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მეურნეობის სამინისტრო

# SUSTAINABLE PUBLIC PROCUREMENT GUIDELINES OF GEORGIA

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LEPL ENVIRONMENTAL  
INFORMATION AND  
EDUCATION CENTRE

## Disclaimer

This Sustainable Public Procurement Guidelines of Georgia have been developed within the framework of the project of the “European Union for Environment Action”(EU4Environment), funded by the European Union and implemented by the OECD, UNECE, UNEP, UNIDO, and the World Bank. The guidelines were prepared with the support of the LEPL Environmental Information and Education Centre of the Ministry of Environmental Protection and Agriculture of Georgia (UNEP’s implementing partner in Georgia) and the State Procurement Agency of Georgia, under the guidance of UNEP.

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## List of abbreviations and acronyms

CPV	Common Procurement Vocabulary
SDGs	The UN Sustainable Development Goals
SPP	Sustainable Public Procurement
The Association Agreement	The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part
The Agency	LEPL Public Procurement Agency of Georgia
Draft PPL	Draft Law of Georgia “On Public Procurement”
Draft Decree	Draft Decree of the Government of Georgia “On the Necessary Measures to be taken in order to achieve the Goal of Sustainable Development in Public Procurement”

## Introduction

These guidelines have been developed for the effective implementation and enforcement of the legal provisions related to SPP, introduced by the primary and secondary legislation of Georgia and by the Draft PPL and Draft Decree.

By signing the Association Agreement Georgia has undertaken the obligation to promote sustainable development<sup>1</sup> for the benefit of present and future generations and stressed the importance of labour and environmental issues related to trade. This commitment includes, inter alia, promoting the development of international trade to meet the key goals and objectives of sustainable development.<sup>2</sup>

In order to fulfil the abovementioned obligations and to ensure that sustainable development is implemented also via public procurement legislation, the specific articles and provisions related to SPP were developed and suggested for the Draft PPL. These legal provisions are based on Directive 2014/24/ EU of the European Parliament and of the Council of 26 February 2014 (repealing Directive 2004/18/EC) and they are in line with the best international practices.

Overall, in order to adjust Georgian public procurement system to obligations under the Association Agreement and to introduce the SPP, the Draft PPL has cardinally updated the conceptual approaches and practical provisions related to public procurement to:

- optimize the overall operational and performance costs of the State
- achieve long-term sustainability and
- create a diverse market for SPP objects in the future.

## Objectives of Guidelines

The purpose of the guidelines is to assist both contracting authorities and economic operators, including SMEs, in the successful implementation of SPP. Guidelines explain the possibilities offered by the Draft PPL and by the Draft Decree developed in accordance with the Draft PPL. Guidelines follow the logic of the procurement cycle and its structure.

They are mainly aimed at purchasing organizations, although the approaches discussed in them are equally important for economic operators too. Guidelines will help economic operators - especially small and medium-sized businesses – to better understand the environmental and social requirements, which will be used more and more frequently in public procurement procedures.

Thus, the guidelines through the development of a common vision and methodology, aim, on the one hand, to raise awareness of contracting authorities for improving the effective implementation of SPP and sustainable procurement policy, and on the other hand, to ensure the readiness of economic operators to meet the needs of contracting authorities for the future. As a result, the guidelines will ensure the introduction of SPP principles and tools for its implementation in practice and will increase the knowledge and skills of interested parties.

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<sup>1</sup> The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as an instrument to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity (UNDP). More information is available at <https://www.undp.org/sustainable-development-goals> [23.08.2021].

<sup>2</sup> By the Decree N2328 of the Government of Georgia “On the National Document on Sustainable Development Goals” of November 12 2019, the Government of Georgia approved the National Document on Sustainable Development Goals, which aims to promote sustainable development and to introduce evidence-based national policies in accordance with the Agenda 2030. The decree is available at <https://matsne.gov.ge/ka/document/view/4732470?publication=0> [23.08.2021]

## What is SPP?

Sustainable procurement is defined as a process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organization but also to society and the economy, whilst minimizing damage to the environment.<sup>3</sup>

In addition to the environmental dimension, SPP also considers social and economic aspects:

- The economic aspect is related to the use of the methodology for calculating the total life cycle cost. Procurement must be efficient, which means accepting the most economically advantageous bid.
- The social aspect relates to the protection of social equity, various social groups, human rights and the principles of labour law.
- Environmental aspect includes air, water and soil emissions, climate change, biodiversity, and proper use of natural resources throughout the life cycle of the procurement.

SPP aims to strike the right balance between the three pillars of sustainable development<sup>4</sup> - the economic, social, and environmental aspects.

Sustainable development requires contracting authorities to take into account social, economic, and environmental aspects while exercising their rights and obligations.

None of the mentioned aspects shall have priority over others; rather, the right balance is important. Contracting authorities have the opportunity to apply SPP criteria at any stage of procurement, from market research to contract enforcement and monitoring. Moreover, in the cases defined by the Draft Decree, application of the SPP will be mandatory.

## Why SPP?

Public procurement carries large purchasing power: The total volume of public procurement for the procurement of various services, goods, and works amounted to a record-breaking figure – 5 332 804 815 Lari in 2019. It is about 11% of the country's GDP and 63% of the state budget expenditure.<sup>5</sup>

Each acquisition provides a potential opportunity to promote and encourage sustainable development. Rational, responsible, and sustainable spending of public funds by the contracting authorities will serve as an example for economic operators to pursue sustainable policies, environmental and social goals, and will motivate them to apply innovations and new technology. From an economic point of view, SPP has the potential to reduce costs and improve technologies, since whole life-cycle costs are taken into account and better-quality products last longer. Thus, SPP may become the major driver of innovation and a real indicator in the formation of a market of sustainable products and services.

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<sup>3</sup> Source: Procuring the Future – the report of the UK Sustainable Procurement Task Force, June 2006. The definition adopted by the Marrakech Task Force on Sustainable Public Procurement.

<sup>4</sup> See [https://ec.europa.eu/environment/gpp/versus\\_en.htm](https://ec.europa.eu/environment/gpp/versus_en.htm) [23.08.2021].

<sup>5</sup> See Annual Report 2019 of the State Procurement Agency, p. 3, available at:

[http://procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/Angarishi\\_2019\\_GEO.pdf.aspx](http://procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/Angarishi_2019_GEO.pdf.aspx) [23.08.2021]

## SPP and Sustainable Development Goals

It is worth mentioning that SPP is one of the efficient instruments of shifting into green economy patterns that Georgia aims at. It can support Georgia in achieving SDGs<sup>6</sup>, as well as other commitments of Georgia defined under over 30 Multilateral Environmental Agreements<sup>7</sup> where Georgia is a party too.

