



GUIDELINES FOR GREEN PUBLIC PROCUREMENT

HOW TO APPLY ENVIRONMENTAL ASPECTS IN PUBLIC PROCUREMENT

# February 2025, Belgrade

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# INTRODUCTION

Green public procurement is defined as *“process in which public bodies seek to procure goods, services and works with lesser impact on environment during own life cycles when compared to goods, services and works of the same primary function that would otherwise have been procured”*.[[1]](#footnote-1)The way the natural resources are presently used in Europe inflicts environmental damage at the rate which is no more sustainable. Should the world as a whole follow the European consumption pattern, estimates are that the global use of resources could quadruple in the next 20 years. Such trend could jeopardize economic growth due to the shrinking natural resources and costs related to the solving of those issues.

The largest consumer in the economy is the public sector. State expenditures for works, goods and services in the European Union make some 14% of EU GDP, or some 1.8 trillion euros annually.[[2]](#footnote-2)

Green public procurement is an important tool for achieving the environmental policy goals concerning climate change, use of resources, and sustainable consumption and production, especially having in mind the significance of the public sector spending on goods and services. The goal of green public procurement policies is to procure more environmentally friendly goods and services. Examples of green procurement include efficient computers, office furniture made from durable wood, energy-efficient buildings, recycled paper, cleaning services that use environment-friendly products, and electric, hybrid or low-emission vehicles, and electricity from renewable energy sources.

The applicable Law on Public Procurement of the Republic of Serbia (“Official Gazette of the RS”, Nos. 91/19 and 92/23, hereinafter: the PPL) classifies the principle of environmental protection as one of the basic principles of public procurement. Pursuant to Article 6, Paragraph 1, of the PPL, procurer is obliged to procure goods, services or works of adequate quality in terms of the reason, purpose, and value of public procurement, meaning cost-effective spending of public funds that has minimal impact on the environment. The PPL also provides for exclusion from public procurement procedure where procurer finds out that economic operator has violated its duties in terms of environmental protection during two years preceding the date of expiry of deadline for the submission of tenders or applications. In terms of the execution of contracts, the PPL provides that economic operators are obliged to observe duties concerning environmental protection while executing public procurement contracts.

According to publicly available data from the annual reports on public procurement in the Republic of Serbia[[3]](#footnote-3), prepared and published by the Public Procurement Office (hereinafter: the PPO), procurers apply environmental aspects in more and more public procurement procedures. For the sake of further promoting environmental aspects in public procurement procedures and of increasing the number of green public procurement, it is necessary to better educate procurers and provide to them practical tools and examples that facilitate the use of green procurement in practice.

1. **ADVANTAGES OF GREEN PROCUREMENT**

By using own purchasing power to choose goods, services and works with lesser environmental impact, procurers can make a vital contribution to local, regional, national, and international sustainability goals. Green public procurement can be a key driver of innovation, by providing industry with realistic incentives to develop green products and services. This is especially true in domains in which a large segment of the market is covered by the buyers from public sector (e.g., construction, health services, transport). Green public procurement can also ensure financial savings for public authorities, especially in terms of the entire life cycle costs of contracts, not merely the initial purchase price. Purchasing energy-efficient products, or products that, for example, save water, can help substantially reduce one’s utility bills. Reducing harmful substances in products can reduce the costs of their disposal. Authorities conducting green public procurement will be better suited for responding to environmental challenges, such as reducing greenhouse gas emissions, or for shifting to a more intensive circular economy[[4]](#footnote-4).

Green procurement brings many advantages:

## Political benefits

* This is an efficient way for public authorities to demonstrate commitment to environmental protection and sustainable consumption and production

## Environmental benefits

* Helps public authorities achieve the environmental protection goals,
* Sets an example to private consumers,
* Raises environmental awareness in the society.

## Social / health benefits

* Capable of improving quality of life, both directly and indirectly,
* Helps establish high environmental performance standards for products and services.

## Economic benefits

* Incentivizes industry to introduce innovation,
* Promotes green products and environment-friendly technologies,
* Saves money, considering the product’s life cycle costs.

A misconception about green procurement is that green services and products are more expensive than the traditional ones. However, different studies demonstrate this is not necessarily the case. Green products can have lower purchase prices because they exert lesser environmental impact, often with lesser consumption of energy and raw materials, and/or less waste.

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| **Example:**The European Commission’s study *“Costs and benefits of green public procurement in Europe”* established that the procurement costs incurred by public authorities of green (including 100% recycled and eco-certified copy paper) and non-green copy paper are very similar. In Germany, ‘green’ versions of copy paper were much cheaper (23%). In Sweden, the same study revealed that environment-friendly floor maintenance products, sanitation products and window cleaning products were cheaper than conventional ones (74%, 82% and 9%). In addition, where the life cycle costing approach is applied to competing products or services, greener alternatives may be cheaper even when the initial purchase price is higher. |

1. **LEGAL FRAMEWORK GOVERNING GREEN PROCUREMENT**

##

## Rules of the European Union

Legal framework for public procurement in the European Union is defined by the provisions of the Treaty on the Functioning of the European Union (hereinafter: Treaty) and EU Directives on public procurement[[5]](#footnote-5), as interpreted by the Court of Justice of the European Union (the Court of Justice). From the international perspective, the EU is bound by the terms of the World Trade Organization’s (WTO) Government Procurement Agreement, and by bilateral trade agreements. Besides the general EU legislation on public procurement, there is sectoral legislation that only applies to specific types of procurement.

