

## Introduction

HM Treasury and the Department of the Environment, Transport and the Regions have issued the following to provide guidance to Government departments, including their Executive Agencies and NDPBs, on considering environmental issues in purchasing. It provides potential suppliers with a better understanding of how environmental issues are to be dealt with in Government Procurement.

### Part I - Environmental Issues in Purchasing - A Policy Statement

#### Procurement policy

All public procurement of goods and services, including works, is to be based on value for money (VFM), having due regard to propriety and regularity. VFM in procurement is defined as "the optimum combination of whole-life cost and quality (or fitness for purpose) to meet the customer's requirement". The policy is set out in guidelines which are available on the Treasury website: <http://www.hm-treasury.gov.uk/guid.html>

The emphasis on whole-life costs means that departments are required to take account of all aspects of cost, including running and disposal costs, as well as the initial purchase price. The reference to "quality to meet the customer's requirement" enables departments to specify what they need to meet their own operational and policy objectives while contributing to the Government's objectives on environmental matters. Departments must, of course, satisfy themselves that specifications are justifiable in terms of need, cost effectiveness and affordability.

#### Environmental policy

The 1990 White Paper *This Common Inheritance* committed each department to have a strategy in place for greening their operations. This should be adapted, to meet each department's circumstances, from the Government's model framework for greening operations which was approved by Green Ministers in May 1998, a copy of which is on DETR's website: <http://www.environment.detr.gov.uk/greening/gghome.htm>

Among the model's key aims are:

- conserving energy, water, wood, paper and other resources, particularly those which are scarce or non-renewable
- while still providing a safe and comfortable working environment;
  
- reducing waste through re-use and recycling and by using refurbished and recycled products and materials where such alternatives are available;
  
- monitoring discharges and emissions to air, land and water to assess what action is necessary to reduce pollution or the risk of pollution;

- phasing out ozone-depleting substances and minimising the release of greenhouse gases, volatile organic compounds, vehicle emissions and other substances damaging to health and the environment;
- encouraging manufacturers, suppliers and contractors through specifications to develop environmentally preferable goods and services at competitive prices;
- ensuring that any products derived from wildlife such as timber, plants and leather goods are from sustainable sources, and complying with EC and international trading rules such as CITES (the Convention in International Trade in Endangered Species);
- working with contractors to improve environmental performance where this is relevant to the contract and to the achievement of value for money; and
- meeting all relevant current and foreseen statutory regulations and official codes of practice and specifying contractors to do the same when working on departmental premises.

#### Environmentally sensitive procurement

Drawing up specifications based on these criteria can contribute significantly to the achievement of Government targets for reducing the environmental impact of its activities. Although the aim must be to achieve value for money, not to further other policy aims, it should not be overlooked that legitimate requirements laid down by Government purchasers can have an influence in assisting the development and use of goods and services which are less harmful to the environment.

#### The EC Procurement Rules

Departments and other contracting authorities are required to comply with the EC Procurement Directives and the UK Regulations which implement them. These apply to most contracts whose estimated value equals or exceeds specified thresholds.

They are also required to comply with the Treaty of Rome (for example, on the free movement of goods and services and non-discrimination on grounds of nationality).

The main ways in which these rules affect environmental considerations within the procurement process are:

- (a) specifications - contracting authorities are free under the rules to specify their requirements in green terms. For example, departments may specify that a product should be made out of materials which are or could be recycled or that particular materials, such as ozone-depleting substances, should not be used in the product. This is subject to the general rule that specifications must be drawn up in a manner which does not discriminate against products or providers from other Member States and which is, where applicable, consistent with the provisions in the Directives on technical specifications and the use of standards;
- (b) selection of tenderers - the Regulations set out detailed criteria for the selection of tenderers based on evidence of their personal position, their economic and financial

standing, their technical capacity and, for services, also their ability. The nature of the evidence that may be requested with regard to technical capacity is exhaustive, so evidence on other factors may not be taken into account. In particular, questions about providers' general policies (e.g. on environmental issues) are not permitted.

