

DOCUMENT

with recommendations to encourage organization of “green” public procurements and prevent corruption in the process

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Document with recommendations to encourage implementation of “green” public procurements and prevent corruption in the process

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INTRODUCTION

Having in mind the purchase power of money that are spent annually on public procurements for state institutions to purchase goods, services and construction works for their needs and for needs in the society, it becomes clear that procurement of products that have lesser negative impact on the environment could make a significant contribution towards sustainability of the environment in which we live and work.

In North Macedonia only, public procurements account for around one billion euros – money which could become an instrument for pursuing “green” policies and promoting environment quality provided that the concept of “green” procurements is applied.

In the European Union, “green” public procurement is described as “a process whereby the public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle compared to goods, services and works with the same primary function that would otherwise be purchased”.

Similar definition is used in the United States, where these are called “environmentally preferential purchasing” or “green purchasing”, which is generally defined as “purchasing a product that has a lesser or reduced negative effect or increased positive effect on human health and the environment, when compared with competitive products that serve the same purpose”.

In other words, a common feature of both definitions is that “green” public procurements are those that have lesser negative impact on the environment compared to “usual” procurements.

Long-standing practice of implementing “green” public procurements in many countries across the world has shown there are no actual grounds for the two most often used justifications for non-implementing “green” procurements, i.e. there is insufficient supply, meaning there are no “green” products on the market, and “green” procurements are more expensive than common procurements. On the contrary, the practice has shown that the more the institutions seek and purchase “green” products, services and works, the more the business sector is adjusting to the market and offers more green products.

As regards the price of “green” procurements, it turns out that, in the long run, and when the product’s life-cycle costs are taken into consideration, their price is much lower compared to the one-time higher price of what is purchased. The concept of “life-cycle costs” includes all costs related to procurement, use and disposal of any product. According to this concept, common products are cheaper only in terms of their initial price of purchase, but imply much higher use and disposal costs, making “green” products not only environmentally friendly or preferable, but also cost-effective.

Goods, services and works impact the environment in each of these three phases: procurement, use and disposal. In the procurement chain, this impact is seen in raw materials, energy and water consumed and waste created during production and transport. In the case of product use, this impact is measured against energy and water consumed, waste and emissions created, and materials spent, such as paper, ink, etc. In the case of product disposal, the environmental impact is defined in terms of waste, emissions, but also the possibility for future new use of the object in question as potential raw material.

Be that as it may, experiences from other countries in the world show the pivotal importance of jumpstarting “green” public procurements. Hence, there are a series of measures that authorities can take to encourage use of “green” procurements, which has gained importance in the last several years marked by more prominent negative effect of climate change which is a result of environmental pollution.

Contrary to many countries in the world that have already recognized the value of so-called green public procurements as instrument for pursuing environmental policies, in North Macedonia “green” procurements are not even discussed. On the account of the absence of clear policies and guidance, there are diametrically opposed practices among institutions.

STATE-OF-PLAY WITH “GREEN” PROCUREMENTS IN THE COUNTRY

In order to assess the actual state-of-play concerning the extent of and the manner in which “green” procurements are implemented in North Macedonia, in the period June - December 2022, the Center for Civil Communications conducted extensive research on a sample of tender procedures that could be linked to the environment or can be assessed as contributing to environmental protection, and analysed data on public procurement procedures in the country implemented in the period from 01.07.2021 to 30.06.2022.

The general conclusion inferred from the research is that there are almost no “green” public procurements in the country and that the right to discretionary proceeding on the part of the institutions in terms of eco-labelling public procurements, implementation of environmental protection standards and adherent enforcement of the Government’s recommendations provide fertile ground for external influence and, accordingly, for corruption. The analysis detected numerous findings, most important of which are elaborated here:

- **The Law on Public Procurements allows organization of so-called green or sustainable procurements, but they are not implemented in the practice.**

The Law on Public Procurements stipulates three crucial preconditions for implementation of green procurements. First, it stipulates that environmental protection elements should be considered as early as the procurement subject’s description. Second, in addition to price, bid-evaluation could also use the procurement subject’s ecological characteristics and environmental aspects. Third, companies participating in tender procedures can be requested to fulfil environmental management standards.

The research shows that description of the characteristics of goods or services being procured (technical specifications) do not include specific ecological features or conditions related to environmental protection.