Sectoral legislation introduces duty to procure specified goods and services, for instance, by setting minimum energy efficiency standards that must be applied. Duties involve the following sectors, and in particular:

* **office IT equipment:** IT products purchased by central authorities must meet the latest minimal energy efficiency requirements set by the *EU Energy star* Regulation[[6]](#footnote-6)
* **road transport vehicles**: All procurers must take into account vehicles’ operational use of energy and environmental impacts within the procurement process. The Clean Vehicles Directive provides for the shared methodology for calculating operating costs throughout lifetime[[7]](#footnote-7)
* buildings: minimum energy performance standards apply to public buildings. These are set at the national level, on the basis of the common EU methodology. From January 1, 2019, all new edifices owned by public authorities must be “nearly zero energy buildings”.[[8]](#footnote-8) The Energy Efficiency Directive[[9]](#footnote-9) further sets mandatory requirements for renovations of public buildings and for purchasing or new leases that meet minimum energy efficiency standards.

## Provisions of Serbian legislation

The PPL foresees option to apply environmental aspects in public procurement and a number of solutions related to green procurement. The PPL, applicable from January 1, 2024, provides even more tools related to green procurement as compared with the preceding legal solutions.

Firstly, the PPL sets general rules on the principles of public procurement. Namely, Article 5, Paragraph 4, of the PPL provides that economic operators are obliged to observe, among other things, duties concerning environmental protection while executing public procurement contracts.

As of January 1, 2024, the principle of environmental protection was introduced. Namely, Article 6, Paragraph 1, of the PPL provides that procurer is obliged to procure goods, services, or works of adequate quality in terms of the reason, purpose, and value of public procurement, that is, cost-effective spending of public funds with minimal impact on the environment. Pursuant to this principle, procurers are obliged to purchase non-polluting goods, services and works, i.e., those that have minimum environmental impact. This principle is formulated in line with the goals defined by the Program for Development of Public Procurement in the Republic of Serbia for 2024-2028, the Program for Development of Circular Economy in the Republic of Serbia for 2022-2024 (“Official Gazette of the RS”, No. 137/22), goals defined by the Green Agenda for the Western Balkans, and other applicable public policy documents.

The application of environmental aspects is also important in defining technical specifications. Specifically, Article 98, Paragraph 2 of the PPL provides that technical specifications for the contract on public procurement of works imply the totality of technical specifications contained in tender documents that define required features of materials or goods so to fulfill the purpose intended by procurer, such as are, among other things, the level of environmental impact and climate change. Article 99 of the PPL provides that technical specifications can be designed in the form of characteristics or functional requirements that may also include environmental features.

Further to the above, for proving environmental characteristics of the procurement subject, Article 102 of the PPL provides that, where procurer intends to procure goods, services or works with specific environmental, social, or other characteristics, it can request, in its technical specifications, award criteria, or conditions for the execution of contract, certain labels as proof that the goods, services or works correspond to requested characteristics.

Environmental aspects have to be taken into account in defining the grounds for exclusion from public procurement procedure. Article 111, Paragraph 1, Point 3) of the PPL provides for exclusion from public procurement procedure if procurer finds out that economic operator has violated its duties in terms of environmental protection during two years preceding the date of expiry of deadline for the submission of tenders or applications. The purpose of the rules on exclusion and selection of economic operators is to ensure minimal level of compliance with legislation on environmental protection by contractors and subcontractors.

Further, Article 124, Paragraph 1, Point 8) of the PPL provides that data on measures for managing environmental protection that economic operator will be able to apply during execution of contract are among proofs of technical and professional capacities, whereas Article 126 of the PPL prescribes the standards in environmental management.

In terms of award criteria, Article 132, Paragraph 1, Point 3) Sub-point (1) of the PPL provides that procurer, in public procurement procedure, awards contract to the economically most advantageous tender, identified as such on the basis of one of legally prescribed criteria that also include environmental characteristics as a possibility for weighting.

Among the most significant novelties in terms of applying environmental aspects, applicable since January 1, 2024, is listing the subjects of public procurement for which procurers are obliged to apply environmental aspects. This legal solution, elaborated in greater detail by an implementing bylaw, will certainly contribute to the rising number of public procurement procedures in which are applied environmental aspects. Regulation on Types of Goods for Which Procurers Are Obliged to Apply Environmental Aspects in Public Procurement Procedures (“Official Gazette of the RS” No. 115/23) provides that procurers are obliged to apply environmental aspects in public procurement procedures while designing technical specifications for the selection of economic operator, criteria for the selection of economic operator, criteria for awarding contract or conditions for the execution of public procurement contract for the following goods: 1) photocopier paper; 2) computer equipment (desktops, laptops, and monitors); 3) office electronic equipment (printers, scanners, multi-functional devices, etc.); 4) air conditioners (standard air conditioners, inverter heating and cooling devices, etc.); 5) cleaning stuff (hard surface cleaning products, textile cleaning products, etc.). The share of procurement subjects with environmental aspects is at least 10% relative to the total volume of the public procurement subject.