Purchasers are allowed to reject candidates who have been convicted of a criminal offence or who have committed an act of grave misconduct in the course of their business where they consider rejection to be justified. This may include infringement of environmental legislation/regulations. However care should be taken to ensure that decisions to reject providers are proportionate to the offence and that the provider is given an opportunity to describe any steps they might have taken to prevent recurrence. Care should also be taken to ensure that providers are treated equally;

(c) award of contract - only two criteria are permitted - either various criteria including whole-life costs for determining which offer is "the most economically advantageous" to the purchaser (i.e. best value for money) or "lowest price" alone; and

(d) contract conditions - as a matter of Community law, purchasers can attach conditions to the award of contracts provided these conditions are compatible with the Treaty of Rome. In brief, this means that the conditions must be equally capable of being met by providers in all Member States. However, the UK's domestic policy of not using procurement to achieve other policy ends limits the extent to which departments may have recourse to "contract compliance" - as the imposition of contractual conditions is commonly known. An example of an acceptable contract condition might be "while working on the department's premises the contractor will comply as far as possible with the department's green strategy".

### Specifying Requirements

The procurement process will normally start with the definition of the business need by the end-user. From this, a user requirement or specification will be drawn up. In preparing the specification the end-user should decide the extent to which it should cover environmental requirements.

These should take account of:

- a. the Government's environmental policies and the department's own strategy for greening its operations;
- b. the resources available to the department;
- c. the requirement to achieve value for money (see below); and
- d. the EC Procurement Directives and the Treaty as appropriate.

### Procuring Goods and Services

The departmental purchaser's role is to respond to the end-user's needs in the normal way. The purchaser will need:

- a. to be fully aware of the department's environmental strategy;
- b. to be able to challenge a specification to ensure that full account is taken of the purchaser's knowledge of the market and professional skills and experience;
- c. to ensure that where the EC procurement directives apply, they are followed appropriately - e.g. in framing the specification, in selecting tenders and in awarding contracts; and
- d. to ensure that the requirements of the Treaty of Rome are complied with.

### Accountability

The Accounting Officer is accountable to Parliament through the Public Accounts Committee for the department's decisions on purchasing and the expenditure arising from them, and will need to be able to demonstrate that value for money has been obtained. The Minister in charge of each department is also accountable to Parliament for the department's strategy for greening government operations including taking account of environmental factors in purchasing. (In practice, the department's Green Minister, where different, will normally answer on these matters.)

### Value for Money

Examples of the factors which need to be considered in assessing whole-life costs include:

- running costs, such as the energy or water consumed by the product over its lifetime;
- indirect costs, e.g. less energy-efficient IT equipment will produce more heat causing the plant in air-conditioned buildings to work harder to remove it, so adding to the electricity bill;
- administrative costs, e.g. the use of a more expensive product which is less harmful to the environment may reduce the time spent by staff in complying with the Control of Substances Hazardous to Health (COSHH) Regulations;
- investing to save revenue costs ("spend to save" measures)  
e.g. specifying higher levels of insulation where the extra expenditure can be recouped from lower energy costs;
- not generally insisting on new items when refurbished parts or products could be used;
- recyclability, e.g. purchasers can create markets for their own waste such as paper, toner cartridges, etc, by buying products containing recycled materials; furthermore, a recycled product, e.g. a refurbished toner cartridge, may cost less than a new one. Purchasers should, however, look to waste reduction and re-use as well as recycling (see below);

- the cost of disposal arrangements, e.g. it may be worth paying a premium to a supplier giving an undertaking to remove a product or a hazardous substance at the end of its useful life.

Departments should also consider risk factors, for example:

- Management (under Section 4 of the Environment Protection Act 1990) e.g. by choosing benign rather than hazardous materials; and
- the risk of investing in redundant plant and equipment as increasingly stringent environmental standards are imposed through EU and UK legislation, allied to increasingly vigilant enforcement.

Buying green may often cost less, taking proper account of factors such as these. However, cases may arise where the specification of a particular environmental requirement results in higher costs which will not be offset by savings over the longer term. Departments are accountable for their expenditure and, therefore, will need to determine whether the extra cost is justified. The justification may be that Ministers have decided collectively as a matter of policy that the Government should not buy a particular substance or material on the grounds that it is harmful to the environment. Otherwise, it will be for the purchasing department to judge whether the premium is justified after taking into account the department's own policy statement on greening operations. In formulating such requirements it will, of course, be necessary to strike a proper balance between the costs of the requirement to the taxpayer and the environmental benefits. However, that is a matter of prudent financial management generally rather than specifically one of procurement policy.

At the tender evaluation stage the costs and benefits of the competing bids should be evaluated in the normal way to establish which of the bids meeting the specification offers the best value for money. The contract should be awarded accordingly.

Departments should not seek to use their purchasing power as a means of pursuing wider environmental ends (i.e. those outside the scope of the contract). For example, while a department is free to specify paper made out of recycled materials, it should not limit its field of selection to providers who only supply recycled paper. The unwarranted rejection of suppliers capable of meeting the specification could lead to both a loss of value for money and a breach of the EC rules.

