

RENATA KOZIK*

GREEN PUBLIC PROCUREMENT CRITERIA FOR CONSTRUCTION CONTRACTS

KRYTERIA ŚRODOWISKOWE W ZAMÓWIENIACH PUBLICZNYCH NA ROBOTY BUDOWLANE

Abstract

This paper describes the legal conditions for the award of Green Public Procurement for construction works. Environmental criteria that can be used in contracts for construction works are also presented. The author presents current practice in green procurement organized by Polish authorities.

Keywords: Green Public Procurement, environmental criteria, works

Streszczenie

W artykule przedstawione zostaną uwarunkowania prawne udzielania zielonych zamówień publicznych na roboty budowlane. Zaprezentowane zostaną kryteria środowiskowe, które mogą być stosowane w zamówieniach na roboty budowlane. Autorka przedstawi również dotychczasową praktykę w udzielaniu zamówień zielonych przez polskich zamawiających.

Słowa kluczowe: kryteria środowiskowe, zielone zamówienia, roboty budowlane

* Ph.D. Renata Kozik, Department of Construction Technology and Organisation, Faculty of Civil Engineering, Cracow University of Technology.

1. Introduction

Green Public Procurement is “a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured” [8].

Through the use of ecological criteria, contracting authorities may significantly affect the development and dissemination of environmental technologies. Green Public Procurement can therefore be an important factor in stimulating market innovation and encouraging the creation of eco-friendly products. Green Public Procurement can also provide financial savings throughout the life cycle of product.

European Union legislation imposes mandatory requirements for the procurement of certain goods and services, for example by setting minimum efficiency standards. Mandatory requirements also apply to the construction sector. Since 2013, all new construction projects and major renovations projects (e.g. renovation of more than 25% of the external walls or if the cost of the renovation exceeds 25% of the building value) excluding the value of the land, will have to use the minimum energy performance requirements.

From 1 January 2019 all new buildings used and owned by public authorities must be buildings of nearly zero energy (Directive 2010/31/EU on the energy performance of buildings).

In addition, some Member States have specific provisions under which mandatory standards for Green Public Procurement in relation for specific sectors or types of contracts are created [7].

1.1. Legal provisions

Polish regulations on Public Procurement is tailored to the requirements of European Union legislation, including Green Public Procurement.

1.1.1. European Union legislation

The basic legal acts adopted at EU level policies regulating Public Procurement are: Directive 2004/18 [4, 7] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC [5, 7] which covers the procurement procedures of entities operating in the water, energy, transport and postal services sectors. Directives clarify how the authorities may contribute towards environmental protection via Public Procurement. According to recital 5 of the Directive 2004/18, the Directive itself “clarifies how the contracting authorities may contribute to the protection of the environment and towards the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts”. Similar conditions for eco-labels are set in Directive 2004/17/17. The last part of the said Directives that might be useful for the promotion of GPP is article 53 of Directive 2004/18. It states that: the criteria on which the contracting authorities shall base the award of public contracts shall be either:

- a) when the award is made to the most economically advantageous tender, from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or
- b) the lowest price only.

Therefore, Contracting authorities may choose to award the contract with the lowest price, or to the most economically advantageous one.

The Directive focuses on procedure rather than on the subject matter – it regulates how public authorities should proceed with Public Procurement rather than what they should buy. Directives emphasize a desire to obtain contracts with best value for money, providing the opportunity to take account of environmental issues in subsequent stages of the procurement procedures:

- at the stage of the subject-matter description (art. 23 Directive 2004/18/WE),
- at the stage of contractors qualification (art. 45, 48 i 50 Directive 2004/18/WE),
- at the stage of selecting the best bid using environmental evaluation criteria (art. 53 Directive. 2004/18/WE),
- at the stage of determining the conditions of the agreement (art. 26 Directive 2004/18/WE)[4, 6].

The EU has created a number of acts that are indirectly related to green procurement, such as the Directive of the European Parliament on The energy performance of buildings, energy efficiency, promote the use of energy from renewable sources and a number of other.