Besides the PPL, it is also necessary to list special laws governing environmental protection, as follows:

* The Law on Environmental Protection (“Official Gazette of the RS”, Nos. 135/2004, 36/2009, 36/2009 - other law, 72/2009 - other law, 43/2011 - decision of the Constitutional Court, 14/2016, 76/2018, 95/2018 - other law, and 95/2018 - other law);
* The Law on Energy (“Official Gazette of the RS”, Nos. 145/2014, 95/2018 - other law, 40/2021, 35/2023 - other law, and 62/2023);
* The Law on Energy Efficiency and Rational Use of Energy (“Official Gazette of the RS”, No. 40/2021).

Pursuant to the Law on Energy Efficiency and Rational Use of Energy, procurers in public procurement as defined by the law governing public procurement procedure, are obliged to apply requirements in terms of energy efficiency while designing technical specifications, award criteria or conditions for the execution of contract, while conducting public procurement of goods or services, and while awarding contracts, inasmuch as this is cost-effective, economically justified, sustainable in a broader sense, technically feasible, and ensuring sufficient competitiveness. The competent minister determines requirements concerning energy efficiency in terms of this legal provision.

To the same end, the Rulebook on Requirements on Energy Efficiency in Public Procurement Procedure was adopted (“Official Gazette of RS”, No. 10/22). The Rulebook prescribes the requirements regarding energy efficiency that procurers have to apply in the procedure of public procurement of goods or services, while designing technical specification or defining the award criteria. This Rulebook is applied by procurers in the procedure of public procurement of:

1) such goods, for which technical regulations prescribe requirements regarding energy labeling, in accordance with the law governing energy efficiency and rational use of energy;

2) such goods for which there are no prescribed requirements on energy labeling, but there are requirements on eco-design, prescribed by technical regulation, in accordance with the law;

 3) such services, the provision of which requires procurement of new goods under Points 1) and 2) of this Paragraph.

**Example:**

Pursuant to Article 5 of the Regulation on requirements regarding energy efficiency in public procurement procedure:

In the procedure of public procurement procedure of goods under Article 2, Point 1) of this Regulation, procurer in its technical specifications specifies goods in the highest class of energy efficiency.

Where, in terms of cost-effectiveness, economic justification, technical feasibility, sustainability in a broader sense, and sufficient competitiveness of the set requirements, procurer is not able to procure goods belonging to the highest energy efficiency class, then it may specify the goods referred to in Paragraph 1 of this Article with a lower energy efficiency class in its technical specifications.

1. **CONDUCTED MARKET RESEARCH ON THE POSSIBILITIES OF APPLYING GREEN CRITERIA IN PUBLIC PROCUREMENT PROCEDURES**

On the National Alliance for Local Economic Development (NALED) website is published document “Report on conducted market research on the possibilities of applying green criteria for selected procurement subjects”[[10]](#footnote-10). As stated therein, its purpose was to collect data through comprehensive market research in the Republic of Serbia, to serve as the basis for formulating recommendations on introduction of green criteria as mandatory, for subjects for which this market research finds the process would not result in distortion of competition, i.e., for which is available sufficient number of tenderers capable of meeting the set criteria.

Market research was carried out in two stages. During the first stage, data was collected by means of notification of a market research in progress, sent by the Agency for Business Registers to all economic operators from this Agency’s database (14,704 of them which registered as tenderers) via email, with links (paths) through which economic operators could fill in questionnaires related to their respective business activities and with set deadlines for completing them. Questionnaires were also available on the Public Procurement Portal (hereinafter: the Portal), where registered tenderers, upon logging in to the Portal, were notified of an ongoing market research, with links (paths) through which they could fill in questionnaires related to their respective business activities and with set deadlines for completing those questionnaires. Market research was also carried out by written and oral research methods, as follows: surveying (questionnaire-supported research - electronically) and interviewing (by phone). The second phase consisted of qualitative research in the form of group discussions (focus groups), through online meetings.

Market research covered over twenty procurement subjects (sanitary goods; desktop computers, monitors, laptops; office electronic equipment; sanitary equipment; paper goods; electricity; air conditioners; TV sets; cleaning products; cleaning services; tires; furniture; textile products; paints and varnishes; etc), and for each of those procurement subjects was drawn conclusion whether given procurement subject is suitable to have environmental aspects applied to it.

