

GREEN PUBLIC PROCUREMENT AND REQUIREMENTS FOR CONTRACTORS

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Abstract: Green Public Procurement is an undisputable potential, although still used to a limited extent in Poland. Creating demand is a domain of the public sector, since it is the largest beneficiary of goods and services in the economy. The aim of this article is to show the importance of green public procurement, especially for the participants of this market - the Contractors. In particular, law regulations, related with public procurement, have been analyzed. According to assumptions of green procurement, the strategy of reducing negative impact on the environment should take into account all elements of the production chain, and therefore all suppliers. Standards selected properly for this purpose should cover the entire product lifecycle starting from its design, through manufacturing to disposal, and should address all environmental aspects that are affected by the company's business. The research also made an attempt to assess the engagement of contractors in the eco-procedures and the status of their knowledge on green public procurement.

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1. INTRODUCTION

The term *Green Public Procurement* (GPP) has appeared for several years in public procurement, but in fact most of the people involved in this sector still do not know what exactly this concept means. This situation applies both: to the Ordering Party as well as to the Contractors, who do not fully realize what changes occur in the procedures due to the launching of green procurement.

At the present moment, green public procurement in Poland is still a not fully exploited potential. This study concerns the use of green tendering procedures for the purpose of the contract and the Contractors involved in the procedure. It also denotes the degree of knowledge of Contractors, who are responsible for preparing offers on green public procurement.

The first part of the paper presents a brief description of green procurement public tenders and their potential. The rest of the work details the purpose of environmental criteria and the way they occur in public procurement. Finally the last part of this essay presents a summary of research on the state of knowledge of Contractors on public procurement, that includes environmental issues.

2. Environmentally Preferable Purchasing (EPP)

Economical activity of people each year has an inevitable impact on the environment, generating hazards and polluting it. The emergence of a variety of terms with “eco” prefix in environment-related literature and the promotion of eco-lifestyle is a consequence of the growing interest in this issue.

Eco-lifestyle is also, apart from sorting waste and efficiently saving energy, the ability of making choices between buying products that are environmentally friendly, and those whose production contributes to the degradation of our planet (Staniszewska & Wyrwicka, 2011, p.118). Production, sale and use of many products has a negative impact on the environment and human health. It contributes to generation of significant costs too, but these costs can be reduced or avoided by the responsible management of shopping. (Grzybowska, 2011, p.84)

The EU's objective is to decrease the environmental impact caused by the use of resources and to reduce waste generation, while maintaining economic growth. This involves the use of renewable resources, recycling on a large scale and improvement in residual waste management.

3. Green public procurement (GPP)

Green public procurement is a policy, under which public institutions include ecological criteria and/or requirements in the purchase process, seeking solutions that reduce the negative impact of products / services on the environment and tak-

ing into account the entire life cycle of products, and thus influence the development and dissemination of environmental technologies (Gawlik, 2010, p.42).

It can also be defined as "a process whereby public authorities seek to procure goods, services and works, whose impact on the environment during their life cycle is limited compared to goods, services and works with an identical purpose, which would have been ordered in another case" (KOM(2008)400, 2008, p.6). The main idea of green public procurement is therefore to define clear and ambitious environmental criteria for products and services (Pchałek, Juchnik & Kupczyk, 2009, p.9), which are to be an effective tool for development of sustainable patterns of production and consumption and indirectly contribute to the development of the market eco-products and eco-services.

Environmental objectives can be achieved primarily at the level of single orders placed by the Ordering Party, but it must be realized that only large-scale effect will allow full exploitation of potential of public procurement and achievement of actual pro-environmental changes.

4. The potential of green public procurement

The increase in value of purchases made on the basis of procurement procedures demonstrates the potential of this type of public procurement. Resulting from the analysis carried out by the European Commission, the estimated market value of public procurement in the EU represents approximately 16% of EU GDP (EU Commission, 2005, p.5). It means that each year European public authorities spend the equivalent of 16% of EU gross domestic product on purchasing goods.