1.1.2. Polish legal regulations

The basic act regulating issues relating to Public Procurement in Poland is the Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2013, No. 907, 984, 1047, 1473) [2], hereinafter referred to as PPL. In the Act PPL environmental issues are indicated in three articles.

In art. 30 paragraph. 6 it is said that the contracting authority may not describe the subject-matter of the contract on the basis of the terms of reference through Polish, European or international standards, where it will provide a precise description of the subject-matter of the contract by indicating functional requirements, which may include a description of impact on the environment.

Article 91 paragraph. 2 states that tender evaluation criteria shall be price or price and other criteria linked to the subject-matter of the contract, in particular quality, functionality, technical parameters, use of best available technologies with regard to the impact on the environment, exploitation costs, after-sales service and a period of contract performance.

In Article 24 paragraph. 1 point 4–8 on the list of crimes for exclusion from Public Procurement procedure an offense against the environment can be found. In accordance with provisions of the award of a public contracts, which excludes persons or partnerships, commercial law and legal entities who are connected to officers, general partners or members of the Office of the management body who have been validly sentenced for an offense against the environment.

In order to confirm that offered works comply with requirements laid down by the contracting authority, the contracting authority may request a certificate of an independent

entity responsible for compliance with the economic operator's activities with European environment management standards, if contracting authorities indicate environmental management measures to be used by the economic operator when performing a contract for works or services, referring to the Eco-Management and Audit Scheme (EMAS) or environment management standards based on European or international standards certified by entities operating in accordance with the EU law, European or international certification standards.

The Contractor may also submit equivalent certificates issued by entities domiciled in another Member State of the European Economic Area or other documents confirming the use by the contractor equivalent quality assurance measures and the use of equivalent environmental management measures.

Another legal act which indirectly relates to environmental protection in construction works is the Act of 7 July 1994 Building Law (Consolidated text: Journal of Laws of 2010, No. 243, item 1623 with subsequent amendments [1].

2. Environmental criteria

The European Commission has taken action to develop a common criteria for Green Public Procurement which can be used in European Union Member States. The advantage of common GPP criteria is to prevent restrictions of competition, which could arise as a result of the diversification of national criteria.

GPP criteria (environmental criteria) have been developed for these product groups, which were considered most suitable for the implementation of GPP (Green Public Procurement), both because of the value of the contracts and the impact on the environment [10].

Construction is one of the sectors for which a common criteria was developed (including raw materials, such as wood, aluminum, steel, concrete, glass, and building products such as windows, wall and floor coverings, heating and cooling equipment, aspects related to maintenance of buildings, execution of works contracts in place).

Environmental criteria is proposed for each of the stages of the construction project, such as the design stage, construction, operation and decommissioning of buildings.

Environmental criteria relates to energy consumption, the use of renewable energy sources (RES), construction materials and products, waste and water management as well as other aspects influencing the environmental impact of construction: architects' experience, monitoring and user aspects. Green Public Procurement should consider the overall environmental profile of the entire building.

The criteria can be used in tenders for the construction of new buildings, as well as in relation to contracts for repair and maintenance. This criteria should be directly connected to the tender documentation and include information on the methods of verification [6].

The term "environmental criteria" "includes not only the selection criteria and award of the contract, but also specifications and clauses of the contract. For each product/service group two sets of criteria are presented [6]:

- Basic GPP criteria addresses the most significant environmental impacts and can be used with minimum additional verification effort and cost increases;
- Comprehensive GPP criteria are intended for use by institutions that are trying to purchase the best environmental

products available on the market, and may involve additional administrative effort or entail some increase in cost compared to other products performing the same functions.

In order to increase the degree of integration of environmental considerations in procurement procedures, EU GPP criteria have been translated into Polish for selected product groups or sectors, including for construction.

Another sources of GPP criteria are eco labels. Eco labels exist for a variety of construction materials and products. Even though contracting authorities cannot require purchased products bear a specific eco label, the environmental criteria underlying an eco labelling scheme can provide valuable assistance in developing environmental criteria and the labels themselves constitute easy ways of demonstrating compliance with those criteria [3].