The UN Sustainable Development Goals (SDGs), approved in 2015, are a set of 17 goals and 169 targets adopted by all United Nations Member States, in order to achieve a better and more sustainable future.<sup>8</sup>

SDGs combine the targets in order to respond to the challenges we face today. It should be noted that SDGs are directly linked to the SPP approach too. In line with this should be mentioned Goal 12 — Ensure Sustainable Consumption and Production Patterns. This goal is considered as an instrument to ensure energy efficiency, sustainable infrastructure, resource efficiency, and access to decent work conditions. Sustainable production and consumption is about doing more and better with less<sup>9</sup> by increasing resource efficiency and promoting a sustainable lifestyle.<sup>10</sup> Target 12.7 aims at promoting sustainability-oriented public procurement in line with national policies and priorities.

It should be mentioned that after the introduction of the SPP approach, demand of contracting authorities on sustainable goods, works or services will increase. This, in turn, will contribute to strengthening of green and sustainable production on the market and to the introduction and development of environmentally friendly, eco-innovative solutions by economic operators during the process of manufacturing.

The concept of the SPP also takes into account the social aspects of sustainable development during the procurement process. In this regard, attention is also paid to the provision of ensuring rights of vulnerable groups, people with disabilities, underrepresented sex as well as securing labour and social rights by economic operators. Thus, SPP is also directly related to the SDG5 (Gender Equality)<sup>11</sup> and the SDG8 (Decent Work and Economic Growth).<sup>12</sup>

Therefore, we can say that the implementation of the target 12.7 of SDGs and, accordingly, the introduction of the sustainability-oriented public procurement in line with national policies and priorities, have a direct impact on the achievement of SDGs. Thus, the introduction of the SPP in Georgia is crucial for the implementation of the 2030 Agenda at the national level.

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<sup>6</sup> <https://sdgs.un.org/goals> [23.08.2021]

<sup>7</sup> For further information see: <http://www.eiec.gov.ge/NavMenu/Documents/International-Convention.aspx> [23.08.2021]

<sup>8</sup> For further information: <https://sdgs.un.org/goals> [23.08.2021]

<sup>9</sup> <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-consumption-and-production-policies> [23.08.2021].

<sup>10</sup> For further information see: <https://sdgs.un.org/goals/goal12> [23.08.2021].

<sup>11</sup> For further information see: <https://sdgs.un.org/goals/goal5> [23.08.2021].

<sup>12</sup> For further information see: <https://sdgs.un.org/goals/goal8> [23.08.2021].

## Legal Framework of SPP

The legal provisions related to sustainability are provided by the Constitution of Georgia, by the Association Agreement, by the Draft PPL and by the Draft Decree.

In order to execute the legal obligations stemming from the Constitution of Georgia<sup>13</sup> and to ensure the commitment to promote sustainable development the Draft PPL provides, that in the cases defined by the Decree of the Government of Georgia, the achievement of the goal of sustainable development shall be mandatory when implementing public procurement.<sup>14</sup>

Draft Decree defines the CPV codes of the procurement object, during the procurement of which it is obligatory to take into account the sustainability aspects. In this case, the contracting authorities will be obliged to determine the characteristics of sustainable development in the terms of procurement and to procure environmentally-friendly objects. However, it should be noted that contracting authorities will have the right to procure other procurement objects using the characteristics of sustainable development as well, if the imposition of such requirements ensures and complies with the general principles established by the Draft PPL.

## SPP elements in the basic Principles of Public Procurement

SPP is not a parallel system to the existing procurement system. Instead it must be implemented through everyday procurement procedures. Therefore, in order to implement SPP, the basic principles of public procurement, such as efficient and rational spending of public procurement funds, openness, and transparency, proportionality as well as non-discrimination and equal treatment must be observed. SPP shall ensure rational spending of public funds and, at the same time, motivate the business sector for sustainable development.

Among the principles mentioned above, the principles of the effective and rational spending of public funds are particularly relevant to SPP. Procurement must be efficient, which means doing proper market research before procurement and accepting the most economically advantageous offer/bid. This does not necessarily mean choosing the bid with the lowest price.

Rather, it means choosing a solution and means that meet the requirements of contracting authorities, including taking into account environmental and social aspects. The best value does not always mean the monetary value of the procurement object only but also takes into account factors such as quality, efficiency, effectiveness, and feasibility.

However, buying according to the lowest price or cost criteria should not be excluded – there are situations where it is the most feasible and rational approach. In case of applying the criterion of the lowest price or cost for the tender award, the sustainability-related requirements may be formulated in technical specifications (description of the subject matter of procurement). In this case, compliance with them will be mandatory, whereas non-compliance will result in the dismissal of the bid.

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<sup>13</sup> Such as obligations of protection of the environment, rational use of natural resources, social protection of people and development of free entrepreneurship and competition.

<sup>14</sup> In particular, Article 2 of the Draft Law of Georgia “On Public Procurement”.



## Implementation of SPP

When implementing SPP, it is important to take into account the specifics, priorities and goals of the contracting authorities. The coherent implementation of SPP includes consideration of all stages of procurement transaction, from the procurement planning, market research, publication of prior information notice (PIN), drafting the terms of procurement to awarding the contract and monitoring of its implementation. In order to encourage the use of SPP, contracting authority may set a specific goal, for instance, set up the percentage of the total tenders during the budget year that could be conducted with inclusive sustainability criteria.

To achieve the goal of sustainable development, it is advisable for the contracting authorities to consider the costs associated with such procurement before making a decision on SPP, also, assess whether there is a better alternative that saves both their time and costs and whether it achieves sustainability goal without using SPP. For example, if a contracting authority plans to arrange a meeting that requires travel of passengers from one point to another and determines that such passenger transportation services should be procured through SPP, taking into account the aspect of reduction of environmental impact with a view to reducing the environmental impact on the environment, then the services of transportation by environmentally friendly transport could be specified and purchased through the SPP tenders. On the other hand, the contracting authority should evaluate whether there is a more optimal solution in the remote, so-called online meeting. Conducting an online meeting is an even more environmentally friendly decision (it will no longer have to use a vehicle at all), and in turn, contracting authority will save time and money as well.

According to the Draft PPL, contracting authorities have the opportunity to enter into contracts not only on the basis of the lowest acquisition price ("today's price") but also according to entire life cycle cost. Life-cycle costing includes the costs related to the production, delivery of goods, provision of services or execution of works, including costs related to procurement, utilization, consumption of energy and other resources, maintenance, recycling, as well as costs imputed to environmental externalities (provided their monetary value can be determined).