1. **STATISTICAL DATA ON THE APPLICATION OF ENVIRONMENTAL ASPECTS IN THE REPUBLIC OF SERBIA**

 Thanks to the Portal’s functionality enabled in 2021, for the first time was collected data on public procurement procedures that applied environmental aspects in their technical specifications, award criteria, or special conditions for the execution of contracts. Procurers said that, in 2021, they had applied environmental aspects in 650 public procurement procedures. In most of them, environmental aspects were applied in technical specifications. The most common procurement subjects for which were applied environmental aspects are as follows: procurement of vehicles, procurement of office supplies, computer equipment, laboratory supplies, lighting, construction material, cleaning services, chemical products.

The next year, 2022, witnessed significant progress in the application of environmental aspects. Namely, procurers said that, in 2022, they applied environmental aspects in 1,111 public procurement procedures, or 0.44% of the total public procurement procedures.

According to the data published on the Portal, it is established that, in 2023, 1,592 public procurement procedures were initiated, with concluded a total of 27,695 contracts in which procurers had applied environmental aspects. Further, a more detailed analysis of the use of environmental aspects was carried out for 2023, by analyzing the share of public procurement procedures with environmental aspects in the total number of initiated procedures, and the share of public procurement contracts with environmental aspects in the total number of concluded contracts. As for public procurement procedures, only those initiated in 2023 were taken into account, regardless of whether they did or did not result in concluded public procurement contracts. As for public procurement contracts, only those concluded in 2023 were taken into account, regardless of when relevant public procurement procedure was initiated. This number covers all contracts concluded in 2023, including contracts concluded on the basis of framework agreements.

The ratio of the number of procedures, i.e., contracts with applied environmental aspects, to the total number of procedures, i.e., contracts, reveals the following. The share of public procurement procedures with environmental aspects in the total number of procedures is 3.32%, whereas the share of public procurement contracts with environmental aspects in the total number of concluded contracts is 8.24%.

All above presented statistics are publicly available in annual reports on public procurement in the Republic of Serbia that the PPO publishes on the Portal.

1. **DEFINING ENVIRONMENTAL ASPECTS BY PHASES OF PUBLIC PROCUREMENT PROCEDURE**

***CHOOSING APPROPRIATE PROCUREMENT PROCEDURE***

From the perspective of green procurement, preparatory phase is the key phase of each public procurement procedure. While choosing a particular procedure, procurers should consider the phases in which will be possible to apply environmental aspects. Pursuant to the PPL, procurers can choose one of the following public procurement procedures.

*Open procedure*

In an open procedure, all interested economic operators can submit their tenders.[[11]](#footnote-11) Tenders submitted by all tenderers who fulfill eligibility requirements set by procurer, are being evaluated. Procurers have access to the maximum-ranging choice of potential environment-friendly solutions (tenders) but in the open procedure, for example, procurers cannot choose whom to invite to submit tender on the basis of environment-friendly technical capacity, in the same way they would be allowed to do so in the restricted procedure.

*Restricted procedure*

In restricted procedure, which is two-phased, procurers can evaluate candidate’s technical capacity environment-wise in the phase before the submitting of tender. Only such economic operator which fulfills requirements and has recognized qualification will be invited to submit tender.Procurers can also apply the so-called reduction of the number of eligible candidates and limit the number of economic operators they will invite to submit tenders.[[12]](#footnote-12) The reduction of the number of eligible candidates consists of the selection of a limited number, among qualified economic operators, of those to be invited to submit tenders. The minimum number of candidates that must be invited to submit tenders is five, provided that there are enough candidates that meet criteria for qualitative selection of economic operators.[[13]](#footnote-13) Due to its organized structure, the restricted procedure can help procurers determine the adequate level of environmental performances in their specifications, in the award criteria, and in the provisions on the execution of contracts. However, by limiting the number of tenderers, procurer can also miss out on tenders with high environmental performances.

*Competitive procedure with negotiation, and competitive dialog*

Competitive procedure with negotiation[[14]](#footnote-14) and competitive dialog[[15]](#footnote-15) may be useful to procurer for procurement requiring an element of adjusting existing solutions, or designing, or innovation, or in some other circumstances.

These procedures can afford advantages in the context of green public procurement, as they bring in elements of flexibility otherwise not available in open and restricted procedures, and can enable better understanding and control of the effects that environmental requirements have on costs. However, for the best results, both procedures require a certain level of skills and experience in interacting with economic operators.

*Innovation partnership*

Where procurer wishes to purchase goods or services presently unavailable on the market, it may establish an innovation partnership[[16]](#footnote-16) with one or several partners. This facilitates research and development, piloting, production, and subsequent purchase of a new product, service, or works, through the means of establishing a structured partnership.

Each of the above procedures involves a series of steps in which environmental aspects can be applied, as follows:

* defining the subject of public procurement and technical specifications
* grounds for exclusion and criteria for the selection of economic operator
* award criteria, and
* provisions on the execution of contract.

These will be further elaborated in this document.

***DEFINING THE SUBJECT OF PUBLIC PROCUREMENT***

The ‘subject’ of public procurement is a good, service or work the procurer wishes to purchase. Overall, the process of specifying it will result in a detailed description of goods, services, or works by means of technical specifications, and may also take the form of characteristics or functional requirements. In principle, procurers are free to define the procurement subject in any way that suits their specific needs. Legislation on public procurement is less about what procurers purchase, and more about how they buy it.