In the case of energy certificates awarded to buildings currently in Poland, the certification process can be carried out in the British system, BREEAM International Bespoke awarded by the organization BRE Global (Building Research Establishment) and the American LEED (Leadership in Energy and Environmental Design). Up to March 2010 in Poland 20 LEED certified projects, including one LEED-NC v.2.2 at the level of silver as well as 9 – BREEAM systems were registered. [9]

The contracting authority may take environmental issues into account by determining specific evaluation criteria or conditions for participation in the proceedings in the tender documentation.

An ecological evaluation criterion carried out by the contracting authority is not sufficient. The contracting authority has the additional task to take care of its measurability, define how to assess an offer based on the criteria and assign a certain validity. Among the ecological evaluation criteria most frequently mentioned: use of the best available technologies in the field of environmental impact, operating cost, product life-cycle costs (LCC), the technical quality of the proposed solutions, the level of emissions, noise and water consumption, power consumption, etc.

In the case of “green procurement” in building, environmental criteria may also relate to the use of construction products with a minimum use of energy for their manufacture and eventual disposal, or products that can be recycled or are biodegradable, as well as the criterion of efficiency

The contracting authority may also specify notice and tender documents in the contract, as well as how many additional points will be awarded for each award criterion. Where the award criterion is formulated in terms of “better performance compared with the minimum requirements set out in the technical specifications”, points will be awarded in proportion to the improved results.

3. Environmental criteria in Public Procurement for works

The Public Procurement Office prepares the documents, on the basis of which are realized information and training for representatives of the contracting authorities, aimed at popularizing the integration of environmental considerations in Public Procurement. The National Action Plan [8] on sustainable Public Procurement for the period 2013–2016 is already the third planning document which includes results of the monitoring process for granting green procurement, including in the construction sector. The Public Procurement

Office conducts periodic analysis of the degree of greening procurement based on a representative sample of contract notices on the basis of its own methodology. The analysis takes the notice published in the Public Procurement Bulletin and published in the Official Journal of the European Union into account. Table 1 presents results of monitoring conducted by the Public Procurement Office in the period 2006–2012 demonstrating the scope of green procurement.

Table 1

The percentage of green procurement in the total number of procedures, on the basis of [8]

Year	Total percentage of green procurement	Percentage of green procurement in the proceedings of values below EU thresholds	Percentage of green procurement in proceedings of the value above EU thresholds	Total value of green procurement (mld zł)
2006	4.00%	No data	No data	3,18
2009	10.50%	No data	No data	13,30
2010	9.00%	7.04%	11.16%	16,80
2011	12.00%	8.00%	15.00%	18,82
2012	12.00%	9.50%	14.50%	15,90
Plan for 2016	20%			

In the analyzed period, a moderate increase in the degree of integration of environmental aspects in procedures for the award of public contracts can be noted, which is a result of a growing interest in environmental issues on the part of authorities. The number of orders taking environmental aspects in Poland into account is lower than that assumed by the Public Procurement Office and one of the lowest in the EU.

4. Construction works

According to the tender procedures examined in 2009–2010 in the construction sector, it was determined that the percentage of orders which consider certain environmental criteria is 25% (Fig. 1). The environmental criteria used was related to e.g. the level of water consumption used by equipment, using the best technology in the field of environmental impact in the construction of sewage treatment plants and wastewater regulation, modernization of buildings (ie replacement of window frames, insulation of the building), reconstruction of water supply and sewerage (eg installation of compressor stations, sewage pumping stations, etc.) [8].