Definition of the life cycle includes all consecutive and/or interconnected stages, including research and development, production, trading and its conditions, transportation, use and maintenance, the whole period of existence of the product or execution of works and provision of services, from the moment of acquisition of raw material or generation of resources at disposal, through clearance and end of service, or utilization.

## Monitoring and Control of SPP

According to the Draft PPL and the Draft Decree, the body responsible for studying and analysing the field of SPP in Georgia is the Agency. Using the results of the monitoring, the Agency can identify the gaps and prepare recommendations for the Government how to improve PP/SPP procedures

According to the Draft Decree, in order to effectively control the implementation of SPP, the contracting authority shall prepare and submit to the Agency information on the implementation of SPP, annually, and no later than November 1 of each year. The Agency, in turn, shall provide an annual assessment of the use of Public Procurement and determine the share of SPP in the total volume of public procurement. As a result, the Agency shall prepare and submit a report on the use of sustainable procurement to the Government of Georgia once a year.

The contracting authorities shall keep the obligation to follow to and monitor their own SPP transactions

too, in order to ensure that they are in line with applicable legislation and ensure the best possible value for money.

## Use of sustainability criteria in Public Procurement Procedures

The preparatory stage of the procurement procedure is crucial for the successful implementation of any procurement. Contracting authorities should be aware at what stage of a particular procurement procedure it is possible to use sustainability characteristics.

Sustainability criteria can be taken into account during different stages of procurement procedure:

- Procurement planning
- Establishing the selection criteria
- Establishing technical specifications
- Establishing tender award criteria
- Drafting procurement contract.

A brief review of procedures defined by the Draft PPL is presented below to explain how sustainability criteria can be effectively used in public procurement.

### ➤ Open Procedure

Open Procedure is a one-stage procedure. A contracting authority shall announce public procurement and publish terms of procurement containing all the information related to public procurement. Thus, sustainability characteristics should have been taken into account while describing the tender. Sustainability requirements can be set for both economic operators and for the subject matter of the contract. In this procedure, a contracting authority simultaneously assesses the compliance of economic operators as well as of the bids submitted by the economic operators with the terms of procurement and subject matter of the contract.

### ➤ Restricted Procedure

Restricted Procedure is a two-stage procedure. At the first stage, a contracting authority shall verify whether economic operators are duly qualified. Only compliant economic operators can be invited for the second round to submit bids. In the first stage of the procedure, SPP related requirements may be introduced via selection criteria. Contracting authorities also have the right to reduce the number of candidates in accordance with Article 59 of the Draft PPL (for example, in addition to the minimum criteria, they can define specific sustainability criteria and indicate in the procurement conditions that the number of candidates will be reduced according to this criteria). In order to exercise this right, objective and non-discriminatory criteria must be defined in the terms of the procurement. In addition, genuine competition must be ensured. In determining the number of candidates, a contracting authority should take into account the specifics of the procurement object and the relevant market, including competition in that market. The minimum number of candidates in the restricted procedure must be 5.

Those economic operators who are invited to submit bids at the second stage will have to submit technical and financial offers. In this stage of the procedure, SPP-related requirements may be included in technical specifications, tender award criteria and draft procurement contract.

### ➤ Negotiated Procedure with prior publication and Competitive Dialogue

Competitive dialogue and negotiated procedure with the prior publication are also two-stage procedures. These procedures may be used only in the cases explicitly provided by Draft PPL, including where the

procurement involves an innovative solution or where the needs of a contracting authority cannot be met without adjustment of the solutions available at the marketplace.

Same rules apply to the competitive dialogue and negotiated procedure as those that apply to restricted procedure. However, in addition, the competitive dialogue and negotiated procedure involve a negotiation/dialogue phase. In this phase contracting authorities and economic operators may negotiate about technical offer, financial offer and procurement contract conditions. These negotiations may include SPP requirements as well.

It must be borne in mind, though, that successful implementation of both procedures requires both the procurers' and business representatives' appropriate skills and experience to negotiate.

➤ Innovation partnership

When contracting authorities want to procure innovative goods, services and/or works, or when there is a need for research and development, or where the goals of contracting authorities cannot be achieved through procurement of goods, works and/or services already available at national or international marketplace, contracting authorities have the possibility to start the procedure of innovation partnership by concluding individual contracts with one or several economic operators. As in other procedures, SPP criteria may be used also here. For instance, Innovation Partnership may be organized in order to achieve new innovations in environmental area – new types of energy-saving approaches, green technologies etc.

## Defining the Terms of Procurement

### Defining the subject matter Procurement

According to Paragraph 1 of Article 48 of the Draft PPL, a contracting authority shall determine specifications in the terms of procurement that describes characteristics of goods, works or services to be procured. It is noteworthy to mention that specifications shall ensure equal participation of economic operators in public procurement procedures and shall not create artificial hampers.

One of the key aspects of the SPP approach is that decision not to buy anything can also be considered as a sustainable decision. For instance, instead of buying new cars for civil servants, the Ministry may decide to use public transport. If one public authority has a surplus furniture, perhaps it is possible to transfer it to another authority that needs new desks and chairs for equipping a new office. There might not be a need to buy bottled water, thus increasing the amount of plastics, if the tap water is fully suitable for drinking.

If, however, it is established that the need to buy something exists, contracting authority must assess the impact of the procurement subject on sustainability aspects (for example, the environmental impact) until the publication of the procurement notice and should consider having a consultation with proper authorities and end-users. Also, it should be desirable to be explained to the end-users, why a contracting authority decided to procure the object of the procurement exactly with concrete requirements and what was the reason for procuring, for example, paper different from the paper used before. This method also serves the goal of raising awareness on SPP principles through (throughout) the people employed in contracting authorities.

As in any public procurement procedure, in the public procurement procedures with sustainability criteria, a contracting authority shall be obliged to carry out all the necessary measures to determine requirements in the procurement terms, before commencing the procurement process. In order to define if there is an object of the procurement with, for example, less environmental impact a market consultation (market research) carried out prior to procurement should be carried out (taking into account consultation with proper authorities and proper normative act research at the same time).

Overall, after a contracting authority defines the need for procuring specific object on the basis of market research and after a contracting authority is able to grant the concrete procurement the status "Sustainable", the specifications, as well as the terms of procurement can be developed.

### Defining Technical Specifications

It must be remembered that technical specifications include only mandatory requirements – non-compliance with them will result in the exclusion of the economic operator. Therefore, contracting authorities should consider the necessity of each requirement and ensure that only important and significant requirements are put into the specifications. That relates to SPP-related requirements as well.

