTION 1 demonstrates why cities can make a real impact through and profit from responsible procurement.

SECTION 2 explains how a buying process within a public authority works.

SECTION 3 outlines the legal framework for responsible procurement.

1 The potential of responsible procurement

1.1 The consumer power of cities

Cities are economic actors

Public authorities not only regulate the economy through laws, incentives, and subsidies, they also actively participate in the market as consumers: they buy goods, purchase services, and commission works according to their needs just like any other corporate or private consumer. The process of a public authority entering into contracts with suppliers is generally referred to as public procurement.

Cities are big spenders

The size of the public procurement market is considerable: in total, public authorities in the European Union spend around 1500 billion on buying supplies, services and works annually – roughly 16% of the total Gross Domestic Product in the European Union. As a consequence of decentralisation processes, responsibilities and budgets have been shifted to regional and local public authorities (incl. utilities) who today spend around 65% of public procurement expenses¹.

Cities can make a difference

Clearly, changes in the consumption habits of cities can have a significant impact on markets and send strong signals to the public. Concerted demand from local authorities for innovative products and services with guaranteed standards will provide incentives for companies to evaluate their supply chains, invest in innovation, and review their employment policies. In the long term, this can lead to companies making sustainable products and services a standard available to all their customers.

Green procurement: The market impact of concerted public demand

The US Federal Government buys around 1 million computers annually – a market share of 3%. In the 1990s, a presidential directive committed all federal government departments to switch to buying energy-efficient computers (based on the Energy Star label of the national Environmental Protection Agency). This policy led to a huge increase in the number of companies manufacturing energy-efficient PCs in response to rising demand from the public sector: between 1992 and 1998, the number of Energy-Star labelled PC manufacturers rose from 10 to 600 – as this is virtually 100% of companies, basically anyone buying a PC in the USA today will be buying an energy-efficient model.

Source: ICLEI, The World Buys Green, p.59.

¹ OECD (2003): The Size of Government Procurement Markets, p.30.

1.2 A contribution to best value

Strict rules for procurement

All public authorities are obliged to follow strict rules regarding transparency and non-discrimination in their purchasing activities².

Best value for money

As they use public money in their purchasing activities, public authorities also have a special responsibility to spend wisely: they have to secure best value for money. The concept of best value requires purchasing decisions to be based not only on the price of offers, but also on their quality and ability to deliver additional benefits.

Responsible procurement: Considering impacts

Responsible procurement makes an important contribution to securing best value. It urges public consumers to consider ecological and social aspects when assessing the quality of an offer: What are the environmental impacts of a product along its whole life cycle? Under which working conditions is a product being manufactured, or a service delivered? Can the contractor contribute to the local authority's strategic policy goals? Is a product designed in a way that it takes into account special accessibility needs and minimises health impacts on end-users?

Responsible procurement – a definition

Responsible procurement aims at integrating social, environmental, and/or ethical concerns into public purchasing decisions. By practicing responsible procurement, public authorities realise added value when carrying out necessary purchases of supplies, services or works. They spend their procurement budget in such a way that, while delivering the required goods or services, the expenditure also contributes to wider policy goals.

Types of responsible purchasing

Pioneer cities are already adapting their buying decisions, opting to buy services, products, and works that support their policy goals in a range of areas:

- **Green procurement**
- **Ethical procurement**
- **Social procurement**
 - Promoting Employment
 - Safeguarding Working Conditions
 - Supporting the Social Economy
 - Promoting Equal Opportunities and Accessibility

1.3 The business case for responsible procurement

Investment in innovation

Responsible purchasing is innovative practice and as such will require initial investments both in organisational and financial terms. Challenges relate in particular to costs, guarantee of supply, and necessary expertise:

The **UK National Strategy for Local Government Procurement** defines best value as “the optimum combination of whole life costs and benefits to meet the customer's requirements”.

National Procurement Strategy for Local Government, p.17

Social procurement: The potential to push for law compliance

Between 1983 and 1989, the Greater London Council ran a procurement policy that checked suppliers' compliance with equality legislation. In order to be listed as approved contractor, companies had to demonstrate that they were complying with regulations on composition of workforce (regarding sex, ethnicity, disability), equal payment, and non-discriminatory HR management. A special unit was set up to administer this policy and run an accompanying programme to assist companies that did not comply. While at the onset of the policy, very few companies were compliant with equality legislation, significant numbers were encouraged to change their practices and procedures – for instance, the number of companies using non-discriminatory job application forms increased from 1,3 % to 44,7 %.

Source: UK Government Cabinet Office, Ethnic Minorities and the Labour Market: Final Report, p.122.

²

This includes both public administrations and utilities providing water, energy, transport or postal services. The legal framework for public procurement is set out in more detail in Section 3 of this chapter.

Challenges for responsible procurement

- Higher initial investments can be a problem for tight budgets; some benefits of responsible procurement cannot be expressed in monetary terms. Political commitment is necessary to defend long-term and non-financial benefits.
- As responsible procurement uses innovative standards, it can be difficult to find suppliers able to supply the necessary quantities. This is why market research and exchange with other local authorities is important.
- Using responsible procurement standards requires both technical and legal expertise, which is sometimes difficult to find within the administration. Co-operation across departments and with external experts from research institutions and NGOs is therefore a crucial success factor.

Despite these challenges, there are many good reasons which make the (business) case for responsible procurement:

Improved efficiency and accessibility

- Introducing responsible procurement requires strategic rethinking of procurement practices. This occasion can also be used to make internal procedures more efficient; as well as to improve accessibility of information on public tenders, potentially resulting in increased competition and reduced prices.

Long-term savings

- Through adopting a life-cycle costing approach in green procurement strategies, responsible purchasing practices will realise savings in operating and disposal costs. Labour market oriented procurement strategies can pay off by reducing expenditure for social benefits.

Promoting quality standards

- By considering both price and quality of an offer, responsible procurement encourages companies with high quality standards in their delivery of services or supplies. This will benefit the local authority's performance towards its citizens.

Supporting responsible business champions

- Responsible procurement turns private sector investments in social responsibility and environmental innovation into a competitive advantage. This will support the market position of champions of responsible business, such as social economy enterprises.

Compliance with legislation

- Explicitly building environmental and social requirements into contracts guarantees that local authority operations comply with relevant legislation.

Contribution to delivering strategic objectives

- Responsible purchasing practices can make a significant contribution to delivering strategic objectives of the local authority. This can include policies on environmental protection, social inclusion, equal opportunities, employment, global solidarity, sustainable development, and improved services to the public. It thus improves the quality of life both locally and elsewhere.

Improved corporate image

- Cities buying along responsible standards raise their public profile and represent credible model consumers towards their citizens. They also avoid being associated with ill-reputed companies or unreliable products.

2 Procurement in local authorities

2.1 What do cities buy?

Three types of purchases

Local authorities purchase items private consumers also buy – such as paperclips, computers or cleaning services; other purchases are more particular: the construction of roads, buses for public transport, or the management of the local school canteen. Three different types of procurement contracts are generally differentiated, depending on the object of the purchase:

Supplies

„Supplies“ comprise the purchase, lease, or rental of consumable and durable goods as well as potentially necessary installation operations: for example paper supplies, office furniture, schools food or the purchase of IT equipment and its installation.

Services

This type of procurement has as its object the provision of a service. In specific cases, a service contract might include the purchase of products or minor works necessary to deliver the service. Examples for service contracts are: maintenance and repair of facilities, banking services, market research, printing services, cleaning services, public transport, urban planning services, waste treatment etc.

Works

„Works“ refers to building, installation and civil engineering work, e.g. site preparation, construction of buildings, roads, bridges, waterways, electrical and plumbing installations, building plastering etc.

2.2 How does a buying process work?

Competitive tendering

Most buying processes³ in local authorities are carried out on the basis of competitive tendering: the authority publicises what it needs to buy and receives offers from competing companies. Two basic procedures can be distinguished:

- **Open procedure:** Any interested company can submit a bid for the contract.
- **Restricted procedure:** The local authority invites selected companies to tender for the contract.

In particularly complex circumstances, the authority can use more flexible procedures⁴:

- **The negotiated procedure** allows the purchasing authority to negotiate the terms of the contract with one or more pre-selected companies.
- The **“competitive dialogue”** method allows the contracting authority to develop possible solutions through a discussion with potential suppliers. Once the authority has received sufficient clarification, a restricted competition is put in place.

³ Only exceptionally – e.g. for purchases of very low volumes – can contracts be awarded directly to one company. The thresholds for direct awarding are defined by national procurement legislation.

⁴ The exact circumstances under which these flexible procedures may be used are laid down in European and national procurement legislation.

Other special procurement instruments include:

- **Framework agreements:** They are concluded in case supplies or services need to be called off repeatedly during a certain timeframe.
- **Joint procurement:** Several local authorities form a purchasing consortium in order to achieve better prices and conditions.

Procurement stages





Regardless of which procedure is chosen, all procurement processes move through the same basic stages: identification of needs; elaboration and publication of the contract notice; evaluation of suppliers; evaluation of bids; contract implementation and monitoring.

The call for tender

Any information on the requirements of the contracting authority and its expectations towards the contractor is summarised and published in the contract notice or call for tender. The call for tender thus represents the central reference point both for the bidding companies and for the decision-makers within the local authority and plays a crucial role in securing a successful purchase. It reflects each stage of the procurement procedure in a specific, standardised section.

2.2.1 The stages of a procurement process

The following section sets out the different stages of the procurement process, relevant terminology and necessary information in the call for tender.

	Stage in procurement process	Section in call for tender
	Identification of needs and contract notice	Definition of the subject matter Technical specifications
	Evaluation of suppliers	Selection criteria
	Evaluation of bids	Award criteria
	Contract implementation and monitoring	Contract performance clauses



Identification of needs and contract notice

Definition of the subject matter / Technical specifications

What do we need to purchase?
What exactly should the contract deliver?

This initial stage is crucial to a successful procurement process: the local authority draws up a basic description of a specific good, service, or work it wants to procure. The technical specifications then translate this into detailed characteristics and functions. This information is not only important to guarantee the authority will obtain exactly what it needs, but also to provide sufficient information to potential bidders so they can decide whether and at which price they are interested in making an offer. All offers have to conform to the technical specifications.



Evaluation of suppliers

Selection criteria

Which skills and qualities do bidders need to prove in order to be able to execute the contract?

