



## SELECTION ACCORDING TO TECHNICAL CAPACITY

The objective, at this stage, is to select the candidates most able to execute the contract. Therefore, requirements relating to capacity must be directly relevant to the subject of the contract.

The EC Public Procurement Directives provide an exhaustive list of the evidence contracting authorities can request as proof of technical capacity. Several of these can relate to environmental matters.

Where relevant to the subject of the contract, contracting authorities can ask for evidence of the following:

- Specific knowledge or experience and, for services contracts, ability.
- Description of technical facilities and measures for ensuring quality.
- Statement of tools, plant and technical equipment.
- Indication of environmental management measures (see below for further details).

## TRACK RECORD

In assessing technical capacity, contracting authorities can also consider how tenderers have performed on previous contracts. If, for example, a contractor failed to fulfil the environmental requirements of a previous contract, this can be taken into account at the selection stage. As ever, care needs to be exercised to ensure equal and proportionate treatment of candidates.

## ENVIRONMENTAL MANAGEMENT SYSTEMS

As mentioned above, contracting authorities can require evidence of those environmental management measures the provider will be able to apply that are relevant to the execution of the contract. This option is only available when contracting for works and services because an environmental management scheme will not be directly relevant to a supplies contract.

Where they require independent certification, contracting authorities should refer to:

- The EU Eco-Management and Audit Scheme; or
- Environmental management standards based on the relevant European or international standards.

And they must recognise:

- Equivalent certificates from bodies established in other Member States; and
- Other evidence of equivalent environmental management measures.

## WHAT CANNOT BE DONE

Contracting authorities should not, for example:

- Ask for evidence that is not directly linked to the subject of the contract.
- Ask about candidates' general policies, where this goes beyond what is necessary to assess the candidates' capacity to perform the particular contract. Any information that is requested would be assumed, by the courts, to have been taken into account, even if only the relevant aspects of that information were considered.

This guidance is based on a joint note by the Office of Government Commerce and the Department for Environment, Food and Rural Affairs, which can be found at [www.ogc.gov.uk](http://www.ogc.gov.uk)

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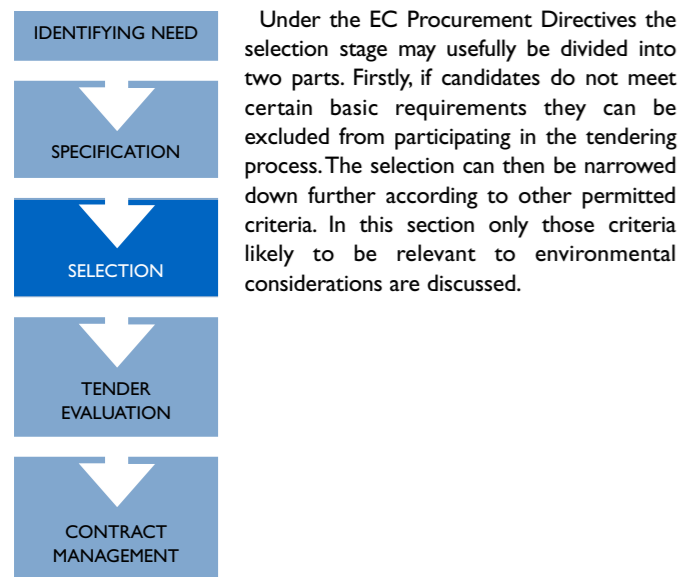


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## SELECTION STAGE



Under the EC Procurement Directives the selection stage may usefully be divided into two parts. Firstly, if candidates do not meet certain basic requirements they can be excluded from participating in the tendering process. The selection can then be narrowed down further according to other permitted criteria. In this section only those criteria likely to be relevant to environmental considerations are discussed.

## EXCLUSION FROM PARTICIPATION

Candidates can be excluded from participating in the contract on certain grounds.

These include circumstances where they have:

- Been convicted of a criminal offence concerning professional conduct; or
- Been guilty of grave professional misconduct proven by any means that the contracting authority can demonstrate.

These might relate to environmental matters.

Care should be taken to ensure that candidates are treated equally, and that the decision to reject a candidate is proportionate to the seriousness of their misconduct and the profile of the particular contract. The candidate should also be given the opportunity to describe any steps they have taken to prevent recurrence.