In accordance with the Draft PPL, if a contracting authority wishes to take into account environmental, social or other similar issues while describing the object of procurement, it can indicate in the specifications about the necessity of having particular labels<sup>15</sup> such as the evidence that offered goods, works, or services comply with the specifications referred to in the draft PPL. Also if a contracting authority does not request that the object of procurement meets all the label requirements, it shall indicate which requirement is mandatory to be satisfied.<sup>16</sup>

It is noteworthy to mention that, the clearer the technical specifications the more chances are there for the economic operators to define their own interests and – accordingly – the more opportunity for developing genuine competition. SPP is a new concept that will be gradually introducing in Georgian public procurement practices, thus awareness of business and market players is essential for high-level competition on the market.

Technical specifications must provide measurable requirements, in order for the economic operators to be able to formulate clear offers that are in compliance with a contracting authority's terms of procurement and in order for the contracting authorities to be able to assess offers' (bids submitted by economic operators) compliance. Otherwise, the offer with sustainability criteria might not be awarded.

Technical specifications need to relate to specific characteristics of the particular object of public procurement that is being purchased.<sup>17</sup> It must be considered, that in any case, including implementation of SPP, if a contracting authority forms the specifications of the procurement object by reference to the relevant standards, such reference shall be indicated in the following order: international standard; or when the standard referred to does not exist - regional standard; or when it does not exist – state standard applicable in Georgia on the bases of international treaties of Georgia; or when it does not exist either – Georgian standard. Each reference to the standard shall be accompanied by the words “or equivalent”.<sup>18</sup> In turn, it means that if compliance of the offered procurement object with an “equivalent” standard is proved, such a term of procurement will be considered accepted.

If technical specifications are formed by contracting authorities in the form of performance and/or functional specifications with reference to technical specifications the purpose of which is to check compliance with performance and/or functional specifications,<sup>19</sup> contracting authorities should describe their expectations towards the results and outputs of public procurement. Determination of the procurement terms in this way gives more ability to economic operators to have more innovative offers and respectively, somehow, it could be a challenge to the market and could promote the development of innovative solutions. It should be noted here that when formulating technical specifications in this way, a contracting authority must carefully take into account obligations of the principles of transparency and equal treatment and also must consider and assess if the desired result will be achieved by the solutions offered by economic operators in the manner that the level of quality specified in the procurement documents is not breached (for example, notwithstanding the fact that an economic operator may offer the procurement object or solution with less environmental impact or submit the bid with the lowest price, this must not prejudice the quality required by a contracting authority in the terms of procurement).

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<sup>15</sup> Like “eco”, “bio”, “organic” and/or others.

<sup>16</sup> In accordance with Sub-Paragraph 5 of Chapter II of the Draft Decree, information regarding environmental protection measures - the requirements and criteria used in public procurement to reduce the environmental impact of procurement objects must be precisely formulated and objectively measurable. Furthermore, appropriate conformity verification methods should also be taken into account in these requirements and criteria.

<sup>17</sup> For example, if a contracting authority needs to procure an environmentally friendly lamp, it can determine the criteria for environmentally friendly requirements in the technical specifications but not requirements of having experience of delivering such an environmentally friendly goods. In turn, this issue could be defined in the selection criteria.

<sup>18</sup> Article 48, Paragraph 5, Sub paragraph “b” of the Draft Law of Georgia “On Public Procurement”.

<sup>19</sup> Article 48, Paragraph 5, Sub paragraph “c” of the Draft Law of Georgia “On Public Procurement”.

## Description of Materials, Conditions of Production and Delivery

What an object of the procurement (goods) is made of, also how it is produced and delivered, could be one of the criteria to define the environmental impact of an object of procurement. Accordingly, methods of production and delivery process of the object of procurement could be one of the components of the technical specifications in the terms of procurement and description of these aspects can be taken into account when defining procurement terms.<sup>20</sup> At the same time, it is noteworthy to mention that any requirement, including requirements of the environmentally friendly process of production should bear a link to the object of procurement and it must not be related to the operations and the policy of economic operators.<sup>21</sup>

As far as a contracting authority defines technical specifications of the procurement object by taking into account its own needs, it might define, for example, what the goods to be delivered should be made of and what the goods should consist of, also the percentage of recycled or reused content, or the provision that goods should not consist of hazardous (toxic) substances. It is noteworthy to mention that in such cases, a contracting authority must indicate normative acts that restrict the use of hazardous substances or the goods containing thereof.<sup>22</sup>

SPP-related requirements, however, shall not be used in a way that may create unequal treatment and discrimination of economic operators. Contracting authorities therefore should come up with SPP requirements that they are able to verify. In any situation where the contracting authority is not sure on how it will verify the compliance with the related requirements, it shall not use the relevant requirement. Such situations may occur in cases when contracting authority refers to the production or trading stage of the life cycle of the procurement object in question.

## Labels

Application of international, regional (EU), and national labels are one of the successful ways of implementation of SPP. Eco-labelling could be one of the sustainability criteria used in public procurement. To contracting authorities labels give an opportunity to save time and recourses, as they already testify the compliance with particular requirements. In the technical specifications, labels could be used for the following purposes:

- to define the characteristics of the goods or services, which are purchased;
- to check compliance of the tender with the requirements of sustainability set by the procurement terms.

It must be considered that the Draft PPL establishes concrete clauses (cases) when a contracting authority can indicate in specifications about the necessity of having particular labels (like “eco”, “bio”, “organic” and/or others).<sup>23</sup> In such cases, it shall be necessary for the label to meet all of the following requirements:

- The label concerns only those criteria which are linked with the object of procurement and are used as an established method for determining the specifications of such an object of procurement.

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<sup>20</sup> These cases may arise even when they are not the matter of the material substance of the object. For example, it may be required in the terms of public procurement that electricity shall be produced from renewable sources.

<sup>21</sup> Certain requirements, including requirements of sustainability, might be determined with regard to the activities of the policy of an economic operator, however, this should be defined not in the technical specification, but in the requirements set for an economic operator.

<sup>22</sup> To ensure reduction of the risk of non-equal treatment, it would be better, that sustainability criteria are based on the requirements sustained by legal norms, labels and aspects acknowledge for sustainable development in order not to have unjustified requirements in the terms of procurement.

<sup>23</sup> Article 48, Paragraph 9 of the Draft Law of Georgia “On Public Procurement”.