At this stage, the reliability and capability of potential suppliers is assessed. In order to be eligible to receive the contract, bidders must demonstrate certain technical, financial and professional qualifications. Only tenders from eligible suppliers proceed to the next stage; the others are excluded. The call for tender must list the criteria used for selection or exclusion of bidders: selection criteria relate to human resources, skills profiles, experience, equipment, and management structures necessary to deliver the contract; exclusion criteria relate to potential mismanagement, lawsuits or grave financial problems of bidding companies.



Evaluation of bids

Award criteria

How well are the tender specifications met? Which tender offers the best value for money?

At this core evaluation stage of the procurement procedure, the quality and performance of the bids is evaluated against a range of parameters. Authorities can choose to award contracts on the basis of the most basic award criteria only - compliance with the technical specifications and price; but in order to identify the offer that delivers best value for money, additional criteria such as life-cycle costs, environmental impacts, innovation, user-friendliness, delivery of additional benefits etc. need to be considered. All award criteria must be published in the initial call for tender. At evaluation stage, a matrix is used to allocate scores and weightings to each award criteria; extra points can be awarded if a bid exceeds minimum requirements.



Contract implementation & monitoring

Contract performance clauses

Under which conditions should the contract be delivered? Is the contract being executed according to the agreed contract?

Once the best offer has been determined, a contract is concluded on the basis of the authority's call for tender and the company's bid. The contract will include any contract performance conditions the contracting authority may have established. Any company winning the tender is obliged to respect these, as long as they have been set out in the call for tender. Contract performance conditions can refer to, for example, delivery modes, disposal of products, or training of staff. The contracting authority should have mechanisms in place to monitor contract implementation in general and compliance with performance conditions.

2.3 Organisational structures

Resources for successful procurement	Implementing a procurement is a complex process and requires efficient organisational structures. Skilled professionals play a key role in ensuring appropriate and accountable spending of the procurement budget.
Combined approach	Organisational structures for purchasing depend on the size and administrative division of the city. Large cities generally combine centralised and decentralised entities: A central strategic purchasing unit supports decentralised structures in the design and management of procedures. It is staffed with procurement experts who are responsible for strategic planning, compliance with legal regulations, contracting, maintaining supplier relationships, and monitoring contract implementation. In addition, each administrative entity usually has its own purchasing unit for purchasing goods and services necessary for delivering its particular services.
Cooperation patterns	In order to realise saving opportunities, standard purchases (such as office equipment or furniture) which recur throughout different units might be carried out jointly. Purchases which require specialised knowledge may be assigned to the administrative entity with the relevant expertise.
Matching expertise and user needs	The combined approach brings together the benefits of both centralised and decentralised purchasing: The concentration of skills and knowledge of legal and procedural issues in a central „hub of expertise“ is matched with the perspective from the end-users who can best specify their particular needs.
Influence on responsible procurement	In terms of responsible procurement, both decentralised and centralised structures offer particular opportunities. Lower volume contracts resulting from decentralised purchasing offer more opportunities to include “responsible” conditions; on the other hand, a strong central purchasing unit makes it easier to introduce responsible procurement as part of the general procurement strategy.
Works procurement	Due to its large budget and the technical expertise required, the procurement of works is generally carried out by a separate entity. The procurement of works is generally divided into an investment and a maintenance budget.
Political involvement	The level of involvement of the elected council in public procurement varies. It is, however, common practice that the council or a designated committee need to approve high volume procurements.

3 The legal framework for responsible procurement

Local governments are not as free in their consumption decisions as private consumers: as they are spending taxpayers' money, they have to comply with national and European procurement law to ensure this money is spent to the maximum benefit of the community. At the same time, public authorities within Member States of the European Union (EU) have to comply with the basic principles of the EU Treaty and establish free access to their public procurement market for companies from all EU countries. They also have to comply with basic rules on international trade freedom as set out by the World Trade Organisation (WTO).

In order to ensure that public money is spent in an economical, relevant, and non-discriminatory way, national, European and international procurement regulations are built on three basic principles:

- **Transparency**
Procedures to award public contracts must be organised transparently and must use objective, accountable criteria.
- **Equal treatment or non-discrimination**
All interested companies must have a fair and equal chance to compete for the contract: calls for tender must be widely advertised; the location of a bidding company may not be used as evaluation criterion.
- **Best value for money**
Purchasing decisions can be based on an assessment of the price of bids alone, but should also take quality criteria such as environmental impact or community benefits into account.

3.1 Procurement legislation in the European Union

Free movement of goods and services

The free movement of goods and services within the Internal Market is one of the fundamental aims of the EU as laid down in the Treaty of Amsterdam. This is reflected in the European legislation on public procurement which requires a competition-based awarding of public contracts: companies from all Member States have to be able to tender for public contracts, regardless of their country of origins⁵; their bids have to be evaluated in an objective and transparent procedure.

⁵ It is therefore illegal for public authorities to favor local or national companies on the grounds of supporting the local or national economy.

Detailed regulations for large volume purchases

While these basic principles apply to any public contract regardless of its value, the EU Procurement Directives⁶ regulate particularly large public purchases. They define detailed procedures and guidelines for specifying requirements, rejecting and selecting tenders and awarding contracts. The directives also prescribe appropriate advertising of calls for tenders and contract notices across all EU Member States and define clear timeframes for procedures. A Common Procurement Vocabulary (CPV) code should be used in order to guarantee consistent terminology.

Thresholds to determine whether a public contract falls under the EU Procurement Directives:

Supplies and Services - central government	154,000	€
Supplies and Services - other levels of government	236,000	€
Works - all levels of government	5,923,000	€
Supplies and Services – Utilities	473,000	€
Works - Utilities	5,923,000	€

Figures from 2004.

These thresholds are exclusive of value-added tax and are reviewed every second year.

It is explicitly prohibited to split contracts into smaller projects in order to avoid the EU thresholds.

European Court of Justice Case Law

Cases of infringement are dealt with by the European Commission and the European Court of Justice (ECJ). Decisions of the ECJ have become an important reference point for the interpretation of Community law, particularly in the field of procurement: the revision of the EU Procurement Directives, especially regarding the new regulations on environmental and social criteria, has to a large extent evolved around ECJ case law.

Legal scope for responsible procurement

The revised Directives have clarified some fundamental principles concerning environmental, and to a lesser degree, social criteria in public purchases:

Awarding the contract to the “most economically advantageous tender”

- If an authority wants to award a contract to the bid offering best value for money rather than to the “lowest price tender”, it must state from the start that it will use the option of awarding the contract to the “most economically advantageous tender”⁷. The criteria used to determine the most economically advantageous tender must allow for a fair, transparent, and objective evaluation⁸.

⁶ In March 2004, the European Parliament and Council adopted a revision of EU procurement legislation: Directive 2004/17/EC (the “Utilities Directive”) regulates contracting of works, supplies and services by utilities in the water, energy, transport and postal services sectors. Directive 2004/18/EC (the “Classical Directive”) regulates contracting of works, supplies and services by all other public authorities. These new directives have to be transposed into national law by January 2006.

⁷ In some countries, national legislation translates this into two different types of procedures (e.g. Belgium: “adjudication/aanbesteding” and “appel d’offres/offerteaanvraag”).

⁸ See Recital 46 and Articles 27, 53.

- Link to subject matter of the contract**
- In order to avoid arbitrary decisions, any “responsible” requirements must be relevant in terms of the object of the purchase; must relate to the capability of the contracting company to deliver the contract; or must enable the contracting authority to deliver or improve its services to the public⁹.
- Appropriate publicising**
- Any environmental or social criteria that will be used to evaluate a bidder or a bid must be published together with the contract notice or call for tender.
- Acceptance of equivalent standards**
- Specifications regarding product performance or performance conditions should make reference to recognised (international) standards such as eco-labels and standards of working conditions, but equivalent standards must always be accepted¹⁰.
- Potential of performance conditions**
- Contracting authorities can specify conditions for the execution of a contract that embrace its environmental or social policy goals¹¹.

Further details on the scope for responsible procurement in the EU Directives are referred to in the presentation of specific responsible procurement strategies in Chapter II.

- National procurement law**
The EU Directives and general principles of non-discrimination and transparency are translated into national procurement law which serves as the primary reference for purchasing authorities. National regulations often prescribe procedures also for procurements below the EU thresholds, depending on the size, budget and complexity of the purchase.
- Compliance with other legislation**
European, national, regional, or local policies and legislation on environmental and social matters are other important reference points for responsible procurement. As public authorities have to comply with the laws they impose, the link to the subject matter is obvious. Compliance with legislation can be included in technical specifications, selection criteria, and performance conditions¹².

⁹ See Recital 46 and Articles 27, 53.

¹⁰ See Recital 29 and Articles 23, 50.

¹¹ See Recital 33 and Article 26.

¹² An example from Belgium: The government of the Brussels Capital Region issued a regional law on clean air which lists actions the government will take to assure better air quality. Among these is the legal obligation for government agencies of the region to have a certain percentage of clean cars in their fleet. Purchasing authorities can now refer to this law in the technical specifications of contract notices.

3.2 Procurement regulations of the World Trade Organisation

Free trade: the mission of the WTO

The mission of the World Trade Organisation (WTO) is to reduce barriers in international trade. Its 148 member countries (status: October 2004) negotiate and sign up to agreements that operate a non-discriminatory trading system which guarantees equal market access to foreign and domestic companies in each member country.

GATT and GATS

The two major WTO agreements are the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). Both the GATT and the GATS build on the basic WTO clauses of „most favoured nation” and „national treatment” to guarantee equal market access to suppliers from all countries member of the agreements.

Procurement and the WTO

While the general WTO rules on market access up to date¹³ exempt public procurement activities, a separate Government Procurement Agreement (GPA) has been signed by some WTO members including the European Union¹⁴. It aims at opening government procurement of goods and of some services and works above certain financial thresholds to international competition by implementing transparent and non-discriminatory procedures. In practice, this means that suppliers from the signatory countries to the GPA have the same access rights to the EU public procurement market as suppliers from EU countries. Regarding procedural regulations, a public procurement procedure that complies with the EU procurement directives will also conform to the GPA rules.

Scope for responsible procurement

Under WTO rules, the scope for responsible procurement is defined only in very broad terms.

Protection of human, animal, or plant welfare

- Under the GATT and the GATS, “responsible” criteria are generally regarded as protectionist measures which are legitimate only in exceptional cases and if their goal is to protect human, animal or plant welfare. Any product specifications and monitoring procedures have to be based on international standards and applied in a transparent way¹⁵.

¹³ Following a mandate in the GATS agreement, negotiations on including government procurement of services are underway.