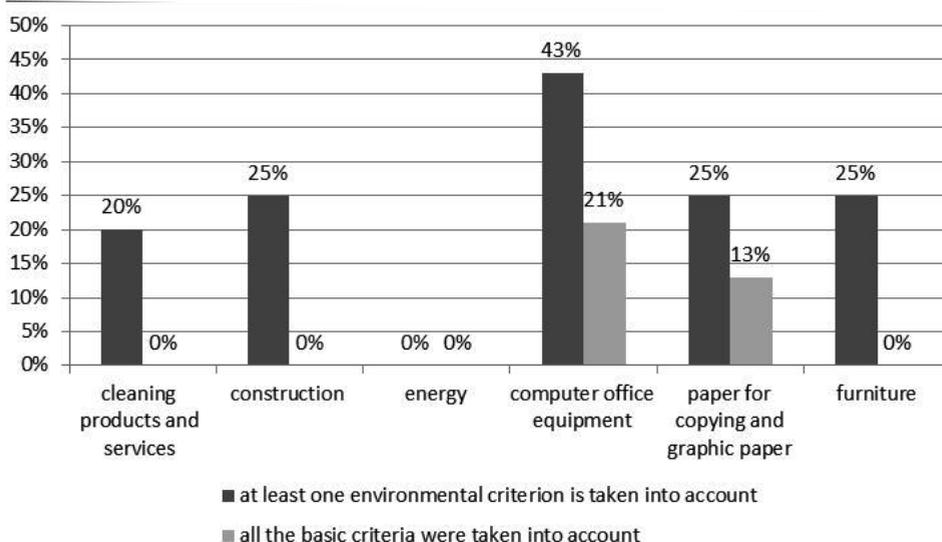


Fig. 1. The percentage of Green Public Procurement in Poland [8]

5. Conclusions

Green procurement can provide purchasing savings throughout the life cycle of the building. The practice of public procurement in Poland shows that contracting authorities focused rather on purchase price of construction works than on the future operating costs generated during the use of buildings.

In Poland, the use of environmental criteria in Public Procurement procedures for construction is not very low but still insufficient.

According to the Public Procurement Office, the application of environmental criteria (with some exceptions) by contracting authorities and the lack of expertise knowledge regarding technical specifications is a factor which effectively inhibits growth of the environmental dimension of Public Procurement. The Public Procurement Office indicates that some action should be taken, such as: increasing awareness of GPP through a system of training, increasing the number of operators who hold a verified system environmental management (EMS), (such as EMAS or ISO 14001:2005), increasing the number of national EU Ecolabel certified products and national eco-labels according to ISO standards.

References

- [1] Act of 7 July 1994 – Building Law (Consolidated text: Journal of Laws of 2010, No. 243, item 1623 with subsequent amendments).
- [2] Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2013, No. 907, 984, 1047, 1473).

- [3] Construction Background Product Report, Toolkit developed for the European Commission by ICLEI-Local Governments for Sustainability, European Commission, Bruxelles (http://ec.europa.eu/environment/gpp/pdf/toolkit/construction_GPP_background_report.pdf2008 – 09.01.2014).
- [4] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, Official Journal of the European Union L 134/114 (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=DD:06:07:32004L0018:PL:PDF:Directive> 2001).
- [5] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004, coordinating the procurement procedures of entities operating in the water, energy, transport and, postal services sectors (OJ L, 134, 30.4.2004, p.1) (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0017:20090807:EN:PDF>).
- [6] Komisja Europejska, *Ekologiczne zakupy, Podręcznik dotyczący zielonych zamówień publicznych*, Wydanie drugie, Luksemburg: Urząd Oficjalnych Publikacji Wspólnot Europejskich (<http://www.uzp.gov.pl/cmsws/page/?D;1598> – 09.01.2014).
- [7] Komisja Europejska (http://ec.europa.eu/environment/gpp/eu_public_directives_en.htm – 09.01.2014).
- [8] *Krajowy Plan Działań w zakresie zrównoważonych zamówień publicznych na lata 2013-2016* (<http://www.uzp.gov.pl/cmsws/page/?D;2645> – 10.01.2014).
- [9] Kukian J., *Ekoinnowacje w budownictwie* (http://www.pi.gov.pl/parp/chapter_86196.asp?soid=4DB1871C4E5B4D73847777B5C97816F7 – 20.03.2014).
- [10] Urząd Zamówień Publicznych (www.uzp.gov.pl – 10.01.2014).