For this reason, the PPL does not limit the procurement subject as such. There is an exception to it in Article 6, Paragraph 1 of the PPL, which provides that procurer is obliged to procure goods, services, or works of adequate quality in terms of the reason, purpose, and value of public procurement, i.e., the spending of public funds that is both cost-effective and has minimal impact on the environment.

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| **Note:**The avenues for taking into account environmental aspects will vary, depending on different types of public procurement subjects.In the case of **works**, contract does not cover only the final product, but also the design and the carrying out of works. Procurer’s best option to take into account environmental aspects is the design phase. Procurers can give clear instruction to architects and/or engineers to design, for example, low energy consumption administrative building, by giving thought not only to isolation and use of special construction materials, but also to installation of solar cells for heat generation. Likewise, procurers can request the building to be designed so that elevators are only used to a limited extent, and that exposure of the offices be such so to limit the use of artificial light.In terms of contracts on procurement of **services**, their nature allows the possibility to stipulate the way of providing services. For example, procurers can insist on a specific way of cleaning buildings, notably, by using only materials that are less harmful to the environment. Further, they can also define that, for instance, public transport services should be provided by electric buses, and to stipulate the manner of collecting household waste.Contracts on procurement of **goods** generally imply the purchase of complete or end products. Hence, the avenues for taking into account environmental aspects are not as great as in the case of works or services. However, procurers can set certain requirements for the production process. |

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| **Important:**In certain cases, the choice of particular goods, services or works may violate equality of tenderers in public procurement procedures. In order to avoid this, there are in place safeguards, imposed by the provisions.First, the general principle of non-discrimination applies. This practically means that procurers must ensure that their definition of the procurement subject does not impede access to public procurement procedure of other economic operators, regardless of them being either domestic or from abroad. Second safeguard is that, according to public procurement rules, technical specifications must not unduly restrict competition. Procurers need to ensure as many competitors as possible in public procurement procedures. Specifically, procurers must not restrict competition in an effort to unduly place certain economic operators in a more favorable or unfavorable position; in particular, they must not prevent any economic operator from taking part in a public procurement procedure by means of using discriminatory criteria for qualitative selection of economic operators, or for technical specifications, or for award criteria. Procurers cannot, either directly or indirectly, impose such conditions that would amount to national, territorial, or personal discrimination among economic operators. (Article 7 of the PPL) |

## NEEDS ASSESSMENT AND ESTABLISHING KEY IMPACTS ON ENVIRONMENT

Key step prior to commencing procurement process is the actual needs assessment of procurers in light of potential procurement subject’s impact on the environment. Consultations with internal or end-users may reveal that smaller quantities or environmentally friendlier options make an acceptable solution. In some cases, the best solution may even be to cancel the purchase. For example, procurers could instead share resources or equipment with other procurers, or buy already used, recycled, or refurbished products. Each individual contract will have a diverse set of potential environmental impact to be taken into account.

Contract on procurement of goods, services and works will typically include different aspects, as demonstrated below.

*Contracts on procurement of goods:*

* Environmental impact of materials (e.g., raw materials from renewable sources)
* Impact of the employed production processes
* Product’s energy and water consumption during the use thereof
* Product durability / lifetime
* Possibilities for product's end-of-life recycling / refurbishing
* Product’s packaging and transportation

*Contracts on procurement of services:*

* Technical expertise and personnel qualifications for executing contract in an environmentally friendly way.
* Products / materials used to provide service
* Established management procedures to reduce the service’s environmental impact
* Consumed energy and water, and waste generated while providing the service

 *Contracts on procurement of works:*

* In addition to the all above stated aspects, contracts on procurement of works can have substantial impact on the environment, e.g., in terms of land use, or traffic planning
* Some projects require to carry out a formal environmental impact assessment, whose results should have bearing on the procurer’s decision on public procurement.

## DEFINING TECHNICAL SPECIFICATIONS

## Environment-friendly technical specifications

Upon defining procurement subject, procurers have to formulate it in terms of technical specifications that ought to be included in tender documentation. Technical specifications have a dual role.

 Firstly, they are an opportunity for the competition on the market so that economic operators, based on information, can decide whether they are interested in participating in given public procurement procedure. Thus, technical specifications are vital in setting the level of future competition.

 Secondly, they provide measurable reference values against which tenders may be evaluated. Tenders not compliant with the technical specifications must be rejected, unless procurer has expressly permitted the submission of tenders with variants. Technical specifications must refer to the features of the particular work, good or service being purchased, rather than to the overall capacities or qualities of given economic operator. Unless clear and accurate, they inevitably result in unacceptable tenders in public procurement procedure.

It is also vital that technical specifications are clear so that all economic operators understand them in the same way, and that procurer can verify compliance with them during expert valuation of tenders. The duty of transparency means that technical specifications must be clearly indicated in tender documents.