- The label requirements are based on objectively verifiable and non-discriminate criteria.
- The label is established by the process in which all the stakeholders such as government bodies, consumers, entrepreneurs, manufacturers and NGOs could participate.
- The label is accessible and available to all interested parties.
- The label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

If a contracting authority asks for the concrete type of certificate in order to verify the eco-label, it must accept a certificate equivalent to this type of certificate if it meets the same requirements. In addition, according to Paragraph 12 of Article 48 of the Draft PPL, in the casewhere an economic operator proves the absence of possibility to obtain the label determined by a contracting authority or its equivalent due to the reasons independent from it, acontracting authority shall receive other, relevant evidence, including an official document issued by the manufacturer, which proves that the object of procurement offered by the economic operator fully meets the requirements indicated by the contracting authority. Furthermore, if the label meets the requirements provided for in Sub-Paragraphs “b” – “e” of Paragraph 9 of Article 48 of the Draft PPL, and at the same time there are other requirements that are not related to the object of procurement, a contracting authority shall not be entitled to request such a label. In such cases, contracting authority shall give a description of the specifications related to the object of procurement.

### Verifying the Compliance with Technical Specifications

According to Paragraph 9 of Chapter II of the Draft Decree, when setting the requirements and criteria for SPP, a method for verifying their compliance shall be clearly stated in the procurement documentation. A contracting authority shall indicate in procurement documentation what type of attestations of conformity economic operators may submit.

Paragraph 14 of Article 48 of the Draft PPL indicates that with a view to establishing compliance of the tender with the specifications, a contracting authority may request from an economic operator to submit:

- description, the document issued by the manufacturer, a photo or sample of the authenticity of which requires verification if so requested by a contracting authority;
- conclusion of expertise, inspection or other evaluating body, a report or other similar document. In such cases, it shall be inadmissible to indicate the body issuing a conclusion, report or other similar documents. A contracting authority shall be eligible to request that such a body has relevant accreditation.

The same general approach works regarding the verification of SPP-related requirements.

It must be considered that in a number of cases these additional checks may not be necessary and a contracting authority may check ex officio whether the object of procurement offered by an economic operator complies with its technical specifications. At the same time, if an economic operator indicates and proves, that due to the overwhelming reasons, an economic operator could not submit requested document (evidence) and a contracting authority shares such indication, a contracting authority shall assess and take into account the risk of violation of the principles of equal treatment and proportionality related to other economic operators and make a decision only after such assessment.

### Abnormally Low Tenders

The abnormally low price of the submitted tenders/bid may raise some questions regarding the fulfilment of the commitments made in the field of environmental, social, and labour legislation in accordance with the bids/tenders submitted by the economic operator.

According to the Draft PPL, adequacy of pricing due to abnormally low price may be justified by the compliance of an economic operator with the applicable obligations in the fields of environmental, social, and labour laws.<sup>24</sup> In this situation contracting authorities must seek an explanation from the tenderer(s) in question as to the reason for their abnormally low price or cost. In such cases, particular production method or offered technical solutions may be legitimate factors. However, when an economic operator fails, within the timeframes defined by a contracting authority, to prove adequacy of pricing by making reference to relevant evidences, including with regard to the performance of commitments applicable in the social, environmental and labour legislation, this will become the ground for rejecting approval of adequacy of pricing and eventually, for the exclusion of a tenderer.<sup>25</sup>

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<sup>24</sup> Article 62, Paragraph 2 of the Draft Law of Georgia “On Public Procurement”.

<sup>25</sup> Article 63, Paragraph 3 of the Draft Law of Georgia “On “Public Procurement”



## Selecting the Economic Operator

### Overview of Criteria for Selection of Economic Operators

Sustainability criteria, especially environmental or social aspects, can be applied at any stage of the public procurement process: from identification of need, through specification, to supplier selection, bid evaluation, and public procurement contract conclusion and management.

Selection criteria mainly focus on economic operator's ability to perform the public procurement contract. When assessing it, contracting authorities are entitled to take into account specific experience and competence related to environmental aspects that are relevant to the subject matter of the public procurement contract. They may ask for evidence of the ability of operators to apply environmental measures when carrying out the public procurement contract. The contracting authority is also authorized to require the economic operator to comply with social, environmental and labour law norms in order to promote sustainable development.<sup>26</sup>

In some cases, for example, during the process of the restricted procedure, contracting authorities carry out pre-selection of the economic operators according to their professional ability and qualifications, based on which an economic operator can place a bid for public procurement contracts. When defining the criteria for experience, contracting authorities might also determine in the procurement terms the condition on relevant experience with the performance of sustainable contracts.

Legal Review, Prioritization Exercise and Market Readiness Analysis that are produced in the framework of the SPP project in Georgia will help contracting authorities to analyse how sustainability aspects can be taken into consideration at the supplier selection stage. It is important that specifications of the relevant public procurement contract and related risks are assessed and sustainability criteria are set appropriately. In some cases, in the long run, in terms of the principle of proportionality, it may be more appropriate to consider a high price in exchange for reduced environmental or social impact.

### Criteria for Determining the Best Economic Operator

It is possible to introduce environmental elements in the selection criteria of an economic operator by laying down the provisions in the terms of procurement-related to the technical and professional capabilities of an economic operator. In this regard, it should be borne in mind that in terms of technical and professional compliance, a contracting authority is authorized to determine necessary requirements such as sufficient human and technical standing, as well as working experience of the economic operator.

### Environmental Technical Capacities

In the process of conducting public procurement procedures drafting selection criteria is a quite complex issue. Accordingly, in order to confirm that economic operators have the necessary capacities to deliver such requirements, it is advisable to determine requirements regarding their previous working experience and about human and technical resources. Environmental technical capacity can include technical competence in minimizing waste creation, avoiding spillage/ leakage of pollutants, reducing fuel consumption or minimizing disruption of natural habitats.

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<sup>26</sup> Article 12, Paragraph 1, Sub-Paragraph "f" of the Draft Law of Georgia "On Public Procurement".

In practical terms, it typically concern questions such as those listed below:

- Does the economic operator have previous experience with executing contracts in a sustainable way?
- Does the economic operator employ the personnel with the required education and does the employed personal have respective experience and/or professional qualifications in order to manufacture environmentally-friendly products and suggest them for the public procurement tenders?
- Does the economic operator own or have access to the necessary technical equipment or facilities for environmental protection in order to fulfil obligations set by the public procurement contract while providing goods/services/works?
- Does the economic operator have the means to ensure the quality of performance assumed by the public procurement contract for the services to be delivered, works to be executed or goods to be supplied?

In this context, one of the useful instruments is the information/records of contracts carried out. This information can be required by defining, in the terms of procurement, a relevant provision regarding submission of the information related to previous experience of an economic operator.