Also in Poland the increase in the share of public procurement in GDP has been noticed, what has been illustrated in Fig. 1.

As it can be seen from the data presented in Figure 1, in 2006 the estimated value of public procurement market was approximately 7.6% of gross domestic product that year, in 2008 it was already 8.6%, while in 2009 - 9.4% of gross domestic product¹. From year to year also the value of contracts awarded under public procurement provisions increased. Data provided by authorities in the annual of awarded contracts indicate that in 2010 195,555 contracts have been awarded with an estimated total value of 167 billion PLN (Wichniak-Olczak, 2011, p.2). This increasing trend in value of public contracts awarded, illustrated in Fig. 2, also occurs on the Polish market.

These figures show how significant and dynamic the public procurement market is and will be. Using its purchasing power and making the choice of products and services that are friendly to the environment the Purchaser may properly form and develop consumer and production trends in every purchasing segment (Stani-

¹ values calculated on the basis of the CSO estimated Gross Domestic Product in 2006, 2008 and 2009 (in current prices) - Newsletters procurement.

szewska & Wyrwicka, 2011, p.121) . Public procurement, through a series of legal instruments, can be an active factor when creating public policy, particularly in the environmental and social aspects or in building an innovative economy (Martin, 1996, pp. 46-48).

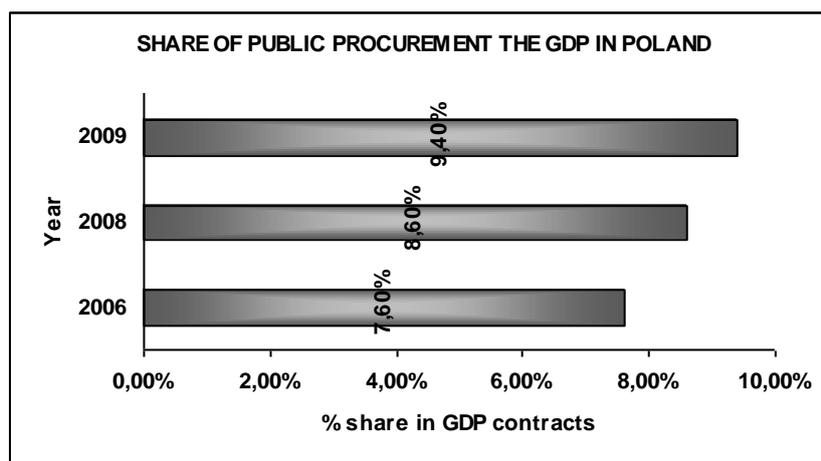


Fig. 1 The share of public procurement in the GDP in Poland, own study based on website www.uzp.gov.pl

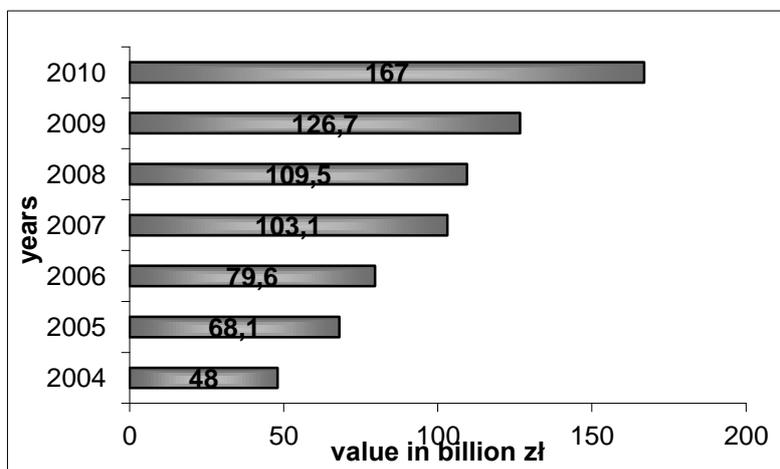


Fig. 2 The value of awarded contracts in Poland in the years 2004-2010, own study based on (Wichniak-Olczak,2011, p.3), (www.uzp.gov.pl)