Technical specifications may be formulated with reference to *European, international, or national standards, and/or as characteristics or functional requirements.[[17]](#footnote-17)* They can also refer to the corresponding criteria defined in *labels* (for more details, see below). The rules on public procurement allow procurers to formulate technical specifications in terms of *environmental characteristics*. For example, procurers may request that a computer consumes no more than a specified amount of energy per hour, or that a vehicle emits no more than a specified quantity of pollutants. Procurers may also specify *production processes or methods for goods, services or works* (see below).

## Standards and other technical reference systems

Standards play leading role in affecting designs of products and processes, and many standards include environmental features such as materials used, durability, or energy or water consumption. Reference to technical standards, including such environmental features, can be inserted directly in technical specifications, thus helping procurers define the subject in an unambiguous way. Reference to standards imply European, international, or national standards and various other technical reference systems, as a way to define specifications.

Whenever referring to a standard, this must be followed by wording “or equivalent”.[[18]](#footnote-18) This means that procurer must accept evidence of compliance with an equivalent standard.[[19]](#footnote-19) Such evidence may take the form of testing reports, or certificates by a conformity assessment body. Tenderer may also rely on the manufacturer’s technical file, if unable to obtain evidence by third-party within the deadline, if this impossibility is not caused by actions on the tenderer’s part. In this case, procurer has to determine the existence of compliance.

*Technical specifications cannot refer to a particular brand or source or specific process that distinguishes products or services provided by a specific economic operator, or trademarks, patents, types, or particular origin or production, which would result in affording advantage or eliminating certain economic operators or certain products*. Exceptionally, such referring is permitted where the procurement subject cannot be sufficiently precisely and comprehensibly described, in line with the above requirements, whereby such reference must be followed by wording “or equivalent”.

##

## Specifications in the form of characteristics or functional requirements

In accordance with the EU provisions, the PPL explicitly permits procurers to apply specifications in the form of characteristics or functional requirements. Such specification describes the expected desired result and outputs (for example, in terms of quality quantity, and reliability), including the way of their measurement. It does not prescribe the input data or working method of tenderer. Tenderer is free to propose most suitable solution for the achieved desired results and outputs.

Such approach typically allows more room for innovation and, in some cases, challenges the market to develop new technical solutions. While setting specifications in the form of characteristics or functional requirements, procurer should carefully consider the way of evaluating and comparing tenders in a fair and transparent manner. It may ask the tenderer to specify the manner of achieving desired results and attaining the quality level set in the tender documents.

*The following example was taken from the European Commission’s handbook “Buying green! A handbook on green public procurement” 3rd edition, 2016)*

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| **Example:**If procurer wishes to maintain a certain temperature in the building, it may do so by setting very detailed specifications for the heating system.Alternatively, it may request that the building must keep a constant inner temperature between 18-20°C, leaving the tenderers to propose various solutions that allow compliance with this requirement. Then, tenderers could opt for innovative heating and ventilation systems that reduce dependence on fossil fuels. Procurers may ask them to provide technical data in order to verify feasibility of proposed methods. Also important is that procurers determine how to include the detailed terms of the tender in the provisions of the contract. |

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## Determining materials and production methods

The substance the product is made of, or its production process, or the manner the service is being provided, may make substantial segment of product’s environmental impact. According to public procurement rules, materials and methods of production or of provision of services can be taken into account while defining technical specifications, even if those are not integral parts of the substance of what is being purchased,[[20]](#footnote-20)such as electricity generated from renewable sources, or food produced from organic agriculture. However, since technical specifications have to be related to the procurement subject, procurers may only include such requirements that relate to the production of goods, services or works being purchased, rather than those that relate to economic operator’s general practice or policy. As with all requirements, while specifying materials or production methods, procurer must ensure that general principles of non-discrimination, equal treatment, transparency, and proportionality are observed.

Procurers have the right to demand that the product they buy is made of a specified material or that it contains a certain percentage of recycled or refurbished content. Procurers can also set requirements in terms of limitation of hazardous substances in the product.

A typical green procurement approach, for example, restricts hazardous substances in cleaning products and textiles, or requires tenderers to prove that wood originates from a sustainable source. To ensure the observance of the general principle of non-discrimination, such restrictions should be based on an objective risk assessment. Labels and criteria for green public procurement presented below are a useful reference point, since they are based on scientific information and life cycle assessment of materials and substances found in given products and services.

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| **Important:**The provisions permit procurers to include in technical specifications the requirements concerning the processes and methods of production, or of provision of services, or of carrying out works. However, they do not allow to insist on a particular production process that is proprietary-wise or otherwise available to only one supplier or suppliers in a country or region, unless such reference is justified by exceptional circumstances of the procurement subject and accompanied by words “or equivalent”. |

Here, the principle of proportionality is of an especial significance. Hence, procurers need to appraise whether the requirements they set concerning the production processes are suitable for attaining the environmental goals they seek to promote. Careful analyses of life cycles of goods, services, or works to be purchased will help procurers design the appropriate specifications for the production processes and methods. The below presented life cycle assessment (LCA) enables analysis of a given product’s environmental impact. It involves the processing of raw materials and other phases of production, all the way through the phases of use and disposal.