¹⁴ The 38 members of the GPA comprise the EU Member States and Canada, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Netherlands-Aruba, Norway, Singapore, Switzerland, United States (December 2004).

¹⁵ Regulated particularly in the agreement on Technical Barriers to Trade (TBT).

- Debate on eco-labels**
- A current debate of relevance is whether eco-labels are a legitimate tool to distinguish between otherwise „like“ (same) products and thereby give preference to environmentally friendly products. The life-cycle analysis approach of eco-labelling schemes focuses on processing or production methods (PPMs) which often do not leave any trace in the final product (non-product related PPMs). However, as with EU law, it is possible to use the criteria of the eco-label in the technical specifications¹⁶.
- Health protection and socially excluded groups**
- Under the GPA, opportunities to include environmental and social concerns are phrased in a rather general manner. Measures aimed at protecting human, animal or plant life, or health are considered legitimate as are measures that give preference to contracts with sheltered workshops or philanthropic institutions¹⁷. In addition, special regulations favouring socially excluded groups are exempt from the provisions some countries.

¹⁶ ICLEI, The Procura+Manual, pp. 67-68.

¹⁷ GPA, Art. XXIII, §2.

Responsible procurement in practice

This chapter presents detailed advice on responsible procurement strategies in different policy areas:

SECTION 1 provides an overview of policy goals for and approaches to responsible procurement.

SECTION 2 present six major responsible procurement strategies, > outlining specific policy concerns as well as appropriate

SECTION 7 “implementation avenues” for each strategy. Examples from cities across Europe illustrate the practical implementation of responsible procurement on the ground.

1 Overview

Responsible procurement aims at integrating social, environmental, and/or ethical policy concerns into public purchasing decisions. By practicing responsible procurement, public authorities realise added value when carrying out necessary purchases of supplies, services or works. They spend their procurement budget in such a way that, while delivering the required goods or services, the expenditure also contributes to wider policy goals.

1.1 From green to social and ethical procurement

The history of responsible procurement

Through responsible procurement, cities can address a complex range of environmental, social and ethical policy goals. Today, green procurement is a concept fairly well known, while social and ethical procurement seem to require more promotion. The history of responsible procurement, however, shows a slightly different picture: social procurement is, in fact, a traditional economic instrument that public authorities have long used to support social policies. However, with the proliferation of international trade agreements, it has today become a challenge to align social clauses in procurement with the regulations on free trade and anti-protectionism.

In contrast, green procurement is a relatively new practice which only started to spread since the early 1990s. The diversification of the green procurement agenda is supported by scientific progress in environmental research and increased availability of environmentally friendly products, but, along with environmental issues in general, still needs to fight for recognition on the political agenda.

A similar need for political commitment can be found with ethical procurement as the latest addition to the responsible procurement agenda. Resulting from growing awareness on development issues and better marketing of ethical products, it is very much connected with awareness-raising activities for citizens. Its particular challenges lie with the definition of objectively recognised standards and guarantee of supply.

Careful phrasing of responsible requirements

In order to guarantee transparency and prevent arbitrariness, EU procurement law demands that any “responsible” requirements in public purchases must demonstrate a credible link to the subject matter of the contract and must be able to be assessed in an objective manner. This means that any policy goal an authority might wish to support through its procurement policy has to be rephrased and reshaped so that its relevance for the purchase in question becomes visible.

Green procurement

With green procurement, this relevance can be demonstrated rather easily. Environmental requirements for production methods and service delivery often have an impact on the final product or quality of service which constitute the object of the contract. In addition, life-cycle costing approaches demonstrate the financial advantages of green spending. Green procurement concerns can be integrated at any stage of the procedure; particularly the technical specifications of a contract provide good opportunities to promote environmental concerns.

Social and ethical procurement

For social or ethical concerns, it is generally more difficult to demonstrate such a link. Social or ethical criteria that assess issues backward along the supply chain normally do not impact on the final product in terms of characteristics or performance. It is also difficult to quantify the long-term financial and non-financial benefits of investing in social issues. Social or ethical procurement strategies therefore concentrate on the delivery of contracts, compliance with relevant legislation, and to a lesser degree, quality aspects at award stage.

1.2 Responsible procurement strategies

Six focused strategies

In order to make responsible procurement operational, prioritisation and a tailored approach are necessary. This guide helps local authorities to set priorities and choose a particular policy goal to start off responsible procurement. Three main areas of responsible procurement – social, ethical, and green procurement – are distinguished and translated into six responsible procurement strategies, each of which focuses on a particular policy goal:

- **Green procurement**
- **Ethical procurement**
- **Social procurement**
 - Promoting Employment
 - Safeguarding Working Conditions
 - Supporting the Social Economy
 - Promoting Equal Opportunities and Accessibility

1.3 Avenues for responsible procurement

While each strategy offers particular opportunities, there are six main avenues for integrating responsible consumption concerns into a procurement procedure. These avenues roughly correspond to the standard stages of a procurement procedure (see Chapter I):



Design of procedures and contracts

Streamlining and downsizing eligibility conditions and careful definition of the appropriate size and scope of contracts encourages competition from companies with less resources to invest in acquisition.



Advertising strategies

Targeted publicising and regular dialogue with suppliers can help to raise awareness of opportunities with business sectors that are less accustomed to tendering for public contracts.



Subject matter and contract specifications

Including relevant details in the description of the subject matter of the contract is the most straightforward way of stating responsible consumption requirements. Choosing a performance-based approach keeps open the option for bidding companies to offer innovative products or services not yet established on the market which might provide cost-efficient and better value solutions.



Selection and exclusion criteria

The evaluation of bidders in terms of technical capacity and compliance with legal requirements can be used to identify those companies best suited to deliver the contract according to responsible procurement standards.



Award criteria

By choosing to award a contract to the bid offering best value for money (the “most economically advantageous tender”), the evaluation of bids can be based not only on the price of an offer, but on additional responsible consumption criteria. These need to be carefully phrased and weighted.



Contract performance conditions

Any winning bidder can be obliged to comply with social or environmental requirements that the contracting authority sets for the delivery of the contract.

1.4 Monitoring responsible procurement

Setting ambitious standards for contractors means that contracting authorities should monitor compliance during contract delivery¹⁸.

For supply contracts, deliveries should be checked for compliance with the standards postulated in the technical specifications. Registers of companies that can supply products and services with environmental, social or ethical standards should be updated with information obtained during monitoring. Future purchasing decisions can then be based on previous experiences with contractors.

Monitoring is of course particularly relevant where performance conditions are used. Monitoring should not only check compliance with the contract clauses, but should also try to learn how the contractor implements the requirements or what difficulties are being encountered. This information will help to design the contract clauses in the best possible way for future contracts.

Some authorities assign staff to carry out inspections on the site of contract delivery. As this is costly, it can be limited to cases where the contracting authority is suspecting non-compliance.

Where companies experience difficulties in fulfilling the conditions, a first step is to try to co-operate with the contractors in order to improve compliance. In extreme cases, however, infringements can lead to a termination of the contract.

The following chapters present six different responsible procurement strategies. In each chapter, a brief introduction to the issues at stake is followed by a description of the general responsible procurement approach and a detailed exploration of the possible avenues for introducing responsible procurement concerns.

Please note:

The information provided in this chapter has been compiled on the basis of research on responsible procurement guidelines and practices across Europe. Information has been collected from cities and various organisations working with cities. It shows possible lines of action, which are being used by European cities, but which have however not always been legally tested. In some instances, alternatives are presented which depend on more restrictive or more liberal interpretation of existing regulations. It is therefore recommended that any local authority willing to adopt one or more of the approaches seek additional legal advice on a case-by-case basis. Please also consult the references section at the end of this guide for further information on particular strategies.

¹⁸ Suggestions for monitoring and evaluating the impact, costs, and benefits of responsible procurement strategies are provided in Chapter III.

2 Green Procurement

Issues Indicators that measure the ecological impact of private and public consumption continue to demonstrate an alarming over-consumption of natural resources and a global deterioration of environmental quality. At the same time, much progress has been made in developing more environmentally-friendly consumption patterns. Public authorities have an important role in promoting greener consumption, and can set a good example by minimising the environmental impact of their own consumption through adopting green purchasing practices. Besides its environmental benefits, green procurement can also contribute to enhancing local quality of life and long-term savings in utility bills through reduced consumption of energy and water.

Approach Green procurement is relevant for supplies, services, and works contracts. It aims at reducing consumption by re-evaluating the need for purchases; at buying energy- and resource-efficient products that cause less or no pollution; and at environmental performance during contract delivery. While green purchasing considerations can be integrated at any stage of a procurement procedure, it is particularly the definition of the subject matter of the contract and the technical specifications that allow the contracting authority to achieve environmental objectives.

Avenues



Technical Specifications:

Make environmental standards a core part of the contract

- The most straightforward approach to green procurement is to integrate environmental requirements already when identifying exactly what the authority needs to purchase. The technical specifications can set detailed instructions on the expected environmental performance of a purchase.
- Environmental technical specifications should be based on a life-cycle perspective that takes into account environmental impacts and costs at production, distribution, use, and disposal stage. Environmental labels based on scientific life-cycle analyses are helpful tools for contracting authorities to define standards¹⁹: the criteria used for awarding labels can be inserted as technical specifications into the contract notice. It is not compatible with European law to ask for a particular label, though.
- Another advice is to describe the technical requirements of a contract in terms of performance rather than a particular product. This allows bidders to propose innovative products that might offer more efficient solutions to a particular problem.

Green product catalogues in Vienna, Lyon, and Bonn

Green criteria for a wide range of regularly purchased supplies are in use in these cities. The development of the criteria relies heavily on environmental labels and required a lot of technical expertise. In Lyon, this work was done by a team of procurers and environmental engineers in the framework of the city's sustainable development strategy. Vienna set up a specific project (Ökokauf Wien) which involved various municipal departments and external experts and also led to the creation of permanent support structures. In Bonn, the environmental department developed green criteria on the basis of eco-labels and additional research on office materials. The procurement unit checked the criteria against their experiences of market availability, usability and affordability. All three cities consider that the rather high investment costs are offset by the fact the criteria lead to environmental benefits and often financial savings for significant parts of their purchases. In Vienna, for example, the replacement of conventional light bulbs with energy-savings lamps in the city hall reduced costs by approx. 110,000€ year.

