

2. GPP GUIDELINES

This section contains a review of the guidelines included in main European Union regulations that support public authorities to greening the supplies, works and services they need to contract. The fundamental rules and principles of public procurement are reviewed, as well as the several procedural stages in which environmental requirements may be placed and tested, together with a couple of brief comments on essential issues linked to waste management.

2.1. Legal framework

The Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement intends, among others, to enable public procurers to make better use of public procurement in support of common societal goals. It also clarifies how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development.

Environmental criteria are linked to all the procurement procedure and go beyond environmental, social and labour law compliance¹. Thus, special conditions relating to the performance of a contract may include economic, innovation-related, environmental, social or employment-related considerations.²

The Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts is also a relevant regulation, particularly for waste collection and management concession contracts. It also provides procedural guarantees and general principles³ for public procurement related to environmental obligations and to the incorporation of technical specifications on environmental criteria.

These mandates in specific public procurement rules are strengthened in the waste regulation. In particular, according to the Directive (EU) 2018/851 of the European Parliament and of the Council, of 30 May 2018, amending Directive 2008/98/EC on waste,⁴ sustainable public procurement to encourage better waste management and the use of recycled products and materials are economic instruments to provide incentives for the application of the waste hierarchy. It also mandates Member States to use procurement criteria to promote re-use and recycling,⁵ and integrate them when drafting their waste prevention programmes.⁶

In addition, the SDG (Sustainable Development Goals) n° 12, included in the 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, establishes the need to ensure sustainable production and consumption patterns and includes, among its targets, the promotion of public procurement practices that are sustainable, in accordance with national policies and priorities.

¹ Art. 18 Public Procurement Directive 2014/24/EU.

² Art. 70 Public Procurement Directive 2014/24/EU.

³ Art. 30 Concession Contracts Directive 2014/23/EU.

⁴ Annex Waste amending Directive (EU) 2018/851, new Annex IVA Waste Directive 2008/98/EC.

⁵ Art. 1 (12) Waste amending Directive (EU) 2018/851, art. 11 Waste Directive 2008/98/EC.

⁶ Art. 29 Waste Directive 2008/98/EC.

2.2. Fundamental rules and principles of public procurement

The general principles governing public procurement remain the same for GPP, such as transparency and equal treatment of economic operators, ensure quality, continuity, accessibility, affordability, innovation, availability and comprehensiveness of the services, the respect of the specific needs of different categories of users or the involvement and empowerment of users.⁷ A best-quality ratio choice is also a key element of public procurement.

When awarding green public contracts, contracting authorities have to apply the national procedures (i.e. open, restricted or framework agreements). There are not specific rules in this field.

2.3. Contract award criteria, technical specifications and conditions for performance of contracts

Contract award criteria, technical specifications and conditions for performance of contracts are the tools, within a public procurement procedure, to shape the supply, work or service' full nature and communicate it to the economic operators. Therefore, the three of them could play a key role in fostering sustainable economy.

The Public Procurement Directive 2014/24/EU sets out the criteria for the selection of the contractor. Best price-quality offer has to be identified on the basis of economic and qualitative criteria, thought a cost-effectiveness approach.

Award criteria⁸ are those that will enable the selection of the best possible deal. Such criteria include, among others, environmental aspects, those that make possible for the contracting authority to create, through GPP, greater incentives for sustainable business. For instance, in the case of a waste collection contract public procedure, environmental criteria could be an adequate specific training for the contractor' workers or the use of energy-efficient vehicles.

On the other hand, conditions of performance of contracts⁹ are those that will allow contracting authorities helping to attain environmental goals. Always linked to the subject-matter, they are mandatory and may include environmental considerations.

In the case of tender for concessions, technical requirements are those that define the characteristics required of the works or services that are the subject-matter of the concession. They may include environmental and climate performance conditions,¹⁰ and be also referred to the specific process of production or provision of the requested works or services.

For instance, in the case of a waste collection contract public procedure, environmental conditions could be the use of smart waste containers, that may include "pay-as-you-throw" or "know as you throw" systems specifications, and the use of related applications.

Examples of best practices are provided in the last section.

2.4. Waste management specificities

Beyond the Public Procurement and Concession Contracts Directives, other European Union regulations increase the possibilities for contracting authorities to draft green public procurement

⁷ Art. 76 Public Procurement Directive 2014/24/EU.

⁸ Art. 67 Public Procurement Directive 2014/24/EU and art. 41 Concession Contracts Directive 2014/23/EU.

⁹ Art. 70 Public Procurement Directive 2014/24/EU.

¹⁰ Art. 36 Concession Contracts Directive 2014/23/EU.

documents focused on waste management. This is the case, namely, of the European Ecolabels, the reduction of the impact of certain plastic products on the environment and the reserved contracts.

In addition, due attention must be paid by contracting authorities on how public contracts and concessions should be adapted to the evolution of separate collection schemes. Both, the new ones and those already awarded.

2.4.1. European Ecolabel

The establishment and the application of the voluntary EU Ecolabel scheme is regulated by the Regulation (EC) No 66/2010 of the European parliament and of the Council, of 25 November 2009. This technical regulation may help Member States to define guidelines when establishing their national Green Public Procurement Action Plans and considering the setting of targets for public purchasing of environmentally friendly products. Indeed, it is an efficient way of ensuring proper green public procurement procedures. The criteria and conditions are linked to technical specifications related to the product's whole lifecycle. It is a legally secure and easy system to request environmental specifications (Pernas, 2022).

Furthermore, the labels are recognized as a means of proof that the works, services or supplies correspond to the required characteristics by the Public Procurement and Concessions Contracts Directives.¹¹

2.4.2. Reduction of the impact of certain plastic products on the environment

The Directive (EU) 2019/904 of the European Parliament and of the Council, of 5 June 2019, on the reduction of the impact of certain plastic products on the environment clearly states that "The fight against litter is a shared effort between competent authorities, producers and consumers. Public authorities should lead by example".¹²

Public procurements appear to be an effective measure to achieve an ambitious and sustained reduction in the consumption of the single-use plastic products.¹³

2.4.3. Reserved contracts

Municipal collection and management of second-hand clothes and textile waste, as well as other old objects, might have a reserved quota within GPP for economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons.¹⁴

Reserved contracts may contribute to the objectives of preparation for re-use, further to the raise in repair and the stimulation of the second-hand market. It may also support projects aimed at social reintegration as well as to return to the market rejected material (Pernas, 2022).

¹¹ Art. 43 Public Procurement Directive 2014/24/EU and 36 Concession Contracts Directive 2014/23/EU.

¹² Whereas (35) Plastic Directive 2019/904.

¹³ Art.4 Plastic Directive 2019/904

¹⁴ Art. 20 Public Procurement Directive 2014/24/EU and art. 24 Concession Contracts Directive 2014/23/EU.



2.5. Means of proof

All the requirements set-up on the procurement documents (award criteria, technical specifications or performance conditions) have to be supported with tools (for example, test reports or certifications) to properly follow and verify the successful conclusion of the work, service or supply.

Contracting authorities should understand that environmental means of proof required to economic operators¹⁵ may be complex and know-how based, thus, specialist technical skills may be required.

¹⁵ Art. 44 Public Procurement Directive 2014/24/EU.