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## Use of variants

Variants are a means of introducing greater flexibility in the description of the procurement subject, which may result in economic operators proposing an environmentally friendlier solution. Variants allow tenderers to submit an alternative solution that meets certain minimum requirements stipulated by the procurer.[[21]](#footnote-21)

*The following example was taken from the European Commission’s handbook “Buying green! A handbook on green public procurement” 3rd edition, 2016)*

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| **Example:**Procurers can specify vehicles with conventional fuel (gasoline or diesel) and also allow for alternative, electrical, or hybrid vehicles as variants. Then, both variant and non-variant tenders are evaluated against the same set of award criteria, in order to establish which is the most economically advantageous tender.This can be a useful approach where procurers are uncertain of costs or other impacts of an alternative product or service. For example: will the introduction of higher insulation standards delay the completion date of the contract on procurement of works?Variants must be related to the subject of the contract, that is, they cannot relate to matters not related to the actual purchase the procurers are planning. |

To be able to permit or request variants in public procurement procedure, procurers should:

* specify in call for tenders that variants will be permitted, or that they are required. Otherwise, the submission of tenders with variants will not be allowed[[22]](#footnote-22)
* specify the minimum requirements that variants should meet. Procurer may only consider variants that meet the minimum requirements it has stipulated[[23]](#footnote-23)
* specify all special requirements for the submission of variants (e.g., that variant can only be submitted in combination with the basic tender)
* specify contract award criteria so that those can apply to variants that meet such minimum requirements, as well as to non-variant tenders.[[24]](#footnote-24)

##

## Labels

The PPL defines “labels” as any document, certificate, or attest confirming that therein specified products, services, or works, processes, or procedures meet certain requirements for given label.[[25]](#footnote-25) “Label requirements” are defined as requirements that the goods, services, or works, processes, or procedures in question must fulfill to acquire respective labels.[[26]](#footnote-26)

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| **Note:**Labels can be used in various ways in the context of technical specifications, as follows:1. labels help procurers design technical specifications in order to define characteristics of goods or services to be purchased
2. labels enable the checking of conformance with those characteristics. Through accepting labels as a way of proving conformance with technical specifications by means of third-party verification, labels can contribute to saving time while ensuring the applying of high environmental standards in public procurement.
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The PPL contains explanations how to use labels.[[27]](#footnote-27) Consequently, when procurer intends to procure goods, services, or works possessing specific environmental, social or other characteristics, it may request special labels as a way of proving that those goods, services or works correspond to the required characteristics. Labels can be used:

* 1. in technical specifications,
	2. in award criteria, or
	3. in conditions for the execution of contracts.

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| **Important:**Labels ought to fulfill certain conditions, as follows: * label requirements can only refer to criteria which are related to the procurement subject and are appropriate for defining the characteristics of the public procurement subject.
* label requirements should be based solely on objectively verifiable and non-discriminatory criteria.
* labels should be established in an open and transparent process participated by all interest groups, such as state authorities, service users, social partners, consumers, producers, distributors, non-governmental organizations and the like.
* labels should be available to all interested parties.
* label requirements should be formulated by a third party over whom the economic operator applying for the label cannot exercise decisive influence.

Where procurer is satisfied that a label meets all the above conditions, it may include such label as a part of its technical specifications.However, procurer should also accept other appropriate labels that have equivalent requirements, namely, those showing that the same objective criteria are met. Where tenderers were obviously unable to acquire label within reasonable deadlines for reasons beyond their control, then procurer has to consider another appropriate means of proof, such as manufacturer’s technical documentation proving that requirements for a specific label have been met. |

Likewise, it is possible to request fulfillment of only a segment of the relevant label requirements. Where procurer does not request that goods, services or works must meet all label requirements, it should specify the actual label requirements to which that applies.

The provisions distinguish between labels whose all criteria are related to the procurement subject and those that include broader criteria, such as criteria related to the general management practices. Procurer may use a label which, even though meeting all the above requirements, also relates to requirements not related to the procurement subject.[[28]](#footnote-28) In such a case, procurer should not refer to the label as such, but rather should design technical specifications by reference to the detailed specifications of such label or, as the case may be, by the parts of such label that are related to the procurement subject and are appropriate for defining its characteristics.

There are many available eco-labels whose purpose is to help procurers identify sustainable products or services. From the perspective of green procurement, the most valuable ones are those that are based on objective and transparent criteria and awarded by an independent third party. Such labels can play a special role in the development of technical specifications and award criteria, and in verifying compliance.

There are different types of labels:

**Multi-criteria labels** are the most common type of environmental labels and the most frequently used ones in green procurements. Multi-criteria labels are based on scientific information about environmental impact of a product or a service, throughout one’s life cycle, from the extraction of raw materials, through production and distribution, the use phase, to final disposal. Those apply numerous criteria that set the standard for a particular label. There are different criteria established for each covered product or group of services.