¹⁹ The European eco-label: http://europa.eu.int/comm/environment/ecolabel/index_en.htm . Links to other eco-labels can be found at: http://europa.eu.int/comm/environment/ecolabel/other/int_ecolabel_en.htm

- In many countries, more detailed information on green criteria for procurement is available from national government, city associations, and environmental institutions for a wide range of products and services.
- The Procura+ Campaign on Sustainable Procurement, which brings together local authorities across Europe that have committed themselves to green their purchasing, proposes detailed environmental specifications for a set of product groups: buildings, buses, cleaning products and services, electricity, food, and IT equipment²⁰.



Selection Criteria:

Check the environmental performance of bidders

- When evaluating bidders, contracting authorities are entitled to verify that potential contractors possess the technical capacity and skills to comply with necessary environmental requirements as set out in the technical specifications. This can include the existence of an environmental management system.
- Bidders can be asked to demonstrate a track record of previous contracts for supplies, services, or works with similar environmental requirements.
- Standardised pre-qualification questionnaires on environmental performance and experience of bidders can present a time-saving solution.
- On the negative side, contracting authorities can exclude companies which have committed grave offences against environmental laws.



Award Criteria:

Evaluate the environmental quality of offers

- Relying on life-cycle analysis research, the contracting authority can consider any costs associated with the product, not only at the time of the purchase, but also during its use and disposal²¹.
- Choosing the “most economically advantageous tender” award criterion gives contracting authorities the opportunity to take into account the impact of a product or service on local environmental quality. As less environmental impact is a non-financial benefit to the authority which has the obligation to care for a good quality of life for the local community, offers with higher environmental standards can be rated better. It is necessary to use objective environmental indicators to measure this impact and to announce this in the call for tender.

Paris: Code of practice for public works

Companies tendering for public works contracts in Paris – representing a volume of approx. 200 Mio €/year - are obliged to adopt a code of practice at selection stage. This code postulates, amongst others, a set of environmental measures for the delivery of works: minimisation of public disturbance, protection of trees, cleanliness, environmental management of resources used, protection against noise, and training of workers on the requirements of the code. The performance conditions require the winning bidder to implement the code. The City of Paris has installed a technical commission composed of various stakeholders which is responsible for monitoring and updating the code of practice. In case of non-compliance, the contract can be terminated and the contractor excluded from future tendering procedures. While in the first years of the code, bids presented extra costs due to the environmental and training measures required to be performed, these have always been proportional to the value of the contract and have decreased by time. Also, accidents and complaints during road works have been reduced since the approval of the code of practice.

Oslo and Brussels: Financial savings in green supply contracts

Joint purchasing of cleaner vehicles brought financial savings of 10-50% to the City of Oslo in comparison to earlier decentralised purchases. Environmental concerns were integrated into the technical specifications (maximum emission levels of CO₂) and selection criteria (services of companies regarding disposal of vehicles). >>>

²⁰ For more information, see <http://www.procuraplus.org>

²¹ In order to assess the price of the tenders, the award criteria can evaluate solely the price of the purchase (the once-off investment). A more transparent picture of the costs associated with a contract, however, will be achieved by looking at the whole life-cycle of a product/service, i.e. purchase price, operating costs, disposal costs, investments for a healthy and safe working environment etc.-



Contract Performance Conditions:

Set environmental standards for the contract delivery

- Contracting authorities can set environmental performance conditions which any company that wins the bid will have to respect when delivering the contract.
- These conditions can refer to respecting environmental management schemes that are in place at the site of contract delivery. A cleaning service in local authority offices, for example, can be asked to contribute to the targets set in the framework of an EMAS Audit. The contract performance conditions would ban toxic cleaning products from being used on site; and would require the company to train its staff on using smaller amounts of cleaning products.
- Performance conditions can also consist of instructions on how to minimise the environmental impacts of the execution of the contract. This can be, for example, the request to deliver supplies in bulk in order to reduce transport travels; or to adopt particular measures in environmentally sensitive areas of contract delivery.

>>>The high volume of the contract (3 Mio €) justified the expense of 4,000 € on a market research study; and the investment of 400 working hours in the procurement department.

In the Brussels Capital Region, the purchase of high-performance rechargeable batteries involved a co-operation of the purchasing, environment and financial departments. The performance standards used in the technical specifications were developed on the basis of intensive own research. With regard to monitoring impacts, a special database permits to follow the life-cycle of the purchased batteries. The slightly higher purchasing costs for the higher performing batteries is expected to pay off within less than 2 years; after which delay an annual savings of 2340 € is expected, as no more batteries will have to be purchased.

Sevilla: Green procurement as part of a strategic policy

In Sevilla, green procurement represents one of the instruments adopted for implementing the city's energy saving policy. Supported by guidelines of the regional government on energy efficiency, the city council elaborated an energy optimisation plan for municipal buildings and street lighting. This included the purchase of thousands of more efficient and environmentally-friendly lights for municipal buildings and the instalment of LED-diode technology in all traffic lights in the city. The purchasing costs are expected to be offset very quickly by the high rates of energy saving – in total, the city is expecting a reduction of energy costs by 18%.

3 Ethical Procurement

Issues In the globalised economy, European consumers daily purchase a wide range of goods at attractive prices – but produced under conditions that would never be accepted in their own countries. On the other side of the supply chain, only a small percentage of the selling price reaches workers and farmers. Producers and retailers that comply with international conventions and standards for acceptable working conditions, minimum salaries, workers’ rights and against child labour – commonly labelled as fair trade or ethical principles – only have a small share of the market. Public consumers across Europe support this sector by giving preference to products that live up to ethical standards. They thereby set an example and demonstrate their readiness to take on global responsibility.

References for ethical procurement

Ethical trade is usually implemented through voluntary codes of conducts of major businesses with operations or supply chain relations in developing countries. Such codes of conducts commit companies to assuming ethical and social responsibility towards employees and other stakeholders. Most codes of conducts require external certification, but standards vary widely.

Fair Trade is promoted by NGOs and based on trading partnerships between producers in developing countries and importers in developed countries. It promotes “fair prices” for goods imported from developing countries, thereby offering better trading conditions to producers and strengthening their rights. Fair trade labels are awarded to products (rather than companies) on the basis of independent controls.

The Conventions of the International Labour Organisation (ILO Conventions) are globally recognised standards on workers’ rights and working conditions which have been ratified by most EU Member States.

Approach A procurement strategy focussing on the promotion of the fair trade sector and ethical business will mostly affect supply contracts, especially food and textile products. Fair trade or ethical purchases can be implemented at different stages of the procurement procedure. Two main lines can be distinguished: Using fair trade and ethical labels, particularly to define the subject matter of the contract; and referring to the ILO Conventions in selection criteria and performance conditions.

Avenues



Advertising strategies:

Encourage offers of fair trade retailers

- In order to enhance participation particularly from the fair trade sector, contracting authorities can publish their calls for tenders in targeted media and encourage fair trade retailers to participate in the competition.



Definition of the subject matter/technical specifications:

Buying (only) fair trade/ethical products

- There are differing opinions and practices concerning the possibilities for a contracting authority to use technical specifications in order to buy products that live up to fair trade/ethical standards.

For more background information on the differentiation of ethical and fair trade, see the Communication from the Commission to the Council on Fair Trade, COM(1999) 619. The four major actors in the fair trade sector (IFAT-International Federation for Alternative Trade, EFTA-European Fair Trade Association, FLO-Fair Trade Labelling Organisations International, and NEWS-Network of European World Shops) jointly promote the FLO Label. Other initiatives from the fair trade sector include the Rugmark label for carpets and the FSC label for timber. The Clean Clothes Campaign is an example of an independently managed code of conduct.

The EFTA is promoting the FairProcura project on fair trade procurement – for more information, see <http://www.eftafairtrade.org/>.



- The most liberal viewpoint holds that contracting authorities can - for any contract size below EU or national thresholds – define fair trade or ethical products as subject matter of the contract without fears of violating procurement laws. This can be done by listing criteria used in fair trade or ethical labels available on the market in the definition of the subject matter or the technical specifications.
- By linking the quality of a product to the conditions under which it was manufactured, the Conventions of the International Labour Organisation (ILO) could provide another reference point for technical specifications. This could be especially useful if a contracting authority wants to avoid buying products made through exploitative forms of child labour. Tenderers would have to supply a self-declaration or certification to prove compliance with those ILO Conventions specified by the contracting authority.

If a declaration is not supplied, bidders must be excluded because of non-conformity to the contract specifications.

- Others maintain that the specifications of a contract can only ask for a specific lot of the contract to consist of fair trade/ethical products. This approach makes it mandatory for all offers to include such products; bids that do not contain the demanded products are excluded for reasons of non-conformity with the contract specifications.
- The most restricted viewpoint is that fair trade/ethical principles are not eligible as essential contract specifications, as they relate to production methods rather than the characteristics or performance of the final product. Following this interpretation, the only option is to ask bidders to include fair trade products as a variant for parts or the whole amount of their offer. This approach implies, however, that bids cannot be rejected if they do not contain any fair trade options.



Technical Specifications:

Use links to other product characteristics

- While it remains unclear whether fair trade/ethical principles are eligible as contract specifications, other product characteristics that are eligible as technical specifications can have a strong affinity to fair trade and ethical concerns. Tendering for products using these characteristics can therefore be a way to buy fair trade products without explicitly mentioning them; or at least to realise some fair trade/ethical principles.
- For example, tropical products originating from organic agriculture are likely to have been produced under circumstances more favourable to the workers (at least in terms of health); many producers offering organic agricultural products also live up to fair trade or ethical principles.

Ethical procurement – a regulatory grey zone

The EU Directives do not provide guidance on applying ethical standards to procurement procedures. To date, no related case-law from the ECJ exists which could be used as a reference point; and there are differing opinions on the legality of including fair trade into public contracts.

As ethical standards do not refer to visible or performance characteristics of the purchased product, but to issues backward along the supply chain, including such requirements in a public purchase presents a special challenge. For technical specifications, selection criteria, or award criteria, it may be difficult to demonstrate the link to the subject matter of the contract.

While contracting authorities can require contractors to adhere to the basic ILO Conventions during delivery of the contract, it is not sufficiently clear whether this applies only to services and works contracts, or if it can also relate to the manufacturing phase of purchased products.

However, in general, the volume of supply contracts relevant for the fair trade and ethical sector remain below EU thresholds, which means that – while the basic principles of transparency and non-discrimination have to be respected – the complex EU regulations for conducting the procurement process and drawing up the call for tender do not apply. Nevertheless, there is no official guidance how exactly ethical standards can be included in the simplified procedure.