# ENVIRONMENTAL ISSUES IN PURCHASING



**The Secretary of State for Environment, Food & Rural Affairs has made it clear that careful consideration should be given to environmental issues during the procurement process. This guidance is based on a joint note by the Office of Government Commerce and the Department for Environment, Food & Rural Affairs and is intended to show how this is possible, and how it can be most effectively achieved. In particular, it aims to explain clearly the scope to take such issues into account within the framework of the Government's procurement policy and the EC procurement rules.**

This guide will be useful to officials directly involved in procurement, as well as those who are customers of the procurement function, and those responsible for managing environmental impact. It is designed primarily for Government Departments, including their Executive Agencies and Non-Departmental Public Bodies (NDPBs), but will also be useful to other public sector purchasers such as local authorities, particularly on the EC procurement rules.

This guidance does not remove the need to seek appropriate legal advice where there is uncertainty about the application of the EC rules, nor to seek other professional advice where appropriate.

This guide seeks to avoid overlap with other publications as far as possible. Where other documents that provide helpful information are widely available, links are included rather than duplication.

The Government's procurement policy is that all public procurement should be based on value for money, having due regard to propriety and regularity. This policy is set out in Government Accounting, Chapter 22. It is

the responsibility of all Government Departments and NDPBs to apply it.

It is important to understand that the Government's policy of achieving value for money in procurement – defined as the optimum combination of whole-life cost and quality (fitness for purpose) to meet the user's requirement – applies to the award stage of the procurement process. It is for Departments to decide what to buy and to set the specification, in the context of their overall objectives, and subject to the normal public expenditure tests of need, affordability and cost-effectiveness. It is at this earlier stage that there is most scope to consider environmental issues. This distinction between the award stage and the specification stage has often been misunderstood.

For example a Department can choose to purchase low emission vehicles (even where they might be more expensive than standard vehicles). They must, however, achieve value for money in awarding the contract, ie the contract for low emission vehicles should be awarded to the bidder offering the best combination of whole-life cost and quality to meet that requirement. And the requirement itself, for low emission vehicles, must be tested for need, affordability and cost-effectiveness in the context of the Department's overall objectives. However, this is a matter of prudent financial management generally rather than specifically one of procurement policy.

## EC RULES

All public procurement procedures must comply with the EC Treaty. The key principles of the Treaty, from a public procurement point of view, are the free movement of goods and services, and non-discrimination on the grounds of nationality.

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.



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In addition to this, the EC Procurement Directives, which flesh out the Treaty principles with more detailed rules based on equal treatment, transparency and competitive procurement, apply to the award of all contracts above certain thresholds. The Directives have been implemented in UK law by Regulations. The requirements of the Directives, insofar as they are relevant to the consideration of environmental issues in procurement, are discussed throughout this guide, and each stage of the procurement process is examined in turn.

## ENVIRONMENTAL PROCUREMENT AND SUSTAINABLE PROCUREMENT

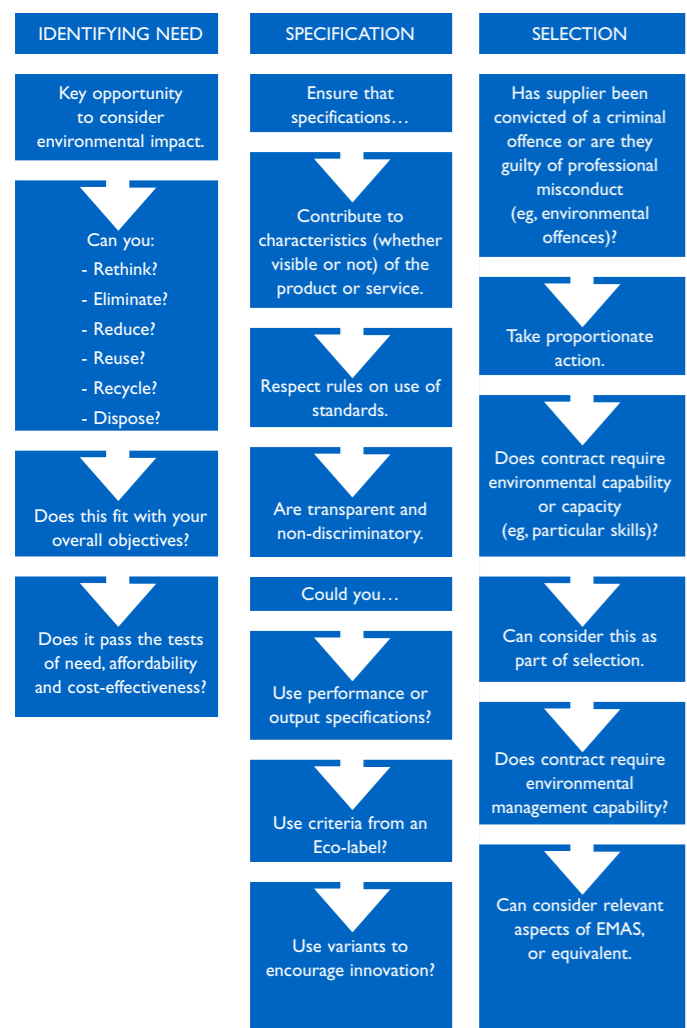
Sustainable development means achieving four objectives at the same time:

- Effective protection of the environment
- Prudent use of natural resources
- Social progress which recognises the needs of everyone
- Maintenance of high and stable levels of economic growth and employment

Environmental procurement, in support of these objectives, is therefore an important component of sustainable procurement and a contributor to the long-term goal of sustainable development. There is considerable scope to consider environmental issues in procurement within the context of achieving value for money, and this is the main focus of this guidance.

The consideration of certain social issues is also encompassed by the term sustainable procurement. The scope to consider social issues is outlined in brief in this guidance. The Government's Interdepartmental Sustainable Procurement Group is conducting further work on social issues in procurement, and further guidance will be issued in due course.

The table below is designed to illustrate how environmental issues can be considered at each stage. It should be used in conjunction with the relevant sections of this guide, which provide more detailed advice.



## KEY POINTS FOR SUCCESSFUL CONSIDERATION OF THE ENVIRONMENT IN PROCUREMENT

Do...

- Consider the environment from the outset. There is most scope available early on when defining needs and specifications, and early action is more likely to be successful.
- Carefully plan the whole procurement process.
- Use performance or functional specifications where appropriate.
- Assemble relevant expertise. Procurement specialists and end-users should be involved along with environmental managers, and others with relevant knowledge or experience.
- Initiate early dialogue with the supplier community. This can be useful in finding out what is available, in informing the market of future requirements, and in stimulating more innovative responses. Care should be taken not to distort competition – this process should not give any advantage to particular suppliers.
- Follow the detailed advice on each stage of the procurement process contained in this guidance.

And, consider the strategic context:

- Develop an environmental purchasing strategy – be clear about how sustainable development fits with other objectives and, in particular, how it fits into the organisation's overall procurement strategy. This should also reflect wider Government priorities.
- Secure commitment to your environmental purchasing strategy at a senior level.
- Consider developing a risk-based approach to enable prioritisation of actions. Look at risks to the environment as well as related risks to reputation and security of supply.

Don't...

- Confuse obtaining value for money with awarding contracts on the basis of lowest price.
- Act in such a way as to distort competition or discriminate against candidates from other Member States.
- Leave consideration of the environment until too late in the process.

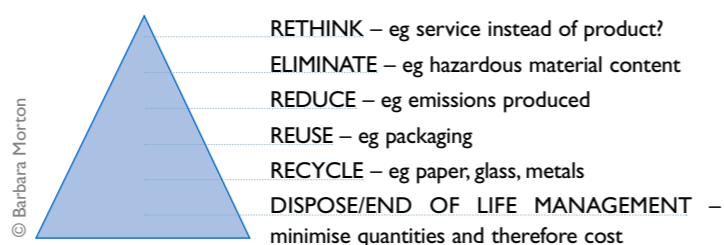
## IDENTIFYING A NEED AND DEVELOPING A BUSINESS CASE

**IDENTIFYING NEED**  
The early stage of identifying a need (setting the 'user's requirement') and developing the business case is a key point at which consideration of issues of sustainability should take place.

**SPECIFICATION**  
At this stage, prior to setting a specification, there is little in terms of procurement policy or the EC rules that affects the scope to take sustainable development into account. However, efficient and effective use of financial resources does, of course, need to be assured.

**SELECTION**  
It will not usually be the procurement officer who sets the need, so it is essential that internal customers and procurement staff work closely together to ensure that full advantage is taken of the scope available to consider environmental issues at this stage, and in the subsequent development of specifications.