The award of contracts should not be made subject to criteria or conditions of an environmental nature which are not directly relevant to the product or service which is being procured. However, departments will need to ensure that they discharge their statutory obligations, for example under the "Duty of Care "(see below).

## Other Issues

### Substantiating environmental claims

Purchasers should be wary of unsubstantiated claims and environmental marks which have no formal recognition. Some typical phrases are:

- "environmentally friendly" - meaningless if unexplained;
- "comes from managed forests" - virtually all forests used for paper-making are managed, but some are managed in ways that are strongly criticised by environmentalists; and
- "kinder to wildlife" - again, meaningless if unexplained.

Further guidance on these issues is given in the Government's Green Claims Code.

### Environmental management schemes

Formal standards for environmental management systems are now in place which assure purchasers that suppliers are operating to control their environmental impacts. Companies can obtain certification for their environmental management systems under ISO 14001 or the Eco-Management and Audit Scheme (EMAS). More information on both schemes but particularly on ISO 14001 is given in DETR's guide to Implementing Environmental Management Systems in Government.

EMAS and ISO 14001 are voluntary schemes promoted by the Government. However, it is not the Government's policy to require its suppliers to comply with them as a condition of selection to tender or award of contract as such a condition could lead to higher prices by restricting those eligible to compete for orders and contracts and could conflict with the EC rules on selecting providers. It is, however, permissible to ask suppliers to provide evidence that they are able to operate an environmental management scheme where it is relevant to the contract, e.g. for the provision of a facilities management service in an organisation accredited to or seeking accreditation to ISO 14001.

### Part II - DETR Procurement and the Environmental Agenda

The following introduces revised procedures which all those involved in a procurement (i.e. those in the originating Business Unit as well as the procurement staff) must follow to achieve the aims and objectives of the Department's greening operations policy statement. A copy can be found at the Department of the Environment, Transport and the Regions (DETR)

website: <http://www.environment.detr.gov.uk/greening/policy99/index.htm>

### Background

The environmental agenda is becoming increasingly important. DETR's Green Minister, currently Beverley Hughes, is accountable for our actions to the Environmental Audit Committee - a select committee set up by Parliament to scrutinise the Government's environmental performance. More information on the role of Green Ministers is given on DETR's

website: <http://www.environment.detr.gov.uk/greening/minister/grmin.htm>

DETR is leading the drive within Government to green government operations, policies and programmes. Good progress has been made

- particularly in procurement. The procurement framework and the need to achieve greening government objectives are compatible. For example, reduced greenhouse gas emissions, waste minimisation and water conservation can be achieved by specifying:

- Energy-efficient IT equipment which helps to reduce CO2 emissions;
- Presence detectors for controlling lighting in offices;
- Environmentally preferable refrigerants to reduce ozone depletion and global warming;
- Recycled paper to reduce the impact on landfill;
- Low-flush toilets for conserving water; and
- Packaging to be reduced or returned.

The Government's procurement policy is based on value for money, which is defined as "the optimum combination of whole-life cost and quality (or fitness for purpose) to meet the user's requirement".

DETR and Treasury have agreed and issued a joint note on Environmental Issues in Purchasing (<http://www.hm-treasury.gov.uk/docs/1999/envte2.html>) which addresses how environmental issues can be taken into account consistent with public procurement policy and the regulatory framework.

DETR's Sustainable Development Unit (SDU) and the Purchasing Policy and Advice Division (PPAD) have issued guidance to help buyers "buy green", including a Green Guide for Buyers. These are on the green procurement pages of DETR's website (<http://www.environment.detr.gov.uk/greening/greenpro/greenpro.htm>).

PPAD has produced other useful tools including:

- a standard contract condition;
- a model statement in the Invitation to Tender letter; and
- a requirement to comply with the Green Claims Code in the Instructions for Tenderers.

A survey conducted by PPAD showed that, where green issues were clearly identified, action was properly taken within the tender process to both maximise positive environmental impacts and minimise adverse environmental impacts. However, where the issues were not so clear, green implications did not seem to have been addressed to any significant extent.

So whilst we have a good overall policy there is potential for improvement in its practical delivery. As the lead department in this area we should ensure that environmental issues are considered in all buying decisions, not just the obvious ones.

There are similar issues with the environmental impacts of policies and programmes. These include consideration of whether natural resources will be consumed, waste or pollution produced or an adverse contribution towards climate change made. The booklet Policy Appraisal and the Environment explains these issues and can be found on the DETR website (<http://www.environment.detr.gov.uk/appraisal/index.htm>).