Due to this legal unclarity, this chapter presents both liberal and more restricted interpretations of possible avenues for fair trade/ethical procurement.



Selection criteria:

Encourage responsible supply chain management

- Again, different interpretations exist on how ethical standards can be incorporated into selection criteria.
- The most restrictive viewpoint is that it is not possible to use compliance of bidders and their subcontractors with ethical standards as selection or exclusion criteria other than in cases of so-called “grave professional misconduct”²². If a contracting authority becomes aware of the fact that a bidder has violated relevant ILO Conventions, this can be classified as violation of social and employment regulations and lead to the exclusion of the bidder. However, it remains the duty of the contracting authority to prove a grave misconduct.
- More liberal viewpoints hold that contracting authorities can require bidders to prove that the company and its subcontractors complies with the basic ILO Conventions, as these are supported by international government agreements. Again, this can be a self-declaration or an independent certification.



Award criteria:

Use links to strategic policies on global responsibility

- Cities with strategic policies on assuming global responsibility – such as a Local Agenda 21 action plan – could choose to support these policies through their purchasing practices. The ability of a bidder to deliver parts or all of the contract in fair trade products could form part of the award criteria.



Performance conditions:

Impose good working conditions and combat child labour

- It is a widespread viewpoint that ethical standards on working conditions can be integrated into performance conditions not only for services and works, but also for supply contracts. Although it is not totally clear how performance conditions relate to supply contracts, contracting authorities should have the right to insist that the products they buy have been produced under lawful conditions²³.
- The EU Procurement Directives list the ILO Conventions as potential performance condition; and most ethical and fair trade standards refer to the ILO Conventions to define good working conditions.
- Contracting authorities could therefore ask bidders to prove that the products delivered have been produced under acceptable working conditions as defined by ILO Conventions or that they and their suppliers are implementing measures to combat unacceptable working conditions. Contracting authorities must accept different proofs of compliance (i.e. self-declaration or independent certification), but they can point out that a specific label is one of the proofs accepted.

Fair trade products in canteens and vending machines

Staff canteens and vending machines run by the local authority can pass on higher prices for fair trade products to their customers. They therefore do not need to disadvantage fair trade offers at the award stage of a procurement procedure because of their higher costs. Staff canteens or vending machines run by subcontractors are not subject to the public procurement rules. It is therefore the decision of the canteen service provider whether or not to include/reorient its offer towards fair trade products. The contracting authority can set incentives for the service provider to provide fair trade products. Higher prices can be passed on directly to the final customer.

²² This viewpoint holds that the list of selection/exclusion criteria as published in the Directives is exhaustive, any additional positive selection criteria have to relate to the capacity of the bidder to delivering the contract; and as ethical standards have no impact on these capacities, they are not eligible.

²³ More legal advice is needed here on whether, in the case of supply contracts, it might be more appropriate to insert these standards in the technical specifications of the call for tender.

Barcelona **Buying sustainable timber****Bonn and
Lyon**

All three cities have adopted a policy that any timber purchased by the city needs to have been grown under sustainable conditions. All three cities ask their suppliers to indicate the country of origin of the timber they offer. Reference standards such as the Forest Stewardship Council (FSC) label are used to elaborate criteria for sustainable forest management.

In Barcelona, the information from bidders on environmental characteristics, sustainability, and social aspects during production and harvesting processes is analysed at award stage. Those offers that comply with more demanding standards of sustainable forest management (as shown through different certifications) receive a higher rating. Until April 2005, 12 contracts – representing 1,094 m³ of timber - have included certified timber (or the commitment to be certified within one year). This includes purchases of the municipal funeral services (coffins); parks and gardens services (benches, gates); and city districts (wooden stages for open-air performances).

In Lyon, technical specifications in supply contracts, and performance conditions in service or works contracts, require any tropical timber to originate from sustainably managed forests. As Lyon co-operated with other cities in the region on this policy, it hopes to achieve spin-off effects on the market for sustainable timber in the whole region and to support the creation of an eco-certification network.

In Bonn, the policy on tropical timber is accompanied by a policy on using native timber where possible. With regard to monitoring, the purchasing department carries out checks on the timber that is used on construction sites. It estimates the annual value of timber purchases at 200.000 €.

Bonn **Linking fair trade procurement to awareness-raising****and Bilbao**

The City of Bonn uses award criteria to buy fair trade coffee for its own consumption. The price for a cup of coffee has only risen marginally - around 2 cents per cup. This purchasing policy supports the city's promotion of fair trade products to its citizens – for example, the traditional sweets distributed during carnival festivities were also sourced from fair trade providers. Citizens can also buy “Bonn Coffee” – a specially labelled fair trade coffee sold exclusively in Bonn.

Adopting a similar awareness-raising approach, the City of Bilbao includes fair trade products in the hampers given to employees for Christmas. The technical specifications require that part of the contents of the hamper have to be fair trade products. The city also adds an information leaflet on fair trade products and their availability in Bilbao. More than 2.300 families can test fair trade products and find out where to buy them themselves. As the budget for this contract is fixed at around 125,000€, the inclusion of fair trade products does not raise overall costs.

**Bonn
and Oslo**

Clauses against child labour

The city councils of Oslo and Bonn have both adopted decisions against child labour which impact on their procurement practices.

In Oslo, the reference is ILO Convention Nr. 138 against child labour which holds contractors responsible for their supply chains. In the performance conditions of contracts, suppliers are required to declare that the products they supply or use in the delivery of works or services have not been produced by children. As a total ban of products from child labour can have devastating effects on the households in developing countries, the City proposes to accompany this procurement policy by compensatory measures in case the performance condition is breached.

Following the lead of the City of Munich in Germany, Bonn no longer purchases products originating from exploitative child labour (ILO Convention 182). Suppliers now have to designate the country of origin of the products and supply a certification or self-declaration stating that the products have not been manufactured by means of child labour. These clauses are inserted in supply contracts as well as in works contracts for building materials purchased by the contractor.



4 Social Procurement: Promoting Employment

Issues Active participation in the labour market guarantees income for individuals to sustain themselves and their families and facilitates social integration. Unemployment today is a major poverty risk for individuals and a threat to the social cohesion of cities; long-term unemployment also constitutes a significant cost factor for municipal budgets carrying the financial burden of social benefits payments. Cities are therefore engaging in a wide range of activities and programmes to combat unemployment. Public procurement contracts can support such labour market policies by encouraging the private sector to implement insertion measures.

Approach Addressing labour market issues in public contracts clearly supports the principle of best value. Recent European case-law and legislation confirms that cities can support their employment policies through including conditions on targeted employment or training measures in the performance conditions of contracts. Additional measures are possible at the design and advertising phases. Differently from other responsible procurement strategies, the main focus lies on the delivery phase of the contract rather than the tendering and awarding phase, and it is particularly important to monitor and assess implementation and impact of the chosen performance conditions. Promoting employment through public procurement is, by the nature of the cause, relevant for contracts for services and works.

Avenue



Advertising strategies: Encouraging “insertion organisations” to compete for public contracts

- When aiming at promoting labour market insertion through public contracts, organisations that work with persons experiencing particular difficulties in finding a job can be interesting contractors.
- As some of these “insertion organisations” are specialised on particular services or works, it can be useful to make them aware of specific contracting opportunities. A database of such organisations and their capacities can be a useful tool to decide which contracts can be interesting for which organisations in terms of skills and volumes of work.



Contract performance conditions: Make insertion measures a condition for contract delivery

- Contract performance conditions offer another good opportunity for promoting employment. They oblige any contractor winning the contract to provide labour market insertion measures during contract delivery.

Nantes: Employment promotion on cleaning and construction contracts

In support of its labour market policies, the City of Nantes adopted in January 2005 a policy to promote the employment of long-term unemployed, young persons with little qualifications, and handicapped persons on public cleaning and construction contracts. Rather than providing general rules, performance conditions are developed individually for each contract in order to identify whether and to what degree the employment of persons with difficulties is appropriate. Monitoring checks quantitative compliance (number of working hours) and provides supervision to the persons concerned by local job centres. One of the first contracts to implement this clause is a construction contract for two buildings which will feature 12500 working time hours of employment promotion.

Denmark: Support for social clauses

As part of its procurement web portal, the association of local governments in Denmark offers an internet service on social clauses in public procurement which includes a step-by-step guide, an automatic tool for composing social clauses, a database of example clauses and case studies from small and big Danish cities.

More information (in Danish language only) on: <http://www.socialaftaler.dk>

- The performance condition can constitute of providing vocational training for certain groups, such as long-term unemployed or young unemployed people. These people have the opportunity to improve their position on the labour market through consolidating existing or acquiring new skills.
- A more demanding performance condition is to require the winning tenderer to recruit a certain percentage of the employees working on the delivery of the contract from groups such as long-term or young unemployed people. Companies have three recruitment options: they can directly hire persons falling under the defined categories, they can recruit through a specialised job centre, or they can subcontract parts of the contract to a specialised integration agency.
- Suitability and design of contract performance conditions depend on the specific target group and the specific contract in question. The choice will depend on issues such as necessary qualifications, existing skills within the target groups, and total size of workforce on the contract.
- Typical contracts for including employment-related performance-conditions are contracts for cleaning services, green space management, and construction works. As a general rule, the desired effect of reintegration into the labour market will most likely be reached through long-term contracts of a minimum duration of six months²⁴.
- Two precautions need to be taken in order to comply with procurement law: Firstly, any contract performance condition must be non-discriminatory. Asking for integration measures for local unemployed people, for example, would be considered discriminatory, as it would be easier for local companies to arrange these. Secondly, the capacity of the contractor to deliver integration measures as required in the contract performance conditions should not influence the decision on the suitability of potential contractors or the quality of the offer – in short, the contractor’s track record in this field cannot be used as selection or award criterion.

Nottingham – Code of Practice for Employment & Training

Since 2002, Nottingham City Council promotes a Code of Practice for Employment & Training in the construction sector. It forms the basis for partnership-based action between the client (the local authority) and the supplier (the construction industry) in order to respond to complex workforce challenges in this sector. All contractors delivering construction work for the council are required to endorse the code; companies that wish to be listed as approved contractors will have to subscribe to the code before winning a contract. This entails commitments to advertise employment opportunities to unemployed people through the local employment service, and to offer training opportunities. Besides these labour market-related issues, the code also contains commitments to health & safety and equal opportunities policies. The city council has set up a social enterprise working for training and employment in the construction sector that manages and monitors the implementation of the code and supports the recruitment of workforce for public contracts.

