

Geneva, 17th September

- The revision of the GPA: Green Public

Revised GPA and Sustainability Issues I

Art. X (6) revised GPA

on technical specifications:

For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Art. X (9) revised GPA

on the tender documentation:

The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

Revised GPA and Sustainability Issues IV

Art. XXII (8) revised GPA + Annex E:

The work programme on sustainable procurement shall examine [...] the ways in which sustainable procurement can be practiced in a manner consistent with Parties' international trade obligations.

[This is especially true concerning social aspects.]

Interplay GPA and EU Directives

The contracting authorities ... which apply [this Directive] ... should therefore be in conformity with the [Government Procurement] Agreement (Recital 7 Directive 2004/18/EC). -> **Framing and applying EU law is interpreting the GPA!**

The **first** objective [of public procurement] is to increase the efficiency of public spending (**best value for money**; p. 4

EU: Green Paper COM(2011)15 final (II)

Another **complementary** objective is to allow procurers to make better use of public procurement in support of common societal goals: These include protection of the environment ... and combating climate change, promoting innovation and social inclusion (p. 5).

Key action: Revised and modernised public

Directive 2014/24/EU – Philosophy

Recital 2: Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. [...]

See also recital 17 on buying innovative goods.

Communication COM(2008) 400 final

Such a shift (to a greener economy) could also boost the competitiveness of European industry by stimulating innovation in eco-technologies – which have been recognised as a high-growth sector where Europe is already a world leader (p. 2).

Finally, [...] there is no requirement that an award criterion relates to an intrinsic characteristic of a product [...; C-448/01 EVN/Wienstrom] There is therefore nothing, in principle, to preclude such a criterion from referring to the fact that the product concerned was of fair trade origin.

Directive 2014/24/EU – Award Criteria

Art. 67 / Recitals 89-92: “most economically advantageous tender” / “best price-quality ratio” / “social, environmental and innovative characteristics” / including factors involved “in the specific process of production”

Directive 2014/24/EU – ILO Core Labour Standards – Exclusion

Art. 18 and Annex X / Art. 57 / Recital 101:
Contracting authorities should further be given the possibility to exclude economic operators ... because of violations of ... social obligations ...

Directive 2014/24/EU – Award Criteria

Art. 67 / Recital 92: When assessing the best price-quality ratio contracting authorities should determine the economic and qualitative criteria **linked to the subject-matter of the contract** that they will use for that purpose.

Directive 2014/24/EU – Award Criteria

In a ruling on the purchase of electricity, an award criterion relating to the amount of electricity produced from renewable sources **in excess** of the expected consumption of the contracting authority was ruled inadmissible, as it was not linked to the subject matter of the contract (C-448/01 EVN/Wienstrom).

GPA 1994 – Basic Rule on Award Criteria (unchanged in revGPA 2012)

Given the objective of the GPA of laying down minimum standards to be applied, it has opted for flexibility and, in addition to allowing awards on price, also allows other criteria to be taken into account, provided they have been set out in the tender documentation (Peter Trepte).

Conclusion on the interpretation of the GPA: GPA is setting minimum standards and not to be seen as a comprehensive procurement codification

The GPA as setting minimum standards is meant to be compatible with different views on economic policy; a strict "purity principle" would rather be a possible characteristic of a full fledged / comprehensive regulation.

Asking for respect of the ILO Core Labour Standards in the context of public purchasing is not the same as an import ban or a trade sanction in the general WTO context. It's not about regulating private

A minimum of consistency?

WTO, ILO, UNCTAD, UNEP etc. are sub-systems of the same overarching system. This presupposes the idea of an at least to some extent coherent legal framework / world order. The GPA is not only about trade, but also on governance and to a certain extent on sustainability, without disregarding the core principles of the GPA (balance of interests).

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