#### Lifecycle assessment and ecolabelling

Few organisations can afford to conduct detailed lifecycle (or whole-life) assessments on all their products because of the technical expertise and resources required to produce meaningful results. This is where the EC ecolabelling scheme can help. It provides rigorous standards for certain product groups which are based on a full analysis of lifecycle impacts and agreed at European level. However, the scheme is voluntary and therefore it does not follow that ecolabelled products necessarily perform better in environmental terms than non-ecolabelled products. Accordingly, invitations to tender and contract documents should not require products to carry the label or any other non-mandatory label. However, the ecolabel criteria may be used to identify environmentally preferable products and to improve the specification for products and services.

#### Energy labelling schemes

Purchasers who wish to identify products in the most energy efficient categories should use the European Union's mandatory energy labelling scheme.

#### Waste minimisation strategy

The aim of the strategy, set out in the Government's consultation paper Less Waste More Value, is to reduce the amount of waste produced. Failing that, value should be recovered from the waste and only if that is not an efficient solution should the waste be disposed of by means which minimise risk to the environment and to human health.

The options for waste management are ranked by merit of their relative benefits:

- a. reduce;
- b. reuse;
- c. recover (i.e. recycling, composting and energy recovery); and
- d. dispose.

Purchasers should focus their attention on the top of the hierarchy when making their purchasing decisions. For example, which products are likely to cause the least waste? Which can be re-used? Or, which can be recycled? Making the right decision - taking into account VFM - can help departments meet their targets for reducing waste.

#### Duty of care - waste disposal

Departments are reminded of their responsibilities under Section 34 of Part II of the Environmental Protection Act 1990, which places a Duty of Care on anyone who produces or holds controlled waste.

#### Producer responsibility initiative for packaging waste

Purchasers should buy recycled products in support of this initiative wherever they provide VFM. The initiative is designed to put an increased share of responsibility on suppliers to make productive use of the materials in their products (and the packaging around them) once they have served their original purpose. The aim is to reduce packaging, and create markets for recycled materials by making greater use of them in packaging and products.

#### Receipt from sales

Departments may enter into contracts with companies which re-use or recycle waste, provided they follow Government rules on the treatment of receipts.

#### Further guidance

Further information may be obtained from the following websites:

DETR, for the model framework for greening government operations:  
<http://www.environment.detr.gov.uk/greening>

HM Treasury for general procurement policy and practice guidance:  
<http://www.hm-treasury.gov.uk/guid.html>

Enquiries should be addressed to:

Mike Davis, PPU, HM Treasury, tel: 0171 (GTN) 270 1551 (fax 1653),  
email: [mike.davis@hm-treasury.gov.uk](mailto:mike.davis@hm-treasury.gov.uk)

or

Mike Acheson, DETR, tel: 0171 (GTN) 3533 3067 (fax 3059),  
email: [mike\\_acheson@detr.gov.uk](mailto:mike_acheson@detr.gov.uk)

The thresholds are reviewed at least every two years and are notified to departments separately.

#### Business Case and the Invitation to Tender

The procurement officer must "think green - buy green". But responsibility for putting into practice the department's corporate policies for greening its operations also rests with the user. Departmental policy must therefore inform the business case for each procurement. The procurement officer should work with the user to develop the business case before the requirement is finalised.

The business case must address green issues and identify whether there is scope to improve the environmental impact of the proposed contract. The key principles are "reduce, reuse, recycle and rethink" including thinking about whole-life costs. More details can be found in the Green Guide for Buyers.

The early consideration of green issues with its emphasis on whole-life costs may result in a different requirement providing better value for money. Whether it does or not, the optional model clause in the Invitation to Tender letter, asking tenderers to identify environmental impacts and how they propose to minimise them, should now always be used. This will allow a wider consideration of the issues during the evaluation of tenders and may result in new ideas. The invitation should also state the general award criteria, which should include environmental issues as shown below. Highlighting this requirement as part of the contract award criteria should also help to raise awareness and indicate the department's commitment and may lead to better solutions as tenderers will now be specifically asked to address green issues.

### Contract Award Criteria

The appropriate contract award criterion for almost all public procurement, and certainly where there is any environmental impact involved, will be the "most economically advantageous tender to the contracting authority". This consists of two main elements: qualitative issues and whole-life costs. All tenders, should, of course, be considered on a consistent basis against the stated criteria. The qualitative issues should include specific reference to relevant environmental issues in any advertisement (i.e. the Contract Notice for an EC tender) and the Invitation to Tender.