More information: <http://www.necta.org.uk>

²⁴ In some cases, sectoral agreements on the transfer of employees might exist which guarantee that in case the contractor for a public service is changed, employees are transferred to the new contractor (e.g. for cleaning services). In this case, it only makes sense to include labour market-related performance conditions if the contract in question to be tendered is a completely new contract.

5 Social Procurement: Safeguarding Working Conditions

Issues National legislation on employment, social security, health and safety as well as collective agreements protects employees in areas such as fair pay, workers rights, and healthy & safe work places and must be applied during delivery of a public contract. Nevertheless, these laws and standards are not always adhered to, particularly in sectors like the construction and cleaning industries, where contracts are often awarded to the lowest price bid. This can lead to lowering the quality of service delivery, or even to breach of legislation. Through explicit demands for legal compliance, and through taking quality aspects into account when taking purchasing decisions, cities can support companies that behave responsibly towards their employees. This will ensure that public contracts are carried out according to law and to high quality standards. The significant market share of public contracts also means that the standards contracting authorities set will impact on the market as a whole regarding salaries and working conditions.

Approach Compliance of tenderers with basic social and employment legislation can be checked at selection stage for any type of contract. In addition, there is a range of further legislation relevant for working conditions and fair treatment of employees that can be enforced through formulating relevant performance conditions for works and services contracts. In addition, some contracts offer possibilities for enforcing good working conditions when drawing up technical specifications. In as far as they are linked to the quality of service delivery, working conditions can also be used at award stage.

As the EU procurement directives do not provide extensive guidance on social considerations that can be taken into account, the transposition into national law opens up possibilities to develop further criteria, particularly at award stage.

Avenues



Technical Specifications

Detail health and safety standards

- For particular works and services, health and safety both of end-users and of workers during contract delivery measures are important considerations. This is the case with contracts for e.g. gas fittings or construction works, but also with the type of products to be used for cleaning services. They can be included in the technical specifications of relevant contracts.
- Including requirements on working conditions in the technical specifications of a public contract gives them a higher profile than if they would be described as performance conditions only: it requires bidding companies to prove that they are capable of implementing the necessary measures.
- It is debatable in how far other working conditions - such as working hours, workers rights, or adherence to the Conventions of the International Labour Organisation (ILO) - can be addressed through technical specifications. It is possible to argue that the working conditions under

Stockholm: Combating black labour in the construction sector

In order to avoid that taxpayers' money ends up in unreliable companies, the City of Stockholm has adopted stricter standards for contracts regarding construction work. Works contracts represent a volume of ca. 100 Mio € per year. While it is standard procedure to check that companies follow Swedish legislation on tax payments, social security contributions and working conditions at selection stage, Stockholm uses an additional contract performance clause. It entitles the city to carry out checks on the location of contract delivery and ask to see evidence regarding payment of taxes, social security contributions, and wages. In some cases, an additional clause is used that obliges workers to carry ID badges which the city can compare with a list of staff the contractor has to supply. In case a company (or its subcontractors) does not fulfill its obligations during the duration of the contract, the city can cancel the contract. Currently, the city is planning to expand this clause to the cleaning sector in co-operation with trade unions who should assist particularly in monitoring compliance. While there has been a political discussion on whether it is appropriate for the local authority to be involved in controlling these issues and how to co-operate with the responsible public authorities, the city feels that it has the responsibility to promote fair competition.

which supplies are manufactured or services are delivered influence the quality of the production processes and subsequently the product. Quality assurance, in turn, is an eligible technical specification. However, the EU procurement directives make explicit provision for addressing ILO Conventions only through contract performance conditions²⁵.



Selection criteria:

Choose only companies that comply with legislation

- Through formulating appropriate selection criteria, contracting authorities can use procurement procedures to remind tenderers of their obligations under employment and social laws.
- The standard approach to ensuring good working conditions and fighting against black labour is to use selection criteria that check whether social security payments for staff are duly paid and working standards adhered to.
- Under the EU Procurement Directives, the relevant point of reference are the employment protection provisions and working conditions which are in force in the location where the contract is delivered²⁶. Contracting authorities are encouraged to state the bodies from which companies can obtain information on their legal obligations towards their employees. This would make it easier for foreign companies to know which standards they have to adhere to²⁷.
- Non-compliance with employment and safety regulations can be considered as grave professional misconduct and lead to exclusion from the tendering procedure.
- Bidders putting in “abnormally low tenders” that are suspected to rely on sub-standard wages can be requested to provide further information on compliance with regulations on employment protections and working conditions. If this additional information is not satisfactory, they can be excluded.



Award criteria:

Promote good working conditions by choosing quality

- Through choosing to award the contract to the company offering best value for money (“most economically advantageous tender”), contracting authorities are entitled to set up award criteria that promote quality services and, in consequence, good working conditions for staff.

²⁵ See Annex VI on the definition of technical specifications and Recital 33 of Directive 2004/18/EC.

²⁶ The current regulation is that in cross-border situations, the EU directive on posting of workers applies. The outcomes of the ongoing discussion between the European Parliament and the European Commission whether service providers have to comply with labour legislation in their country of origin or in the country of delivery of the service will also impact on the possibilities for local authorities to take these aspects into account in procurement processes.

²⁷ See Article 27 of Directive 2004/18/EC.

- Professional qualifications, experiences and motivation of a company's management and staff are paramount to achieve a quality service. Bidders can therefore be asked to provide information on issues such as staff qualifications, turnover rates, and career opportunities in order to assess their potential to deliver the contract at high standards.
- These categories also provide information on working conditions: the availability of highly qualified staff with good career opportunities generally implies that a company provides satisfying work places and adequate payment; low staff turnover rates imply that staff are motivated and happy with their working environment.
- Human resource management policies that go beyond legal requirements, e.g. on health and safety policies, employee participation, or training opportunities for staff, can also win extra points at award stage.
- In order to comply with legislation on maintaining transparency and equal opportunities, it is important to announce all award criteria when publicising the call for tender. The contract notice needs to state exactly which quality aspects will be taken into account, and which importance is allocated to each of them²⁸.



Contract performance conditions: Impose adherence to social standards

- Through drawing up explicit performance conditions, a contracting authority can underline a company's responsibility to adhere to legal provisions and collective agreements on employment protection and working conditions.
- Collective agreements for particular economic sectors generally deal with issues such as wage levels, working hours, holidays, and provisions for workers rights and employment protection.
- Other working conditions that can be imposed on the contractor regard health and safety measures; or training and education for staff.
- Good working conditions are likely to create a motivated and well-trained workforce. This will result in the contracting authority receiving high quality services from the contractor.
- Beyond adherence to national legislation, authorities can demand compliance with employment protection and working conditions as defined in the basic ILO conventions.

Linz, Austria:

Investing in experience

On the basis of quality considerations, the City of Linz awarded a contract for parking attendants' services to the more expensive bid. The relevant company had committed to employing only staff with more than three years of experience in the sector. This won the company an advantage at award stage, where experienced staff was evaluated as a major asset for delivering a quality service.

Source: Selecting Best Value. Manual for organisations awarding contracts of private guarding services, p. 3.

²⁸ Uni-Europa in co-operation with sectoral employer organisations has published two manuals on the integration of quality aspects into public service contracts for cleaning and guarding services. These manuals propose detailed award criteria and weighting schemes for assessing staff, management, and infrastructure of tenderers. With regard to the relationship between working conditions and quality services, the guides state: "It is widely recognised that the existence of a fair and transparent reward structure has a positive impact on the retention of experienced staff, their motivation and job satisfaction, and therefore the quality of their performance." For full references, see the References Section at the end of this guide.

6 Social Procurement: Supporting the Social Economy

Issues Enterprises from the social economy and other small businesses often play an important role in local job markets and provide employment opportunities for persons who otherwise experience difficulties finding jobs. They also safeguard the diversity of the local economy and, through their close local ties, are well placed to deliver contracts closely tailored to the authority's needs. Public procurement contracts can be used to support such enterprises, and can thus contribute to policy goals in areas such as inclusion, employment or economic development, as well as taking off pressure on social benefit payments.

What is the social economy?

While there is no official definition, the term is generally used to refer to a specific economic sector that pursues social aims through a business approach. The sector comprises co-operatives, mutual societies, foundations, and social enterprises. Governance and ownership structures are based on participation of employees and clients; profits are reinvested in business or in the community, rather than being passed on to shareholders. Social economy enterprises play an important role in job creation, training, maintaining social services, affordable financial services, and in the support of voluntary work. Their flexibility and contribution to social cohesion makes them an interesting business partner²⁹.

Approach With the exception of reserving contracts for sheltered workshops, it is illegal to limit access to public contracts to either specific types of businesses or to local businesses. Likewise, demands for local sourcing of labour force, supplies or sub-contracts during the execution of the contract are illegal. A procurement strategy that encourages social enterprises to enter into the competition for public contracts therefore needs to shape contract conditions in a way that such businesses can turn their specific assets into a competitive advantage. In addition, targeted advertising strategies have a significant role to play. All contract types - supplies, services or works - are relevant.

Avenues



Advertising strategies:

Raise awareness of contract opportunities

- Small businesses often do not possess the necessary knowledge about public tendering. Information and training sessions on procedures, publication of notices, rights and obligations of bidders and contracting authorities build capacity to respond to public calls for tender. As long as they deal only with general issues and not with specific future contracts, such information sessions can be directed specifically at local/small companies.
- Accessible information about bidding opportunities enables potential suppliers to easily identify interesting contracts. A procurement section on the city's web portal that lists current calls for tender as well as basic information on tendering procedures is a useful support tool.

²⁹ For more detailed definitions, see <http://europa.eu.int/comm/enterprise/entrepreneurship/coop/index.htm> and www.socialenterprise.org.uk. The recommendations presented in this chapter are also relevant for supporting small enterprises in general.

- Ensuring that all calls for tender are advertised not only (inter-) nationally, but also in local media, will increase the participation of locally based companies. In the case of calls above EU thresholds with Europe-wide obligations for publication, it is of course important to assure that the local advertisement provides no additional information and is not published earlier than the notice in the Official Journal.
- Keeping a file of social enterprises can help buyers inside the authority to directly inform potential bidders from specific business sectors of new calls for tender on top of the general advertising, e.g. in the case of restricted procedures. Such a database could also be made publicly available through a web site.