5. Environmental issues in the Polish public procurement system

An act that controls, on the national level, the procurement and the rights and obligations of the parties involved in these proceedings is the Law of January 29th, 2004, the Public Procurement Act (Dz.U. z 2010 r. Nr 113, poz. 759), which is the adaptation of Polish law in line with European Union (Wyrwicka & Staniszevska, 2010, p. 65). This Act was established with respect to the regulations and directives of the European Parliament and it defines rules and procedures for procurement, legal protection measures, control of the public procurement and the proper authorities for issues described in the Act (Borowiec, 2008, p.69 and more).

As a result of Polish integration with the European Union, each year more and more rules are passed to the PPA, which allow carrying out orders taking into account environmental aspects, in accordance with the guidelines of EU Directives.

One of these documents is Directive 2004/18/WE dated March 31st, 2004 (Dz.U.L. 134 z 30.04.2004), according to which the consideration of environmental criteria in tender procedures aims to contribute to environment protection and promotion of sustainable development, while ensuring the ability to obtain contracts that feature best value for money. The mentioned directive provides the possibility of integrating environmental issues in four phases of the procurement procedures:

1. description of the object of the contract,
2. qualification of contractors,
3. criteria for the contract award²,
4. conditions of the contract fulfillment.

Based on research conducted by the *Public Procurement Office* (PPO), it has been found that, in 2004, 4% of all studied announcement had "green" object of the contract or contained environmental criteria. In 2005 this number oscillated between 4% and 6%, and in 2009 it reached 10.5% (KPD for years 2010-2012, 2010, pp. 29-30). Comparing the results and the pace of green procurement in the country with the results of the leading EU Member States³ it can be concluded that, despite the increase in the percentage of green public procurement at national level, their share is still low. Its increase requires a substantial commitment of both: authorities, responsible for carrying out the contract, and contractors, who must fulfil all the obligations imposed on them.

6. Environmental requirements in procurement procedures

² guided by the statutory authorization provided for in Article. 91 paragraph. 8 of the Act of January 29th, 2004 - Public Procurement Act, the Prime Minister on May 10th, 2011 issued a regulation on non-price evaluation criteria mandatory for certain types of procurement Polish Official Journal of Laws No. 96, item. 559

³ Austria, Denmark, Finland, Netherlands, Sweden and the United Kingdom for which the level of greening for 2010 was set at 50%.

Elements of green procurements can be implemented at almost all stages of the proceeding, from determining requirements, through selection of contractors, evaluation of offers and the signing of the contract. The basic duty of an Orderer, that intends to award a public contract, is to properly identify the subject of the contract. It is the Orderer who decides what to buy and what kind of object of the contract will meet his expectations. Therefore, preparing for the procedure the Purchaser shall determine at which stages the application of environmental criteria will be most effective. When determining the environmental criteria the current state of knowledge, environmental-friendly replacement costs and availability, as well as available environmental technologies must be taken into account.

It is in the interest of the Orderer to shape up their own procurement policies taking into account both object criteria (criteria which must correspond to ordered products) and contractor criteria (for contractors involved in the proceedings).

6.1. Object criteria

The first step in performing each procedure is to define the requirements for the purpose of the contract that results in a basic description of the product or service. The introduction of environmental criteria at this stage allows potential Contractors to identify customer expectations. It also allows an evaluation of how important for the contract the ecological characteristics of a product or service will be.

Public procurement directives provide, for the supplies, the possibility of placing environmental requirements not only for products, but also for the production processes associated with them, provided that technical specifications will be related only to the subject matter of the contract. Examples of such criteria are:

1. Application of ecological resources and materials in the production process,
2. The requirement for equipment or machinery to possess indicated energy efficiency class,
3. Presence of ecotags in the object of the contract,
4. Preference for products produced using environmentally friendly methods.

