

GREENING OF PUBLIC PROCUREMENT**SECTION 4.3 OF THE COMMISSION COMMUNICATION
"PUBLIC PROCUREMENT IN THE EUROPEAN UNION"
*[COM (98) 143]*****UNICE POSITION PAPER****1 Introduction**

UNICE believes that the environment is an important component of any modern economic policy. Environmental protection has therefore been important to European business. At the same time, one of UNICE's priorities as the voice of European business, has been to ensure that the competitiveness of European industries and the success of the Single Market grow in parallel with a respect for and consideration of the consequences for the environment.

In several industry sectors, public authorities have started to integrate environmental considerations into public procurement contracts while in some EEA countries there has been a political push to encourage public authorities to take the environment into consideration in their procurement; some countries have even incorporated such criteria into their national procurement legislation. As a representative of business and industry, UNICE is concerned that different national treatment of this topic could easily create barriers to trade within the EEA, in opposition to the aims of the Procurement Directives and the Single Market.

In general, in defining the supplies, works or services which a contracting entity intends to purchase, the entity may choose those which correspond with its preoccupations for the protection of the environment. The measures taken must of course comply with the non-discrimination principle and free movement of goods and services laid down in the Treaty of Rome and the EEA Treaty. To ensure that, UNICE feels there is a need for guiding contracting authorities, entities and suppliers, regarding how far one can go in requiring environmental criteria in the bids.

2. Principles

- 2.1 UNICE is of the opinion that environmental improvements must be achieved via environmental legislation applicable to everyone, and not in principle via public procurement legislation.
- 2.2 Wherever contracting authorities and entities go beyond requirements in applicable legislation and standards, the environmental demand has to be related directly to the supplies, works and services in question.
- 2.3 Contracting authorities and entities may buy 'green' if they so wish, as long as the environmental considerations are mentioned in the technical specification, and are product related, transparent, predictable, based on scientific fact, and non-discriminatory.

3. Application of Principles

3.1 *Technical specification*

The overall principle is the freedom of the contracting entity to purchase needed supplies, works and services. Contracting entities can encourage the development of a positive approach by companies to the environment, in accepting tenders which meet the requirements defined in the specifications.

UNICE believes that environmental protection considerations must be incorporated in the technical requirements. The requirements must be based as far as possible on agreed standards relating to the characteristics of supplies, works or services covered by contracts. The technical specifications must indicate the relevant criteria in the contract documents and must be non-discriminatory, predictable and objective.

UNICE¹ opposes any changes to public procurement legislation which would allow requirements regarding either European or national eco-label systems, or eco-audit systems such as EMAS or ISO 14001, to be made by contracting authorities or entities of suppliers in the technical specifications. Eco-label and eco-audit systems are by their very nature voluntary, and variations between different national eco-labels can easily lead to technical barriers to trade.

The contracting entity should be encouraged to take into due consideration life cycle.

3.2 *Selection criteria*

In the present Directives there are limits on the selection criteria which may be used. UNICE believes that inclusion of the objective of protection of the environment in these criteria only can be used as it relates to the candidate's economic, financial and technical capacity.

3.3 *Award criteria*

The criteria for the award of contracts are based either on the lowest price only, or on the most economically advantageous tender. There are only limited possibilities for using environmental factors as part of the most economically advantageous tender.

UNICE believes that environmental factors can only be taken into consideration where references to such factors make it possible to measure an economic advantage which is

¹ The Confederation of Danish Industries considers that international and European eco-label and eco-audit systems could be allowed as a requirement under the technical specification and could also be referred to under the award criteria. Requirements or references to national systems should not be allowed in either case.

specific to the works, supplies or services covered by the contract and directly benefits the contracting authority.

3.4 *Contractual obligations*

UNICE considers that environmental criteria may only be imposed on successful tenders where the criteria are made known in advance and are non-discriminatory.

3.5 *Production process and logistics*

UNICE believes that there is only room for imposing environmental criteria on candidates' production and logistics processes to the extent that the purchaser can demonstrate an economic advantage.

4. Conclusion

None of the public procurement directives need to be changed in order to avoid new barriers to trade being created through environmental criteria. However it would be helpful for contracting authorities, entities and suppliers to clarify the principles for using environmental protection in public procurement. An interpretative document on this matter, discussed with UNICE before its publication, should be worked out.

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