When checking technical and professional compliance of an economic operator, the Draft PPL provides the maximum period of time to be taken into account. According to the Draft PPL, technical and professional abilities defined in the terms of procurement may be verified by:<sup>27</sup>

- a) the information about the supplies delivered or services performed over not more than the past three years with the data about their value, dates of delivery of goods or performance of services and about the recipient accompanied by certificates of satisfactory execution of the supplies or services.<sup>28</sup>
- b) a list of the works carried out over not more than the past five years, with the data about their value, date of performance and recipient accompanied by the information of the satisfactory performance of works.<sup>29</sup>

It should be mentioned that in the process of determining provisions regarding environmental technical capacities in the terms of procurement, the following may be required:<sup>30</sup>

- an indication of the technicians or technical bodies involved, especially those responsible for quality control of the commitments assumed by the public procurement contract or who are carrying out the work;
- documents verifying qualification and experience of the manager or technical staff;
- a description of the technical facilities and measures used by the economic operator for ensuring quality;
- a description of the supply chain management and tracking systems to be used for fulfilling the commitments;
- a description of the environmental management measures related to the performance of commitments;
- an indication of the proportion of the public procurement contract which the economic operator intends possibly to subcontract.

<sup>27</sup> Article 58, Paragraph 3 of the Draft Law of Georgia "On Public Procurement".

<sup>28</sup> Where necessary in order to ensure an adequate level of competition, a contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account

<sup>29</sup> Where necessary in order to ensure an adequate level of competition, a contracting authority may indicate that evidence of relevant works carried out more than five years before will be taken into account.

<sup>30</sup> Article 58, Paragraph 5 of the Draft Law of Georgia "On Public Procurement".

It is crucial for the contracting authority to define explicitly, distinctly and unambiguously what kind of required information/documentation will be relevant and by what means the submitted information/documentation will be evaluated.

It should be noted that the economic operator is not requested to submit the information/documentation referred when the data can be checked on the Electronic System or through other open database in compliance with the procedures established by the order of the Chairperson of the Agency, which ensures more flexibility for participation in the procurement procedure.<sup>31</sup>

### Quality Assurance and Environmental Management Standards

A contracting authority is entitled to evaluate the capacities of an economic operator with the technical and professional compliance specified in the procurement terms by the following ways:

- by checking if the economic operator is registered in Eco-Management and Audit Scheme (EMAS);
- by checking if the economic operator has a certificate issued by an accredited body in compliance with procedures established by the legislation of Georgia or respective country which serves as evidence for conformity with European or international environmental standards;
- by equivalent evaluation of conformity of activities with environmental requirements which in Georgia corresponds to environmental management systems referred to in paragraphs “a” or “b” above.

### Supply Chain Management

Environmental impact may arise not only in the delivery of a particular procurement object but also further back along the supply chain. For example, IT equipment generally has components sourced from many parts of the world, including metals and other substances which pose a high risk of environmental damage in their extraction and processing.

Therefore, when there are social and/or environmental risks involved in production, delivery and/or trading stages of the life cycle of the relevant product, it makes sense for contracting authorities to look back at the complete chain of subcontractors (if any) presented by an economic operator in the stage of selection and evaluation and analyses whether required environmental criteria are met beyond the primary or first-tier contractor.<sup>32</sup> One way to do this is to include the specific public procurement contract clauses relating to subcontractors in the terms of procurement.

For instance, it is possible that contracting authorities request the following information:

- What proportion (part) of the public procurement contract does an economic operator intend to possibly subcontract.
- How will the supply chain be managed.
- How will the process of monitoring of the performance of commitments by subcontractors be conducted.

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<sup>31</sup> Article 58, Paragraph 6 of the Draft Law of Georgia “On Public Procurement”.

<sup>32</sup> Buying green!, A handbook on green public procurement 3rd Edition, European Union, 2016, p.48. Available at <https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf>. [23.08.2021].

## Product Samples, Checks and Conformity Assessment of them

Certificates of conformity or quality may be useful in verifying whether the bid or tender, submitted by the economic operator, meets required environmental criteria, for example, in terms of durability or energy consumption.

According to the Law of Georgia “On Energy Labelling” the Government of Georgia shall, by September 30, 2021, ensure the approval of the technical regulations developed by the Ministry of Economy and Sustainable Development of Georgia for different objects (dishwasher for household use, refrigeration equipment for household use, washing machine for household use, TV, air conditioner for household use, electric lamp and light bulb and etc.). Thus, after the approval of the above-mentioned technical regulations, contacting authorities will be informed about the specific characteristics of the energy procurement objects, as according to the Law of Georgia “On Energy Labelling”, the supplier who places the product on the market or puts it into operation is obliged to provide the printed label and information sheet/plate about the product.

## Award Criteria

### Environmental Award Criteria

At the award stage, a contracting authority evaluates the quality and costs of submitted tenders using award criteria, published in advance, to decide finally which tender is the best.

Award criteria ensure to determine the most economically advantageous tender. This does not mean that only the lowest price should be the main award criteria.

According to the Draft PPL, following the order of the chairperson of the Agency there might be cases defined when it shall be admissible or banned to set the lowest price criteria only.<sup>33</sup> However, according to the Draft PPL, it is obligatory to use the best price-quality ratio criteria during several public procurement procedures such as during the innovation partnership, design contest and competitive dialogue.

According to the Draft PPL, the criteria for determining the best tender may be based on:<sup>34</sup>

- the lowest price
- economic efficiency
- the best price-quality ratio.

Economic efficiency implicates several things, including consideration of the concept of the life-cycle costing, which, in turn, includes the cost of the life cycle stage of goods, works or services or total cost, namely costs, borne by the contracting authority or other users, such as:<sup>35</sup>

- costs relating to acquisition
- costs of use, such as consumption of energy and other resources
- maintenance costs
- end of life costs, such as collection and recycling costs
- costs imputed to environmental externalities linked to the goods, services or works during their life cycle, including costs entailed by the environmental damage (provided their monetary value can be determined and verified); such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

With regard to the best price-quality ratio criteria there should also be mentioned that according to the Draft PPL, the best price-quality ratio shall be assessed on the basis of different criteria, including qualitative, environmental or social aspects; such criteria may comprise:

- quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- organization, qualification and experience of staff assigned to performing the public procurement contract, where the quality of the staff assigned can have a significant impact on the level of performance of the public procurement contract;
- after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

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<sup>33</sup> Article 50, Paragraph 3 of the Draft Law of Georgia "On Public Procurement".

<sup>34</sup> Article 50, Paragraph 2 of the Draft Law of Georgia "On Public Procurement".

<sup>35</sup> Article 50, Paragraph 2 of the Draft Law of Georgia "On Public Procurement".