6.2. Contractor criteria

These criteria are connected with selection of the Contractor and are related to their capabilities of accomplishing the contract. In this field, the Purchasers have the option of applying ecological selection criteria. According to the current law, the Purchaser has the right to require that Contractor:

1. Proves, that in relation to the contract executed, it possesses an environmental management system at the indicated level,
2. Attaches, to the offer, certificates confirming compliance of products with environmental standards or specifications,

3. Shows realizations from recent years, similar to those granted to green procurement,
4. Presents its stake in the equipment that it considers necessary for the accomplishment of the contract,
5. Proves to be hiring or disposing of staff responsible for quality management, that will be able to lead an assessment of compliance with the requirements.
6. Proves to the Purchaser, the indicated minimum level of income in the area of green procurement.

The Purchaser is also entitled to benefit from a range of criteria that allow excluding the Contractor from proceeding. The contractor may therefore be excluded from the proceeding, among others for not paying taxes as well as being charged by a valid sentence for violating environmental regulations.

6.3. Criteria for evaluation of tenders

The use of public procurement procedures aims to select, among all offers submitted in the proceeding, the offer with best value for the customer. The definition of the most profitable bid is given in art. 2, point 5 of PPA. Under this provision the best offer is the one with the lowest price offer, or tender which represents the best ratio of price vs other criteria related to the subject of a public contract. In accordance to art. 36.2, evaluation criteria is the price solely, or price and other criteria relating to the subject of the contract, in particular the quality, functionality, technical parameters, the use of best available technologies in the field of environmental impact, operation and maintenance costs and the duration of the contract implementation.

6.4. Records of the contract

Ecological records in the contract can be used to incorporate environmental issues in the implementation phase of the contract. The records should be available from the beginning of the tender procedure and they can not create additional hidden technical requirements or selection criteria. Furthermore, they should be able to be met by all providers involved in the process. Examples of environmental provisions in the agreement may be the requirement of using reusable transport containers for deliveries or deliveries outside peak hours. However, the provisions cannot be used in the agreement to in order to introduce the requirements of specific manufacturing process or a particular experience of the supplier's staff, because these conditions affect the choice of supplier.

7. Knowledge of the Contractors about GPP

In order to determine the state of the contractors participating in tendering procedures, a brief empirical study has been made. It was conducted as direct interviews and telephone conversations, during which the investigator asked questions that allowed them to continuously fill in a questionnaire prepared for the test.

The participants of the study were representatives of the Contractors employed in randomly selected manufacturing companies in Wielkopolska region.

In total, 57 interviews were carried out, as a result of which 50 completed surveys were obtained. 7 people refused to participate in the study.

During the study, an analysis of general knowledge of the interviewed, about the provisions of Public Procurement Act in the context of its adaptation to the possibilities to include environmental considerations by the Ordering Party in public procurement, has been performed.

Only 18% of respondents said they know the rules of PPA on environmental criteria, 20% said they had heard about them, but do not know them, while the other participants interviewed stated that they have not met such provisions. (Fig.3)

The study also revealed that the majority of respondents (64%), has yet encountered with the provisions of the Terms of Reference for the green procurement procedures. Only 36% of surveyed contactors said they met with the eco-entries in the tender procedures. A worrying fact is that the vast majority of contactors (62%) believe that environmental regulations concerning public procurement, do not affect the market position of the company. (Fig.4)

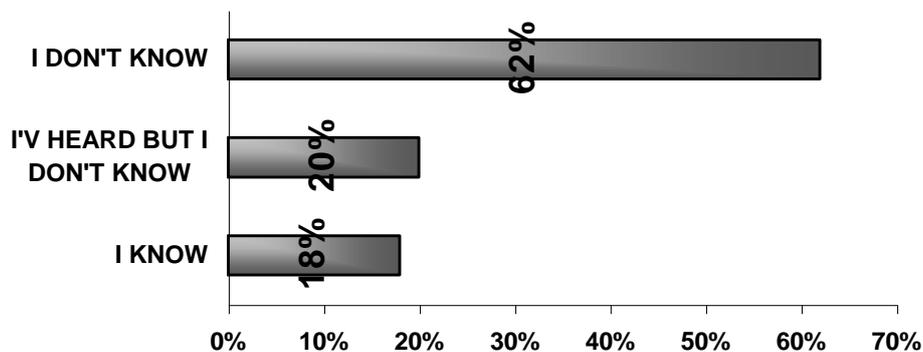


Fig. 3 The results of the survey concerning the knowledge of the provisions of PPL related to the issue of GPP, source: elaboration on the basis own study

