

Reform of the EU Directives and WTO Government Procurement Agreement

Forward steps for sustainability?

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Starting point

Public procurement in the EU worth ~ €2 trillion annually

Represents ~ 15-20% of GDP in industrialised countries

Leverage argument: too big an opportunity to pass up

Responsibility argument: public sector can't hide

Economic argument: SPP saves money in the long run

Good procurement argument: SPP demands intelligence

First steps

Definition:

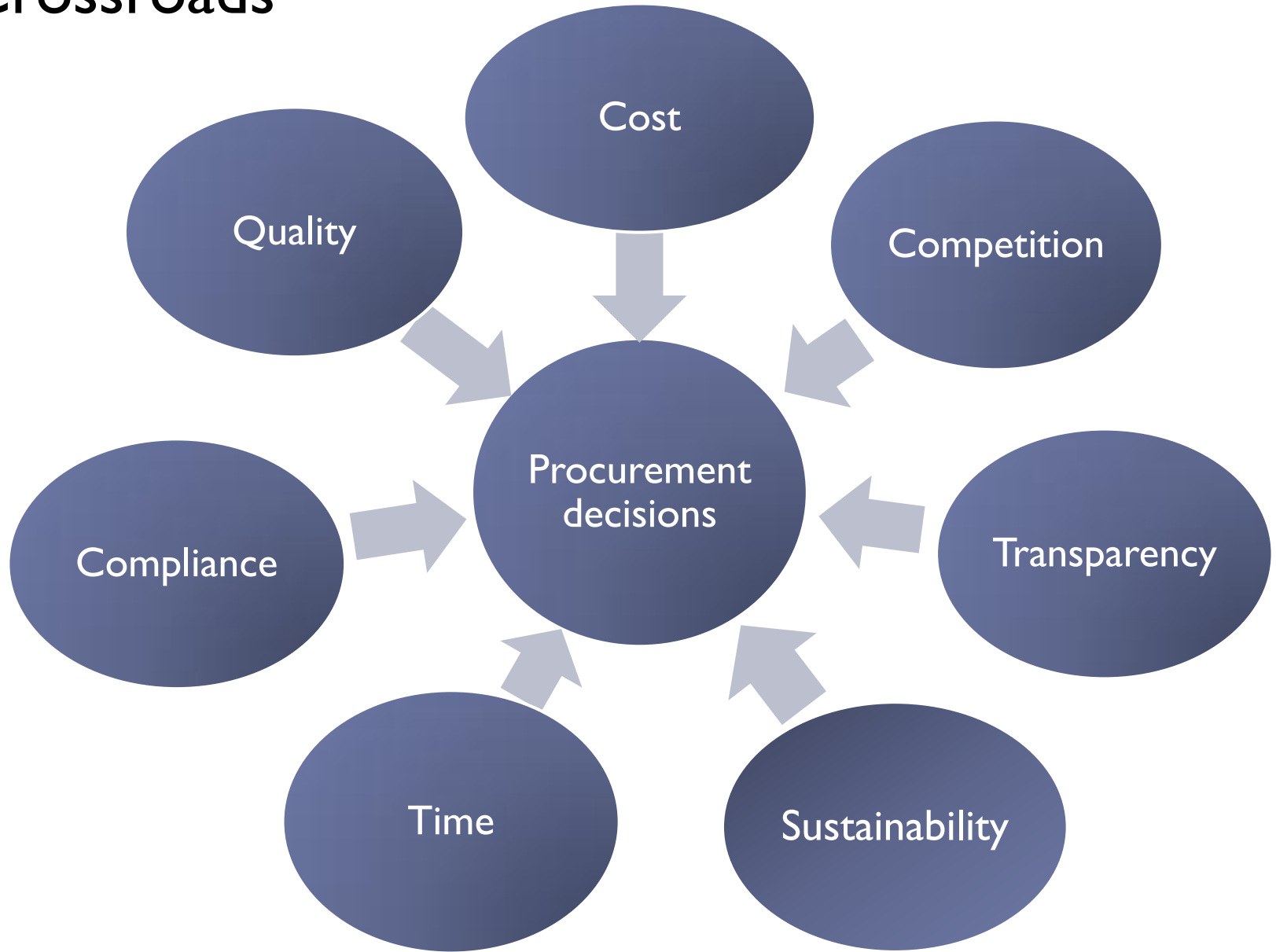
“Sustainable public procurement (SPP) is procurement which takes into account the economic, social and environmental impacts of public contracts over the whole duration of those impacts.”