Design of contracts and procedures:

Make contracts attractive for these enterprises

- Small companies do not possess the resources to comply with heavy paperwork to prove their eligibility for a contract. Preparing a bid will be easier for them if contracting authorities establish straightforward selection criteria that involve as little bureaucracy as possible: for example by using standardised questionnaires to prove technical and financial capacity, and by limiting the timeframe for which previous accounts have to be provided.



Design of contracts and procedures:

Ask for variants including community benefits

- Through close ties to their locality, small businesses and social enterprises usually are well placed to add value to public contracts by delivering additional “community benefits” such as urban regeneration, labour market inclusion, or environmental quality. Integrating the delivery of community benefits into public procurement increases opportunities, but does not reserve the contract for social enterprises.
- The concept of “community benefits” originates from the reform of local government responsibilities in the UK. The UK Local Government Act of 1998 conferred a so-called “Power of Well-Being” to local authorities. Under this act, each local authority is required to develop a “Community Strategy” together with stakeholders which sets out it proposes to promote the economic, social, and environmental well-being of the community.
- The UK–National Procurement Strategy for Local Government launched in 2003 requires local governments to try to pursue community benefits through its purchases as a priced variant: bidders should be asked to include proposals and costs for contributing to the community strategy alongside the delivery of the contract.

Sheffield, UK: Social enterprises and housing investment

Sheffield City Council recently adopted a policy to expand the opportunities for social enterprises through its public procurement. This policy acknowledges the contribution social enterprises can make to delivering best value: they help to maintain a mixed supplier base and to provide local jobs, particularly for disadvantaged groups. Particularly in contracts for housing investments, Sheffield City Council asks tenderers not only to set out how they would contribute to the creation of attractive neighbourhoods, but also how they would contribute to training policies and work in partnership with social enterprises and small businesses. One of the most recent tenders with a volume of 1 billion £ is hoped to represent a huge opportunity for social enterprises in the construction sector over the next years.

Source: Procurement – The Social Enterprise Solution, p.18.

- In order to comply with European procurement law, it is important that such requirements are transparent and non-discriminatory against non-UK suppliers. The contracting authority should make the community strategy available to all bidders and point out which specific objectives it wishes to pursue through the procurement. It is prohibited to refer to resources or knowledge that only local or social enterprises can offer; or to impose local sourcing or sub-contracting requirements³⁰.
- While the concept of evaluating community benefits clearly evolves from ECJ case law on the consideration of social and environmental award and performance criteria, it also depends strongly on national policy and legislation in the UK which explicitly lists procurement as a tool to realise community benefits. It therefore remains unclear in how far this practice is transferable to other EU countries.



Specifications and selection criteria: Highlight involvement of users

- Certain supplies or services contracts need to be tailored closely to the future clients' or users' needs. In these cases, the contracting authority can include the involvement of users in the development of the service as a technical specification of the contract. In consequence, the ability of bidders to co-operate with end-users qualifies as selection criteria as it forms part of their technical capacity to deliver the contract.
- Social enterprises and other small businesses usually have close ties to local clients and are more flexible in responding to their needs. It will therefore be easier for such bidders to demonstrate their technical capacity in this area.



Award criteria and contract performance conditions: Highlight proximity advantages

- While law prohibits favouring local companies in the award of public contracts, certain contract conditions are easier to fulfil for local suppliers. Such conditions can of course not be randomly chosen and need to bring justifiable advantages to the contracting authority.
- Requiring a particular maintenance service to be available within a certain time limit in case of need, or asking for regular quality management checks in case of on-site delivery of services, obviously adds value to the contract while at the same time turning the proximity of a contractor into a competitive advantage³¹.

Nikolaev, Ukraine: Quick IT support

As in the European Union, procurement law in the Ukraine prohibits to give preference to local suppliers. The City of Nikolaev, however, finds that improved procedures and competition among suppliers can contribute to local economic development. When purchasing computers, for example, the city asks for a local service-center in order to receive quick support in case of problems. This requirement is easier and cheaper to offer for local suppliers.

UK: Promotion of small and social enterprises

In the UK, the government is promoting the "Small Business Friendly Concordat", which aims to encourage effective trade between local authorities and SMEs. Procurement from the social economy is also promoted through web directories of social enterprises and their services, for example www.nearbuyou.co.uk and www.shopsocialenterprise.com

³⁰ For more details, consult IdeA, Sustainability and Local Government Procurement, pp.65-66.

³¹ Some sources are of the opinion that it is more appropriate to include this as a performance condition. Such an approach would, however, not allow authorities to take better service availability into account when taking its decision on the successful tender.

7 Social Procurement: Promoting equal opportunities and accessibility

Issues Opportunities for active participation in society are still not equal: certain social groups are underrepresented on the labour market and overrepresented in unemployment statistics; many public amenities are not easily accessible for people with special needs. European-wide legislation on equal opportunities and accessibility is aiming at reducing such inequalities and preventing discrimination. As public authorities have a responsibility to ensure that all citizens can benefit from their investments of public resources, they should promote the implementation of these regulations by including equal opportunities and accessibility concerns in procurement procedures.

Approach Accessibility concerns relate to contracts for supplies, services and works and can be addressed through relevant technical specifications and award criteria, including the involvement of disabled users in the delivery of the contract.

Policies for equal opportunities on the labour market are mainly relevant for service contracts and for selected supply contracts. They are promoted particularly through relevant performance conditions; or in limited cases by reserving contracts for specific types of enterprise.

Avenues



Design of procedures:

Reserve contracts for supported work places

- A local authority can support employment opportunities for disabled people by reserving specific contracts for so-called sheltered workshops or supported workplaces³². Such a provision - a unique opportunity under European procurement law which otherwise prohibits to reserve contracts for special types of companies- must be stated in the contract notice. Competition for the contract will then be limited between sheltered workshops from across Europe.
- The official definition for sheltered workshops or supported workplaces refers to businesses where most of the employees are disabled and cannot work under normal conditions.
- Potential contracts include both supply and services contracts, such as certain manufactured goods, CCTV operation services, or cleaning services.

³² Recital 28 of Directive 2004/18/EC states: "Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. Sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market."



Technical specifications

Outline accessibility requirements

- The EU Procurement Directives encourage authorities to take accessibility criteria into account in any public contract, with non-compliance remaining an exception. The most straightforward way to do this is through including appropriate technical specifications.
- Supplies such as ICT products, services such as public transport, and works such as the construction of buildings should be tendered with appropriate accessibility requirements. Accessibility standards should be checked with relevant national bodies³³.



Selection criteria: Verify compliance with equal opportunities/accessibility legislation

- Bidders can be asked to demonstrate how they comply with existing legislation on non-discrimination, equal opportunities and accessibility.
- On the same grounds, non-compliance with such legislation can be sanctioned: bidders that have been found guilty of not complying with such legislation can be excluded from public contracts.



Award criteria:

Ensure services are tailored to needs of receiving groups

- The accessibility of a supply, service or work can be used as an award criterion. The disabled community should be given the opportunity to assess these aspects at evaluation stage.
- In the case of contracts for services that are targeted at specific groups – e.g. health care services for elderly migrants, or employment counselling for young women –, the ability of the bidders to respond to the needs of and work with the target groups can be used as award criteria.
- Award criteria could assess the track record of the bidder in working with the target group; or could take into account the expertise and skills of the staff that would deliver the contract.
- If a product or service is intended to be used (also) by disabled people, the involvement of a disabled person in the development of the product/service/work can be included as award criteria in order to ensure accessibility is implemented³⁴.

Stockholm, Sweden:

Enforcing equal opportunities on public contracts

Since 2002, the City of Stockholm is enforcing compliance with Swedish non-discrimination legislation in all its services and works contracts. As part of the standard clauses for each contract, a performance condition asks companies to comply with legislation forbidding discrimination because of race, sex, religion, ethnic belonging, sexual preference or functional disorders. In case a company does not fulfil its legal obligations, the city has the right to cancel the contract. Before taking such radical measures, however, the city will try to solve the problem in co-operation with the company. In 2005, the clause was extended to be used for all purchases (services, works and supply contracts with a total budget of approx. 1000 Mio €). This modified clause also gives the city the right to, at any time during the contract period, demand a written explanation from contractors on how they fulfil their legal obligations.

³³ Unfortunately, know-how on accessibility standards is dispersed among different stakeholder groups, and there is no centralised body at EU level which can provide information on accessibility standards.

³⁴ These issues could also be addressed through establishing relevant contract performance conditions. However, by including them at the award stage, they can be used to form part of the decision on which bidder wins the contract.

**Performance conditions:****Promote employment of specific groups in contract delivery**

- A contract for services or works can include performance conditions that underline the obligations of the winning tenderer to comply with national equal opportunities legislation on employing a certain quota of people belonging to disadvantaged groups (for example, disabled persons, women, or employment seekers from ethnic minorities).
- The performance conditions can also require the winning tenderer to employ a higher percentage of people from these groups than legally required in the delivery of the contract.

BUILD-FOR-ALL: Triggering accessibility in public contracts

This EU-funded project uses the opportunity of the new EU Procurement Directives to draw attention to the necessity of better integration of accessibility standards into public contracts. Through a co-operation of organisations representing users, contracting authorities, and the construction sector, the project partners will develop guidance on essential accessibility criteria for buildings and public infrastructure. The information will be disseminated through training events in several European countries. More information on the progress of the project can be found at <http://www.build-for-all.net/>

Organising responsible procurement

This chapter provides a brief overview of the three major organisational building blocks that are important for successful responsible procurement practices:

SECTION 1 outlines who the relevant actors are and how they can be brought together.

SECTION 2 discusses the resources needed to kick off the new strategy.

SECTION 3 provides an overview of a timeline of actions for implementation.

This chapter presents guidelines for a comprehensive approach towards introducing a responsible procurement strategy. Of course, it is also possible to start on a smaller scale with one pilot application of social, green, or ethical procurement, which will require less organisational input and can be gradually expanded.