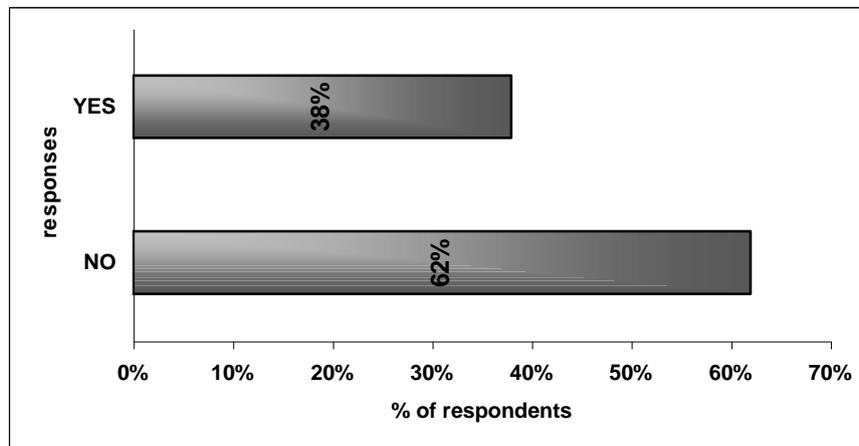


Fig. 4 Survey results on the point of view of Contractors of whether the regulations concerning environmental protection in public procurement have an impact on the company's market position, Source: elaboration on the basis own study

This result indicates that the Contractor have a low awareness of the impact of green procurement in their market position. They do not realize that, in fact, consideration of environmental issues in company management processes leads to achievement of profitable results both environmental and economic. (PARP, 2009, p. 9).

Meanwhile, ecological orientation in a company can give measurable effects in the following forms: minimizing the amount of pollutants infiltrating the environment, better quantitative and qualitative use of raw materials, efficient use of natural resources, improving corporate image, meeting the ecological tastes of consumers (Czaja & Fiedor, 2000, pp. 57 and next).

8. Conclusion

The inclusion of environmental criteria into tendering procedures directly forces pro-environmental behaviour on the providers of products or services, and thus authenticates the involvement of government in environment protection.

In summary GPP is a process consisting of several stages:

1. Identification of products that are most appropriate, taking into account their impact on the environment and other factors,
2. Identification of needs and their proper expression,
3. Development of technical specifications including environmental factors in all possible places.
4. Establishment and identification of criteria for selecting an offer based on the list of available requirements, including ecological criteria,

5. The use of contract clauses, in order to define additional eco-conditions, that complete ecological requirements arising from the provisions of environmentally friendly tender documents.

What differentiates them from standard contracts is a comprehensive look at the products based on the life cycle of products, a broader view on environment protection while paying attention to the reduction in consumption of materials, energy, gas and water. There is still much to do in the field of green procurement to be able to consider them as an equal component of the public procurement market.

The government, implementing EU legislations, seeks to satisfy both the Employer and the Contractor, brochures published contain many useful tips relating to the implementation of environmentally friendly purchases. However, these actions are still insufficient, as it is necessary to change the mentality of people, both those responsible for implementing procedures, as well as those taking part in them.

The potential of GPP has so far been exploited only in a small part. The reasons for this are many, and among them we can distinguish:

1. A still low awareness among Orderers of benefits of environmentally friendly supplies and services;
2. Lack in skills of staff involved in procurement for appropriate preparation of tender documents, taking into account environmental criteria;
3. Lack of practical knowledge exchange between institutions and Contractors, and the Contractors with one another;
4. Underdeveloped mechanisms for the dissemination of environmental criteria for supplies and services.

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