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Green Procurement

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Introduction

- Legal perspective
- How does European public procurement regulation facilitate green public procurement and what are the basic requirements to environmental considerations in procurement procedures?
- Start with
 - Brief introduction to the public procurement regulation
 - What is green public procurement?



Public Procurement Regulation

- Three directives:
 - 2014/24/EU – general procurement directive
 - 2014/25/EU – utilities (water, energy, transport, postal)
 - 2014/23/EU – concession contracts
- Regulate how public contracting authorities enter into contracts when they buy goods and services
- A system of competition for public contracts



The procurement procedures

- Several different competitive procedures
 - Open, restricted, negotiated ++
- Similar structure
 - Publish a notice
 - Procurement documents – technical spec, award criteria
 - Tender
 - (negotiate?)
 - Award – price, quality



Aims and principles

- General aim:
 - Open up the market in the EU
 - Value for money
 - Spending tax money
- Based on general principles of equal treatment and transparency
 - Same requirements to all economic operators
 - Must know how the procedure will be conducted



Green Public Procurement

- Defined by the European Commission as “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.”
- Wide definition – all situations where contracting authorities include environmental considerations



Emphasis in the directives

- Gradually increased attention in the directives
- In the beginning – not mentioned
 - C-513/99 Concordia Bus
- 2004 Directives – mentioned for the first time as a possible qualitative award criteria
- Now seen as an important tool towards reaching EU goal of a more environmentally sustainable economic market



- Recongnises that member states need to make other considerations than purely economical when purchasing
 - Lead by example
 - Implement environmental policies
- Recognition of contracting authorities´buyer power
- PP is a big market – around 14 % of EU´s GDP
 - Environmental considerations in PP gives a competitive edge to greener products and can drive innovation



Green Procurement is voluntary

- Starting point: Green public procurement is voluntary
 - Not all contracting authorities are in a position to take such considerations
 - Increased price or better technical qualities
- Natural as the rules regulates how to buy and not what to buy



- However: there is a general obligation to take measures ensure that economic operators comply with environmental law while performing public contracts
 - In connection with this is also a duty to reject tenders that have an abnormally low price because they don't fulfil legal obligations (art. 69 (3))
- Also some sectoral rules on green public procurement – but these are not given in the general public procurement regulation



Green Procurement – normal rules

- Contracting authorities must follow the rules in the directives
 - There are no exemptions based on green procurement
- Use the same forms of competitive procedures
- Same rules govern environmental considerations as other qualitative requirements and criteria used in the procedure
 - However – some clarifications in the directives



Procedures

- As focus on green procurement has grown – the rules have become more flexible and better accommodates this
- Traditionally rules has been seen as quite rigid
- Open and restricted procedures
 - Notice – tender -award
- When conducting green procurement contracting authorities need knowledge about existing greener solutions
- Can contact suppliers before the procedure



- Also – much focus on innovation through green procurement
- Increased use of:
 - Negotiated procedure
 - Competitive dialogue
- New procedure
 - Innovation partnership



Requirements and criteria

- In procurement procedures contracting authorities can express environmental considerations as
 - Requirements – must be fulfilled
 - Example: low emissions or be energy efficient
 - Award criteria
 - Evaluate how well criteria are fulfilled
 - Example: the more energy efficient the better score
 - Will be weighed against other qualities



- Both needs to be linked to the subject matter of the contract
 - Must relate to the goods or services purchased
 - May not relate to suppliers products in general
- Directive specify that it can be linked to any stage in the lifecycle of the product
 - This opens the possibility for a wide array of considerations and to reward innovation at all stages of a products life



- Evaluating how green a product is can be hard
 - The directives allow the contracting authorities to ask for eco labels to verify that they fulfil specifications or how well they fulfil criteri





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