Relative merits of environmental benefit, over and above any minimum mandatory requirements, do have to be carefully considered and justified. Whether this will result in any "green premia" for a better environmental solution, after any whole-life costs have been considered, is a matter of judgement in each case. Care must be taken that any potential wider environmental benefit that is included, i.e. that is not of direct benefit to the department, does not potentially discriminate against firms, for example distance to travel to deliver goods is not allowed. Evaluation also needs to take into account whole-life costs which can bring longer-term savings, where these fall to the department, as shown below. The end of the evaluation should produce a value for money solution, having considered both the qualitative aspects, including environmental ones, and whole-life costs.

### Costs including Whole-life Costs

Wider costs (e.g. costs of traffic congestion to the economy or long-term pollution on local communities) outside of those that the department directly pays for, must not be considered at the evaluation stage as part of the financial analysis. However, these wider aspects can be considered at the specification stage.

This means that, for example:

- the cost to the country of acquiring new landfill sites, caused by our waste paper, cannot be factored into the cost analysis of our stationery contract. But the landfill

problem can be addressed by specifying that we will only buy recycled paper, so reducing the amount of waste that has no value; and

- the cost to the NHS of treating pollution-related illnesses also cannot be directly taken into account in the evaluation but can be addressed by specifying more efficient and cleaner vehicles which are also likely to cost less over the longer term.

But relative environmental aspects, as part of the non-financial qualitative assessment, can be taken into account as explained above.

Whole-life costing provides the means of determining if it is cost-effective to invest in a more expensive product initially to reduce costs in the long run.

The important elements for buyers (with examples) are:

- Direct running costs - resources used over the lifetime of the product or service;
- Indirect costs - loading on cooling plant arising from energy-inefficient equipment;
- Administration costs - COSHH overheads from buying hazardous products requiring additional controls and special handling and disposal;
- Spending to save - investing in higher levels of insulation to save heating and reduce bills;
- Recyclability - creating markets for our own waste by buying recycled products; and
- Cost of disposal - paying a premium at the outset to reduce waste, i.e. by choosing a product which is more durable, reusable, recyclable, includes disposal costs or is free of hazardous materials requiring its disposal in a special way.

More information on whole-life costs can be found in the Resource Management Guidance - Procurement, starting at paragraph 4321, at:  
<http://infonet/rmg/document.asp?docName=rmg-procurement-04-04>

Some cases will be straightforward but it is expected that in a number of areas, green issues will not be so clear. Nevertheless, at the very least, the department will now be able to demonstrate that consideration was given to environmental impacts even if the conclusion was that there were none. This must be clear to readers of the contract file.

## EC Developments

The EC Commission is currently considering environmental issues and procurement. Most issues in this Guidance align with the Commission's thinking. However, two aspects do not. These are the extent to which production processes (and management systems) can be taken into account and the extent to which environmental quality aspects in the award criteria, where they relate to environmental issues but are not directly measurable, can go further than matters directly affecting the contracting authority. The department has made a response to this and will continue to liaise with the Office of Government Commerce. However, until such time as the Commission

makes a final recommendation, departmental policy will remain as set out in this Guidance.

#### Further Advice

The green procurement page of DETR's website provides a range of advice on how to take account of environmental issues in procurement and has links to other useful sites in the UK and worldwide. This includes the Environment Agency's Spotlight on Business Environmental Performance which lists companies fined for environmental offences. This can be found at: <http://www.environment-agency.gov.uk/envinfo/spotlight/index.htm> Firms found guilty of environmental offences can be rejected from the list of candidates who apply to be invited to tender, but care must be taken to ensure that this decision is proportionate to the offence and that the provider is given an opportunity to describe any steps they might have taken to prevent recurrence.

There is also a great deal of information of interest to purchasing officers on other pages of the Department's greening government website. The address or URL is: <http://www.environment.detr.gov.uk/greening/gghome.htm>

Advice on this Guidance, or on specific cases, should be addressed in the first instance to Andy De Lord in PPAD in Ashdown House Victoria (GTN: 3533 3069, outside number: 020 7944 3069), who will consult with SDU and the WED Greening DETR team, and others, as appropriate, with particularly difficult cases possibly being put to the departmental Green Minister.

All information in this guidance is checked and believed to be correct, but cannot be so guaranteed and the publishers shall not be liable for any loss suffered directly or indirectly as a result of its use