As regards the criterion for selection of the most favourable bid, dominant is “lowest price” (94%). It is noted that the few tender procedures that use the selection criterion “best price-quality ratio” do not include elements related to environmental protection. The legal provision from the Law on Public Procurements whereby advantage can be given to bidding companies that use transport of lesser burden to the environment is not enforced as well.

Albeit in small scope, legal provisions that imply requirements for bidding companies to implement environmental management standards are enforced in around 5% of tender procedures covered by this one-year monitoring effort.

- **The Government and its institutions do not enforce recommendations and conclusions adopted at governmental sessions aimed at implementation of measures that should ensure positive effects of public procurements on the environment.**

The Government has adopted three conclusions that could be assessed as relevant for encouraging the institutions to implement more “green” procurements.

The first conclusion concerns a defined task for state administration bodies not to procure water and other beverages in plastic packaging, as well as sugar mini packages, plastic coffee spoons, plastic

straws and single-use cutlery. The second conclusion concerns compliance with the principle of preventing so-called disloyal green competition. The third conclusion is written in the form of recommendation for state administration bodies to ensure that, as part of their future vehicle procurements, a number of vehicles procured are hybrid or low-emission vehicles.

Around 1.3 million litres of water in cumulative value of approximately 460,000 EUR were procured in the monitoring period (01.07.2021 - 30.06.2022). In that, 89% of drinking water is packaged in plastic bottles, and only 11% in glass bottles.

As regards implementation of the principle on preventing disloyal green competition, the research shows that literally no tender procedure of the Government or line ministries has requested bidding companies to implement their extended producer responsibility (EPR). In doing that, there are no guarantees that procurements are not made from producers that have not complied with their extended producer responsibility and are, therefore, marked by lower price compared to another producer that offers a product of same quality and characteristic, but has implemented the extended producer responsibility.

As regards procurement of vehicles, the research shows that among total of 206 vehicles purchased in the one-year monitoring period, only 12 vehicles (6%) are hybrid or have combined engine (petrol and LPG). Almost all other vehicles are fuelled by diesel or petrol. Even the Government uses vehicles with diesel engines that have been procured after this decision was taken.

- **The absence of any “green” aspects in public procurements starts as early as public procurement planning where dominantly there is no elaboration of public procurement need and no documented evidence on the manner in which the procurement’s estimated value was calculated.**

Decisions on organizing public procurements should include an elaboration of public procurement needs, which is even more important for this type of procurements that are specific to environmental protection. The research shows that this obligation has been respected by slightly more than one-third of monitored public procurements. However, even in the case of tender procedures that include an elaboration of public procurement needs, the justification provided is usually brief and superficial.

Furthermore, the institutions do not have documented evidence on the manner in which they have calculated the estimated value of their tender procedures. Not a single tender procedure from the monitoring sample included a document that could provide insight into the method for calculation of the procurement’s estimated value. The absence of market research aimed to ensure actual estimation of costs is worrying, especially when put in the context of low competition among companies. Except for the risk of contract award at prices that are higher than actual market prices, this monitoring effort observed several examples that could be indicative of illegal proceedings on the part of institutions in relation to estimated values and bids received.

- **In the country, competition in environment-related tender procedures is significantly lower compared to competition in other public procurements.**

The average number of bids calculated for monitored public procurements related to environmental protection (procurement of plastic recycling machines, development of environmental protection studies, development of energy efficiency programmes, ambience air quality monitoring stations,

replacement of non-environmental with environmentally friendly heating systems, development of the Cadastre of Air Polluters, procurement of LED lights, etc.) stands at 2.10 bids per tender procedures. In that, the average number of bids for this type of procurements is significantly below the national average of bids calculated for 2021, which was 3.31 bids per tender procedure. The fact that as many as 45% of tender procedure were presented with one bid each is also indicative of low competition in this segment of public procurements. Satisfactory level of competition was noted in only 28% of monitored tender procedures. Here it should be noted that all tender procedures presented with one bid have resulted in contract award. On the other hand, in the case of tender procedures marked by higher number of bids, the analysis shows increased bid rejection, and even tender annulment.