1 Actors

1.1 Who needs to be involved?

Responsible procurement is a complex challenge and requires input from different fields of expertise in order to match expectations and opportunities. The following actors should be represented:

- Procurement Experts** Experts from the authority's procurement, financial and legal departments possess the necessary knowledge of procedures and legal frameworks. They can identify which avenues to adopt for implementing responsible procurement strategies; they can lead the formulation of contract clauses; and they can develop tools for monitoring contracts and costs that supplement existing procedures.
- Technical Experts** Depending on which responsible procurement strategies are selected, technical experts are required to identify the main issues connected with particular purchases and to propose how to shape them in a more responsible way.
- Such specialists can be found within the relevant units of the local administration – such as the environmental department, the social department, the economic development department. In many cases, it is a good idea to also involve external actors, who might have even more specialised knowledge: for example trade unions and employers' organisations, employment agencies, or NGOs working on development issues.
- Users** The users of the products or services purchased through a responsible procurement strategy should be involved in particular if the responsible procurement leads to a change of product or reorganisation of service. Only if the purchased items continue to fulfill user's expectations, can a responsible procurement strategy be a real success.
- High-level champions** Responsible procurement needs prominent promoters both from politicians and within the administration. Such champions of responsible procurement should be placed at high-level positions. On the administrative side, this could include the head of procurement, the head of works procurement, and other procurement budget holders. On the political side, the mayor, the chairs of council committees, or individual councillors involved in issues of relevance for the responsible procurement strategy selected can lend important support and provide indispensable assistance in preparing necessary political decisions.

1.2 How can co-operation be organised?

Once the necessary actors have been identified, structures and time schedules need to be set up for them to co-operate.

Project management team

A core team, ideally composed of representatives of the different administrative departments involved, should lead the process of introducing a responsible procurement strategy. It will conduct an initial inventory of the local context for responsible procurement, edit discussion papers, propose formulations for contract clauses, and accompany the first procurements that follow the new approach.

Consultations

The project management team should regularly consult on its results with a wider group of experts in order to get feedback from different perspectives. Such consultations can be organized as group meetings or by inviting bilateral (written) comments.

Publicity events

Press conferences and similar events can be used to present new responsible procurement strategies to both the public and suppliers. On these occasions, commitment from high-level champions will play an important role to win public support.

Permanent structures

After developing new guidelines or contract clauses for responsible procurement, implementation throughout the municipality has to be promoted and supported. To this end, a designated person or team – possibly within the central procurement unit – should be assigned to assist in drawing up tender documents and evaluating bids. This person or team could also analyse overall costs and impacts of new policies, and develop proposals on further activities.

2 Resources

2.1 What investments need to be made?

The major cost of introducing new procurement policies lies with the working time of the staff involved. This investment will, however, be distributed across different departments of the local administration. It is difficult to estimate the amount of working time needed to develop particular responsible procurement strategies – this will depend on existing experience, opportunities to learn from other cities, and the quality of political support. In addition to staff resources, investments might need to be made for market research or expert assistance in the development of appropriate criteria.

2.2 How will procurement budgets be affected?

In terms of procurement expenditure, initial investment costs can be higher when switching to more responsible policies. In the case of green procurement, these higher initial costs are set off by long-term financial savings. In other cases, financial benefits are less easy to quantify (e.g. savings in social benefit payments and additional tax income if long-term unemployed receive jobs on public contracts). In yet other areas, benefits are not measurable in financial parameters, but consist of better social cohesion (e.g. equal opportunities policies), or a contribution to improved development opportunities in other parts of the world (e.g. buying fair trade products). Particularly in these cases, political support for higher expenses is necessary.

3 Actions

3.1 What is the local context for responsible procurement?

As it is paramount to know from what baseline a city starts its responsible procurement activities, the first step should consist of a thorough analysis of the local context for responsible procurement. This inventory should analyse the existing procurement policy in order to assess whether responsible procurement issues are already included and how they can best be integrated. In order to win political support, it is necessary to identify which existing policies could be supported by adopting responsible purchasing strategies (e.g. environmental programmes and labour market policies). Finally, an analysis of the national and European policy context is important in order to ensure where there might be support available from other levels of government, where experiences of other cities provide useful input, and what laws and regulations are in place that might lend support.

3.2 What are the local priority goals for responsible procurement?

As responsible procurement covers a wide range of policy goals that are too complex to be tackled in one sweep, a city will need to prioritise strategies. A pragmatic approach is to start with selected contracts only and gradually widen the scope based on the experiences made with the first contracts. Such “testing fields” can be identified according to a range of parameters:

- Volume** - Authorities are more free in the design of procedures and formulation of contract clauses in contracts below European or national thresholds. Of course, lower volume contracts also mean that their significance in the municipal budget is not that high.
- Easy Opportunity** - Purchases for which responsible alternatives are widely available present straightforward opportunities with a high probability of success. Choosing an “easy” field as priority will make it easier to win support from users and politicians for more demanding projects in the future.
- Public profile** - Focussing on issues that can be easily marketed to the public reinforces the role of model consumer a local authority can play towards its citizens. Such responsible procurement strategies can be easily linked with awareness-raising activities and have an impact not only on public, but also on private consumption.
- Impact** - Prioritising the introduction of responsible procurement according to the level of environmental risk or social impacts requires sound scientific data, but can bring the highest positive impact.

Consultation of different expertise plays a paramount role in the identification of priorities which needs to take into account multiple perspectives.

Barcelona: Mainstreaming green procurement

The Barcelona City Council's Green Office programme aims at mainstreaming green procurement in all its daily operations and has developed wide-ranging awareness-raising activities for all its employees: a “Green Office Guide” was distributed to all 12,000 employees; training courses on green procurement and environmental contract clauses in general and on specific purchases such as timber and recycled paper are held on a regular basis; and updated information is available through a bimonthly newsletter, a special web page (www.bcn.es/agenda21/oficinaverda), and regular meetings of cross-cutting internal working groups dealing with issues such as fair trade promotion and timber procurement.

3.3 How to proceed with implementation?

Once context and priorities have been clarified, an implementation framework needs to be developed. This comprises:

- Action plan** - An action plan that summarises the results of the context analysis, presents the priorities and objectives, and outlines concrete steps to meet its targets.
- Political commitment** - The action plan also feeds into a policy document to put forward to the council in order to win political support for responsible procurement. Apart from the concrete steps outlined in the action plan, the council should commit to minimising the environmental and/or social impacts associated with the products, services, and works it purchases and support specific objectives for reshaping the procurement policy. It should also assign a responsible unit in the administration.
- Training** - Background information on the prioritised purchases needs to be prepared for staff carrying out procurements. Information should be available on environmental and social impacts, responsible criteria and contract clauses to be used, and potential suppliers that meet these standards. At this point, the involvement and feedback from different stakeholders again becomes crucial.
- Information of suppliers** - At the same time, suppliers need to be informed of the new requirements the authority will be introducing in its tender documents, so they can adapt their offers accordingly.

Once these tools are available, calls for tender can be published, offers evaluated and contracts concluded.

3.4 Monitoring and evaluation

As with any new policy, and as with any expenditure of public money, responsible procurement practices should be closely monitored and regularly evaluated. This will deliver information on their effectiveness and contribution to strategic policy goals as well as potentially necessary adaptations. Monitoring of responsible procurement should focus on expenditure, impact, and contractors used³⁵.

- Financial evaluation** Financial and quantitative data on procurement are rather straightforward to collect and in most authorities there will already be a system in place which can be adapted and used for responsible procurement purposes.
- Non-monetary impacts** Evaluating the non-monetary benefits of responsible purchasing practices is a very complex task which requires extensive scientific support and the development of new instruments. For social or ethical procurement strategies, no such information is available on a European scale. The environmental benefits of green purchasing have been analysed in an extensive research project co-funded by the European Commission. The results of the RELIEF project are not only useful for demonstrating the impact of green public consumption habits, but also for delivering useful indicators to monitor local green procurement practices³⁶.

³⁵ Monitoring is also necessary on the level of contract delivery.

³⁶ More information: <http://www.iclei.org/europe/ecoprocura/relief/>.

Basic indicators Issues for monitoring and evaluation should be developed along with the responsible procurement strategy, so that they can be applied from the start of the new approach. Basic indicators to monitor responsible purchases should include:

- Quantities of responsible products purchased
- Expenses for responsible contracts
- Comparison of new and former expenses for particular contracts

In addition to indicators, it is also important to collect qualitative information, such as putting together a database of suppliers of responsible products and services; and keeping track of potential difficulties suppliers encounter to comply with responsible criteria.

Advanced evaluation A more advanced evaluation of the impact of responsible procurement would also need to look at the following issues:

- Long-term financial savings or costs triggered by responsible purchases,
e.g. reduced electricity consumption of computers
- Financial community benefits of responsible contracts,
e.g. less black labour leading to higher tax income
- Costs of non-responsible contracts,
e.g. sick days of employees working with toxic cleaning products
- Non-monetary benefits of responsible purchases,
e.g. improvement of air quality indicators.

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CARPE guide to responsible procurement

CARPE

CITIES AS RESPONSIBLE PURCHASERS IN EUROPE

Cities daily spend large sums on buying goods, purchasing services, and commissioning works to run the local administration and deliver services to citizens. With more than fifty percent of public procurement expenditure spent on regional and local levels, cities represent a considerable market force which they can use to make a difference: by practicing responsible procurement, cities take into account social, environmental, and ethical issues along the life cycles and supply chains of the products and services they buy. Necessary expenditure for goods and services can thus contribute to wider policy goals.














The CARPE guide on responsible procurement presents an overview of the potential for responsible procurement in European cities. It provides a basic introduction into public procurement procedures and legislation and develops detailed guidelines for six different responsible procurement strategies: green procurement, ethical procurement, employment promotion, promoting the social economy, safeguarding working conditions, and promoting equal opportunities and accessibility. The CARPE Guide is accompanied by a web site which contains further information, case studies on the project cities and practical tools for responsible procurement at <http://www.carpe-net.org>.

CARPE

CITIES AS RESPONSIBLE PURCHASERS IN EUROPE

The CARPE Guide and web site were developed in the framework of the CARPE project which brought together twelve EUROCITIES members in exploring opportunities for adopting social and environmental criteria in their procurement practices. The CARPE project analysed experiences across the different approaches to responsible procurement such as fair trade, green procurement, or employment promotion. The project was co-funded by DG Employment and Social Affairs.

PROJECT PARTNERS

 Ajuntament de Barcelona	 Bilbao	 Bonn	 BRUSSELS-CAPITAL REGION	 Lille Métropole	 VILLE DE LYON	
City of Barcelona, Spain	City of Bilbao, Spain	City of Bonn, Germany	Brussels Capital Region, Belgium	Urban Community of Lille	City of Lyon, France	
 Nantes		 MAIRIE DE PARIS	 STOCKHOLM	 AYUNTAMIENTO DE SEVILLA	 City of Vienna	 EURO CITIES
City of Nantes, France	City of Oslo, Norway	City of Paris, France	City of Stockholm, Sweden	City of Seville, Spain	City of Vienna, Austria	Eurocities Secretariat, Brussels