It is important to mention that the criteria for revealing the best tender defined by a contracting authority shall ensure the possibility of genuine competition and shall be described in the manner to properly assess the compliance of the information provided by economic operators with the selection criteria determined by a contracting authority. In addition, in case of doubt, a contracting authority shall verify effectively the accuracy of the information and proof provided by the economic operators in order to avoid the possible discriminatory treatment.

It is noteworthy to mention that if the best price-quality ratio criteria are used, a contracting authority specifies in the terms of procurement, the relative weighting that it gives to each of the criteria chosen. Where weighting is not possible for objective reasons, a contracting authority is obliged to indicate the criteria in decreasing order of importance. In this way, the criteria for identifying the best bid is brought under the control of the economic operators, and, in case of a possible violation of their right, it is possible to be appealed in accordance with the Draft PPL.

### Technical Specifications or Award Criteria?

A contracting authority should take into account a number of considerations when deciding whether to indicate environmental criteria as mandatory requirements in the technical specifications or among the criteria for identifying the best tender. One of the basic factors conditioning consideration of environmental aspects in the criteria for identifying the best tender may, for example, be the case when a contracting authority is not sure of the amount of costs and/or the readiness of a relevant market and availability of the environmentally friendly procurement object on the market.

Contracting authorities are entitled to set minimum environmental criteria in the technical specifications, and then allocate extra points in the criteria for identifying the best tender, with reference to the best weighting. This approach will give more flexibility to contracting authorities at the stage of identifying the economic operator as the winner. In such a case contracting authority should ensure that the requirements of technical specifications and tender award criteria do not overlap.

### Life-cycle Costing

According to the Draft PPL, life cycle includes all consecutive and interconnected stages,<sup>36</sup> including:

- Research and development to be carried out
- Production
- Trading and its conditions
- Transportation
- Use and maintenance
- The whole period of existence of the product or execution of works and provision of services, from the moment of acquisition of raw material or generation of resources at disposal, through clearance and end of service or utilization.

Since the criteria for identifying the best tender can be based on the economic efficiency, in which the cost of the life cycle is considered in the first place, it is important to explain its concept.

Life-cycle costing includes the costs borne during a life cycle related to the delivery of goods, provision of services or execution of works, including costs related to procurement, utilization, consumption of energy, and other resources, maintenance, recycling, as well as costs imputed to environmental externalities (provided their monetary value can be determined).<sup>37</sup>

<sup>36</sup> Article 3, Paragraph 1, Sub-Paragraph "u" of the Draft Law of Georgia "On Public Procurement".

<sup>37</sup> Article 3, Paragraph 1, Sub-Paragraph "v" of the Draft Law of Georgia "On Public Procurement".

It is noteworthy to mention that if a contracting authority assesses the costs using a life-cycle costing approach, it shall indicate in the procurement documentation the data to be provided by the economic operators and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.<sup>38</sup>

The method used for the assessment of costs imputed to environmental externalities shall fulfill all of the following conditions<sup>39</sup> :

- It shall be based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favor or disadvantage certain economic operators.
- It shall be equally accessible to all interested parties.
- the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries.

Therefore, the criteria for identifying the best tender vary, depending on what kind of approach is chosen by the contracting authority, taking into account the peculiarities of the procurement object. In the process of using sustainability criteria in public procurement, it is advisable for the contracting authorities to rely only on the provisions defined by the legislative or subordinate normative acts regulating SPP as much as possible. A structurally coherent and detailed system ensures the transparency of evaluating and awarding process, is a prerequisite for identifying an economic operator as a winner in accordance with the basic principles of public procurement.

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<sup>38</sup> Article 50, Paragraph 8 of the Draft Law of Georgia “On Public Procurement”.

<sup>39</sup> Article 50, Paragraph 8 of the Draft Law of Georgia “On Public Procurement”.

## Performance of the SPP Contract

### General Provisions of the Contract

According to Paragraph 5 of Article 65 of the Draft PPL, a contract shall be concluded with successful tenderer(s) according to the terms of procurement and submitted tender(s). Thus, technical specification and technical bids submitted in reaction to that specification automatically become part of the public procurement contract.

In the contract execution phase, it is critically important that the contracting authorities ensure that all aspects and requirements, especially SPP related, are fulfilled properly by economic operator. In general, contracting authorities should not accept – directly or tacitly -any derogation from SPP requirements and criteria provided for in the tender documents. If amendments are made in public procurement contract it might be said that it is possible to make the public procurement contract “stricter” in order to make public procurement more “sustainable”.<sup>40</sup>

It should be noted that a contracting authority might indicate all expected problems in the terms of procurement which may arise during a tender procedure phase performing the contract and demand economic operators to submit solutions to these issues.<sup>41</sup>

### Supervision over the Implementation of the Contract

According to Paragraph 1 of Article 68 of the Draft PPL, a contracting authority shall be obliged to perform supervision over the implementation of the procurement contract. This obligation relates, among others, to the performance of the requirements determined for the implementation of SPP and, in turn, plays an important role in public procurement procedures with sustainability criteria.

According to Paragraph 13 of Chapter IV of the Draft Decree, the contracting authority is obliged to monitor and evaluate adherence of economic operators to the SPP requirements through various methods, such as, but not limited to, review of documented evidence or independent specialist audits (if deemed relevant).

At the same time, different forms of monitoring of the performance of the SPP contract can be applied:

- Economic operators can be requested to supply evidence of compliance with the commitments assumed with the terms of SPP;
- Contracting authorities or a third parties selected by them may supervise the fulfillment of the terms of the contract.

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<sup>40</sup> According to Article 66, Paragraph 1, Subparagraph “e” of the Draft Law of Georgia “On Public Procurement”, contracts may be modified without a new procurement procedure in cases, where the information regarding modification of a contract, including irrespective of its value, is explicitly determined in the terms of procurement and the modification is not substantial.

<sup>41</sup> It would be better that contracting authorities mention all estimated risks, which could arise while performing the contract, in the draft of public procurement (which, in turn, will be a part of the terms of procurement), and thus, economic operators could be informed about all estimated processes from the outset.



According to Paragraph 14 of the Chapter IV of the Draft Decree, control over the compliance procurement objects to be supplied with the sustainability criteria specified in the law or the terms of procurement shall be performed periodically or at the ad hoc request of the contracting authority.

Also, since a public procurement contract regulates contractual relationships between contracting authorities and economic operators, it might include appropriate penalties for non-compliance, including in case of breaching the sustainability terms. While carrying out supervision over the performance of the contract, contracting authorities must take into account the time limits and resources given to economic operators, in order to determine whether it is possible to fulfill the commitments related to sustainability along with other commitments. First of all, it must be determined if performance of sustainability obligations by an economic operator is in compliance with sustainability rules prescribed by the legislation and economic operators shall be required to fulfill such obligations unconditionally.