## ENVIRONMENTAL PURCHASING HIERARCHY



## SOME EXAMPLES...

The following are designed to demonstrate the impact thinking widely about possible solutions can have on finding an environmentally preferable, and often more cost-effective, solution:

- Rather than arranging a business travel contract, consider installing video conferencing facilities at major sites to cut down on business travel by air and car.
- Rather than purchasing new fax machines, consider providing users with the IT facilities to fax from their computers.
- Rather than purchasing new printers for every desk, consider developing a contract for shared printing facilities including the most up-to-date energy and paper saving features.
- Rather than letting waste management contracts for packaging waste, consider working with suppliers to introduce returnable packaging for delivery of the products supplied. © Barbara Morton

### CASE STUDY

Rethinking the approach to road maintenance and recycling old road materials on site, rather than bringing in new material from elsewhere, enabled costs to be reduced, benefited the environment and saved time.



See <http://www.sustainable-development.gov.uk/sdig/improving/contextf.htm> for more information on the Government's timber procurement initiative.

## ECO-LABELS

There are various types of eco-labelling scheme. The EU Eco-label scheme allows consumers to identify products that meet formally approved criteria, based on life-cycle environmental impact. It is a voluntary scheme – it is up to providers to apply for the label.

For more information on the EU Eco-Label scheme see <http://www.defra.gov.uk/environment/consumerprod/ecolabel/index.htm>

There are also other voluntary eco-label schemes for products that meet certain criteria set by national or regional bodies. And there are voluntary eco-label schemes run by private organisations that tend to focus on a particular type of product or material.

Contracting authorities may use specifications drawn from eco-label criteria, where these are appropriate to define the characteristics of the subject of the contract. Contracting authorities may accept the holding of the relevant label as evidence of compliance with the specification. However, as with any other standard, contracting authorities must also be prepared to accept other means of proof that the product or service offered meets the underlying specification required.

## VARIANTS

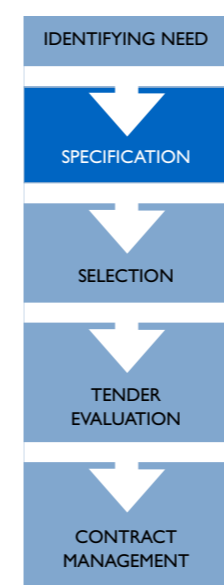
It is possible to define one or more options with higher environmental performance in addition to a 'basic' option. At the award stage, when considering the bids, the contracting authority can then decide which option best meets their needs, according to criteria previously decided by the contracting authority and made clear in the contract documentation.

For example, a basic requirement for post-consumer waste content could be set, along with variant specifications setting higher post-consumer waste requirements. The contracting authority can then choose the variant option that best meets its needs, selecting the best value for money bid within that option, according to the award criteria it has set out in the contract documentation.

## RULES GOVERNING TECHNICAL SPECIFICATIONS AND STANDARDS

In formulating specifications care should be taken to ensure that they are consistent with the provisions of the Directives, for example on the need to use European specifications and standards where available, if using technical specifications rather than performance or output specifications.

## SPECIFICATION



This is a key stage at which to consider environmental issues. Departments have a great deal of scope to decide how they draw up their specifications. They do not need to specify the cheapest product, and are able to purchase products such as recycled paper, 'green' electricity or energy-efficient appliances in accordance with their own policies and objectives, and those of the Government, and the need to ensure efficient and effective use of financial resources. Specifying in green terms sends a clear indication to suppliers that you take environmental issues seriously. In drawing up specifications whole-life costs should be considered. Specifications must not discriminate against products or providers from other Member States, or restrict competition.

## PERFORMANCE/FUNCTIONAL SPECIFICATIONS

Contracting authorities are free to specify in terms of performance or functional requirements, which can include environmental aspects. By focusing on the outcome or functionality desired you can give suppliers the opportunity to be innovative, to suggest more environmentally preferable solutions, and to find the most cost-effective ways of meeting environmental objectives.

## SPECIFYING BASIC MATERIALS

Contracting authorities can specify the primary materials used, for example requiring that:

- Recycled or recyclable materials are used
- Ozone-depleting substances should not be used

## SPECIFYING PRODUCTION PROCESSES

Production processes can form a part of the specification where they help to specify the performance characteristics of a product. They need not be visible in the end product.

Examples of the kinds of production process that may be specified are:

- Organically grown food
- 'Green' electricity
- Sustainable timber