Like all ‘new inventions’ SPP has its progenitors

1929 Manual of the American Railway Engineering Assoc. refers to “Total Cost of Ownership” of track; 1968 article in *Public Administration Review* refers to life-cycle costing as “a relatively new concept in the procurement of major weapons systems.”

More recently linked to concept of sustainable development

Crossroads



Boundaries

EU Directives (2004/17/EC and 2004/18/EC)

National implementing regulations

Treaty principles (free movement, transparency, equal treatment, proportionality and mutual recognition)

Case law – European Court of Justice and national courts

Mandatory EU legislation: Energy Star, Clean Vehicles, etc.

National, regional, local and organisational policies/rules

WTO Government Procurement Agreement

Surveys

24 of the 27 EU Member States have SPP policies in place

European Commission offers support, criteria and targets

In 2011, 55% of last contracts signed included one 'green' criterion, 26% included all GPP criteria (CEPS/CoE 2012)

Problems with measuring GPP/SPP – lack of data, difficulty in defining green/sustainable, many contracts not studied

Internationally, many authorities have adopted policies (U.S., Australia, South Korea, Sao Paulo Brazil, Iceland) but overall figures/studies often not available



Directions

Modernisation of EU Public Procurement Directives:

January 2011 - Green Paper published (630 responses)

June 2011 - consolidation and evaluation of PP rules

December 2011 - Commission's proposals published

May 2012 - Parliamentary committee report

July 2012 – European Council proposed compromise text

End of 2012 (?) Vote and adoption of Directives, with
Member States to implement by 2014

Directions

Revision of WTO Government Procurement Agreement:

1994 Agreement contained commitment to re-negotiate

December 2006 – Provisional agreement on new text

December 2011 – Political decision on agreement

March 2012 – Protocol adopted and ratification started

2013 – Agreement to enter into force

Ongoing negotiations regarding accessions

Impasses (I) Technical specifications

EU Directives

Article 40 – specifications can concern production methods or processes or any other stage of the life-cycle

Article 41 – reference may be made to social or environmental labels to verify compliance/performance

However recitals attempt to limit social production criteria to award and contract performance stages, not specs

Article X(6) of revised GPA: technical specifications may “promote the conservation of natural resources or protect the environment” – no mention of social provisions

Impasses (II) Award criteria

Choice between most economically advantageous and lowest cost remains – cost can be price or life-cycle cost

Contracting authority can stipulate method for calculating LCC, but this cannot be specific to the contract at hand

LCC is currently in use without this restriction, and is mandatory for the procurement of vehicles

Balance between transparency, availability of data and the need to reflect the actual costs which apply

Article X(9) of GPA includes environmental characteristics



Impasses (III) Exclusion or refusal to award

Article 55 allows for exclusion of a tenderer where they do not comply with certain social/environmental obligations

Article 54 allows for refusal to award on the same grounds

Under Article 69 can reject abnormally low tenders – but no obligation to examine (changed from earlier draft)

Annex XI sets out the relevant environmental and social laws, eight core ILO conventions plus four environmental conventions (Ozone, Hazardous Waste, Chemicals, etc.)

Extends to operators in non-signatory countries

(False?) Summit

New provisions aim to encourage GPP, not mandate it

Social provisions are much less ambitious

In some cases (LCC, use of labels, exclusion provisions) specific rules may limit existing approaches

GPA uses a lighter regulatory touch – however complete absence of social provisions may discourage their use

Legal set up is only a small piece of the puzzle – but an essential one. Further study of SPP in practice needed.



Thank you



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Further information

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www.sustainable-procurement.org