In addition, if the subcontractor is involved in the public procurement process, commitments related to sustainability must be fulfilled by the subcontractor too.

It should be emphasized that permanent performance of supervision of a public procurement contract is one of the most important aspects in the process of achieving the purpose of SPP. Without right and comprehensive monitoring, SPP loses its meaning and moreover, there could arise the risk for a contracting authority of violation of the principle of efficient and cost-effective use of funds.

Overall, it is important for a contracting authority to perform supervision for exactly the purpose to determine whether sustainability terms are fulfilled and if there are any violation of sustainability commitments stipulated by the legislation, as well as by the contract concluded between the parties. According to Paragraph 15 of Chapter IV of the Draft Decree, this fact may lead to the termination of the public procurement contract.

## Case Studies

### 1. Case Study No 1 – avoiding “greenwash” – multi country<sup>42</sup>

An increasing number of companies market themselves as being green or sustainable, not always with the evidence to back this up. For example, suppliers may claim an exaggerated level of energy efficiency, or focus on a relatively minor environmental impact in claiming to be green. For this reason, it is important that:

1. You familiarize yourself with the environmental impacts of your intended purchase, prior to issuing your tender.
2. Your technical specifications are based on an assessment of environmental impacts across the life-cycle of the product (e.g. from a third-party environmental label).
3. You ask for appropriate proof from the supplier for the environmental performance they claim.

### 2. Case Study No 2 – referring to Eco Label criteria- Kolding, Denmark<sup>43</sup>

The City of Kolding, Denmark, incorporates the EU Ecolabel criteria together with other eco-labels into all its procurement actions for products covered by the labels, with considerable success. The applicable criteria from the eco-labels are inserted directly into technical specifications and/or award criteria. It is stated that a copy of the eco-label certificate is seen as a full verification that the criteria are met, but also that alternative documentation will be accepted. Recent tenders using eco-label criteria include cleaning products, copy paper, uniforms, laundry services (for the detergent used), printing services (for the paper used), tissue paper, and fleet management (for the lubricants used).

### 3. Case Study No 3 – using social criteria in all stages of procurement procedure - Basque County, Spain<sup>44</sup>

The Basque Country Government has issued an ‘instruction’ on the incorporation of social, environmental and other public policy criteria in public procurement by its administration. This lays down which social and environmental criteria must be taken into account in all public procurement in the region and how.

The Main goal of the instruction: To take account of social and environmental considerations (both of which are part of the sustainability approach) along with other aspects related to other public policies in public procurement by the administration and public entities in the Basque Country.

*Assessment and monitoring:* The Basque government departments for employment, social inclusion, social affairs and the environment periodically assess performance in contracting. The assessment includes the wording of the specifications, how they are applied in the award process and the performance of the contract.

<sup>42</sup> Source: EC Guide „Buying Green! A Handbook on Green Public Procurement”, 3rd edition, p. 32.

<sup>43</sup> Source: EC Guide „Buying Green! A Handbook on Green Public Procurement”, 3rd edition, p. 37.

<sup>44</sup> Source: EC Guide „Buying Social: A Guide to Taking into Account of Social Considerations in Public Procurement”, p.21.

*Technical specifications:* The instruction recommends incorporating Accessibility and Design for All requirements in the technical specifications.

*Award criteria:* Whenever there is more than one award criterion, these criteria have to include that the products and services must be well-suited for people with disabilities (whenever this adaptation is above the legal mandatory minimum). Whenever disadvantaged groups are amongst the beneficiaries of the services defined in the subject-matter of the contract, the characteristics related to the fulfilment of their social needs will be included in the award criteria.

*Contract performance clauses:* The Instruction calls for the contract to include special performance clauses: environmental, social and related to other public policies. The aims of the special contract performance clauses are to protect the environment, health and safety, to promote employment of disadvantaged groups, to remove gender inequality from the labour market and to fight unemployment.

Examples of contract performance clauses in the Basque Country:

*Labour inclusion of unemployed people that are difficult to employ:* For this purpose, the instruction states that the staff performing the contract must include a set percentage of disadvantaged people, such as unemployed people, people with disabilities, long-term unemployed women over 30, victims of household violence, people with mental illness, unemployed single parents, immigrants unemployed for at least six months, long-term unemployed (more than one year) and unemployed young people.

*Employment quality and basic labour rights:* The contractor must guarantee compliance with the ILO Core Labour Standards during the performance of the contract in relation to the workers who make the products (the subject-matter of the contract) along the supply chain.

Health and safety in the performance of contracts for building works and services.

#### 4. Case Study No 4 – using life-cycle costing approach – Baia Mare, Romania<sup>45</sup>

The City Council of Baia Mare tendered for the leasing of 30 new EEV (enhanced environmentally friendly) standard buses and 8 trolleybuses. A life cycle costing model was used, which accounted for acquisition price, fuel consumption, maintenance and operational costs. The total initial cost of procurement is higher than previous purchases but this is partly compensated by lower lifetime costs of the new vehicles. The buses were the first EEV buses ordered in Romania, with greenhouse gas emissions considerably lower than previous diesel buses.

#### 5. Case Study No 5 – fighting against abnormally low bids – Angers, France<sup>46</sup>

The Ville d'Angers noticed that in the cleaning sector workers have tough work schedules. Thus an offer that is economically extremely attractive because it proposes a lower number of workers than is appropriate to the surface area to be cleaned, based on average ratios, will be considered abnormally low and rejected if the bidder is unable to explain how he will be able to guarantee such a low price without infringing any applicable laws (such as laws regarding the maximum number of working hours per day).

<sup>45</sup> Source: EC Guide „Buying Green! A Handbook on Green Public Procurement”, 3rd edition, p. 56.

<sup>46</sup> Source: EC Guide „Buying Social: A Guide to Taking into Account of Social Considerations in Public Procurement”, p.41.

## Conclusion

To sum up, these guidelines intend to ensure that contracting authorities exercise their powers in the implementation of SPP effectively and according to the law. Also, they intend to develop a common vision and methodology in order to improve SPP policy in Georgia.

Furthermore, these guidelines inform economic operators about public tenders with inclusive sustainability criteria as well and will help them to apply the sustainability criteria in the production of their goods and services in order to meet the needs of contracting authorities during the public tenders.

In conclusion, it should be noted that, as a result of taking these guidelines into consideration, undertaken obligations by the Constitution of Georgia will be effectively enforced, in particular, the obligations of protection of the environment, rational use of natural resources, social protection of people and development of free entrepreneurship and competition. Moreover, the obligation to promote sustainable development undertaken by the Association Agreement will be ensured.

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