PROPOSALS TO UPTAKE USE OF “GREEN” PUBLIC PROCUREMENTS AND REDUCE CORRUPTION IN THE PROCESS

Based on experiences from other countries and having in mind the state-of-play and specificities in our country, several steps and measures can be recommended for the authorities and state institutions to jumpstart and encourage greater use of “green” public procurements.

- **Adopt a state-wide policy on “green” public procurements**

that would be mandatory for implementation by all state institutions which spend taxpayer money on public procurements. Such policy should include targets, as well as methods and means for attainment of targets, monitoring progress, as well as stimulating and sanctioning measures. Good examples of such policies can be found in similar documents adopted by many EU member states.

- **Adopt a national action plan on “green” public procurements**

as a framework for integrated measures aimed to ensure greater and adequate implementation of “green” procurements.

- **Define a jumpstarting list of goods, services and works that will be mandatorily organized as “green” procurements**

by using criteria, characteristics and other aspect that will facilitate reduced environmental effect of products procured. Each of these products should be accompanied by special procurement guidelines, minimum “ecological” characteristics, and even methodologies for calculation of the procurement’s life-cycle costs. The selection of procurement subjects can be made on the basis of already used examples from EU member states, with focus on the procurement subject’s environmental impact, the potential to have positive effect on the environment, suitability for application of the concept of life-cycle costs, etc. Products and areas that could be used for jumpstarting this type of procurements include: **energy efficient devices** (for example, copiers, printers, other office equipment, computers, lighting (including traffic lights), appliances, air-conditioning, heating and ventilation equipment, etc.); **recycled content products** (for example, office paper and envelopes, packaging, plastic timber, traffic cones, re-refined motor oil, antifreeze, and toner cartridges); **ecological cleaning products** (for example, those that meet certain standards that are clearly marked on their packaging); **green computers and office equipment** (in addition to energy efficiency in operation, it is important to take into consideration the environmental created by each phase of the product’s life, from extraction of raw materials and the quantity of energy and water consumed for their production, to end-of-life handling and disposal of hazardous materials in certain components); **environmentally preferable paper** (for example, recycled content paper, office paper and envelopes, post-consumption fully recycled paper, chlorine-free processed paper or post-consumption recycled paper to the maximum extent, non-recycled content derived from sustainably managed renewable resources, as well as strategies for reducing paper consumption and printing by default both-page setting on printers, and discouraging paper prints in general, use of chlorine-free processed paper (PCF) to the maximum extent possible for publications and other prints); **ink** (for example, using water or vegetable based lithographic for printing to the maximum extent possible and reducing or eliminating use of colour printing where possible); **services** (for example, printing, landscaping, pest control, etc.).

- **Set a percentage of public procurements that must be organized as “green” (with tendency to increase this share every year)**

whose implementation must take into consideration the environmental protection aspects. This gradual approach to obligations for use of “green” public procurements will ensure gradual acceptance of the commitment for application of this concept by all contracting authorities (almost 1,400 institutions).

- **Develop handbooks, guides and similar materials**

that will help the contracting authorities to plan, organize and implement “green” procurements. In that, the process for development of such documents must include all stakeholders from areas related to environmental protection. Good examples can be found in similar handbooks and guides developed in the European Union, the United States, Australia, etc.

- **Provide inception and ongoing training together with the tools developed (handbooks)**

targeting persons responsible for public procurements and other persons involved in this process, with a focus on the obligations, implementation methods for “green” procurements, market research, calculation of the procurement’s estimated value, definition of the procurement subject, development of tender documents and technical specifications, definition of contract awarding criteria, application of the concept of life-cycle costs for products, “ecological” standardization of products, benefits and other aspects related to addressing lack of information, knowledge and skills needed for implementation of these public procurements.

- **Develop guidelines for adequate and uniformed “eco-labelling” of products**

that will facilitate development of tender documents and technical specification, and procurement of such products. Eco-labelling of products in the European Union can serve as example.

- **Engage in adequate communication and develop a special communication plan**

for the overall process, in order to ensure better understanding among citizens and people that will be involved in implementation of that plan (employees at state institutions, business sector, civil society, experts and scholars, etc.)

Having in mind that the concept of “green” procurements has already been well developed and functional in other countries across Europe and the world, which means there is a sufficient fund of positive examples and monitoring practices, and knowing that the relevant legal framework is already in place in our country, it seems there are no other barriers, except for the required political will, to facilitate and encourage use of “green” public procurements in the country.