Examples of this type of labels are as follows:

*EU Ecolabel*[[29]](#footnote-29) 

The Nordic Swan[[30]](#footnote-30)

Blaue Engel[[31]](#footnote-31)

**Labels for individual issuing**, on the other hand, are based on a single or several pass/fail criteria related to a specific matter, e.g., energy efficiency. If given product meets those criteria it may display the label.

Examples of this type of labels are as follows:

*EU Organic label* 

*Energy Star* label for office equipment 

**Sector-specific labels** – Labels specific for individual sectors include forestry certification schemes run by organizations such as:

FSC (the Forest Stewardship Council)[[32]](#footnote-32)

The PEFC (the Programme for the Endorsement of Forest Certification)[[33]](#footnote-33) 

**Product rating labels** appraise products or services according to their environmental performances against a particular matter, instead of using pass/fail criteria. Examples include the EU Energy Label that rates products in terms of energy consumption according to their energy efficiency.

Majority of labels conforming to the ISO Type I classification meet these requirements, although they may also include criteria not specific to the product or service being purchased, such as general management requirements. To verify if this is the case, procurers should examine all criteria displaying the label prior to referring to them in their respective documents. Most of those are freely available on the Internet.

Where label contains certain requirements that are relevant to a particular procurement subject, but also other ones unrelated to this subject, such as those concerning general management practices, then procurers may only refer to the specific criteria of given label that are related to the subject and do not require the label itself. In other words, it can be considered good practice to always refer to the criteria on which label is based, so to ensure that all of them are relevant and all of them are clear to all tenderers.

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| **Example - Judgment of May 10, 2012, in Case C – 368/10 *Commission v the Netherlands***The use of labels was discussed in a case adjudicated by the Court of Justice.Case C-368/10 reviewed the award of contract by the Dutch Province of Northern Holland for theprocurement and operation of automatic tea and coffee machines.In its tender documents, procurer specified certain social and ecological labels for the procurement of tea and coffee machines. As an eligibility requirement, procurer specifically set the use of organic tea and coffee according to the principles of fair trade with special labels (ECO label and MAX HAVELAAR label). It further stated that, if possible, other ingredients used should conform to these labels, so it assigned points in the evaluation scheme to reflect its preference. In subsequent explanations, procurer confirmed that equivalents to specified labels were also acceptable.Pursuant to the facts of the case files, the Court established that procurer had set the award criterion consisting of request that the supplied ingredients have labels ECO and MAX HAVELAAR.The Court held that the award criteria, in principle, may also be qualitative rather than solely economical.Qualitative award criteria may include environmental characteristics, as well as *“criteria based on aspects of social nature, which may apply to persons who use or accept the works, goods or services that are the subject of the contract, as well as to other persons”.*The Court confirmed that contract award criteria must be related to the subject of the contract, and must be objective, and compliant with the principles of equal treatment and transparency.Having those principles in mind, the Court of Justice examined characteristics on which are based the labels cited in the case files, and concluded that those were the environmental and social characteristics and, as such, permissible criteria. Those did not have to be integral parts of the product, and were related to the ingredients to be supplied, hence they formed a part of the subject of the contract.However, the Court concluded that, pursuant to EU Directive, referring solely to the labels was not legal because the principles of equal treatment, non-discrimination, and transparency, were violated. The Court reasoned that, in line with those principles, all requirements and detailed rules of the procurement procedure ought to be drafted, in call for tenders or tender documents, in a way that is clear, precise, and unambiguous so that, firstly, all notified tenderers exercise regular protection and are able to understand their exact meaning and interpret them in the same way and, secondly, procurer is able to determine whether the furnished tenders meet the criteria. In the Court’s opinion, neither the criteria themselves nor the data confirming those were met, fulfilled this requirement.*Eco label: Private label for products made of at least 95% of ingredients from organic production methods.**MAX HAVELAAR - Private label of fair trade, certifying that products in question were bought at fair prices and under fair conditions from small producers in developing countries.* |

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## Verifying conformance with technical specifications

Procurers should pay special attention to the matter of verifying conformance with technical specifications. In particular, procurers should specify beforehand, in tender documents, the types of evidence of conformance that tenderers can furnish. This is typically done by providing an indicative list, and stating that other equivalent evidence will be accepted.

Environmental requirements are often complex, so the conformance assessment in some cases requires technical expertise. Still, for many environmental specifications there are ways to prove conformance that do not require input of technical experts. Here is an example:

* as a starting point, procurer should refer to the relevant legislation that all economic operators must comply with;
* labels can be used to verify conformance with additional environmental requirements in the above-stated manner;
* where necessary, test report or certificate issued by a conformity assessment body may be requested, provided that procurer also accepts certificates issued by relevant conformity assessment bodies. This is one of ways to verify that given product satisfies certain specification or level of characteristics. Procurers must examine the producer’s technical dossier, or some other means of proof where tenderer is unable to obtain testing report or certificate within reasonable deadline, for reasons beyond their control.

# *SELECTING ECONOMIC OPERATORS*

##

## Introduction

This part presents rules of the PPL that govern the qualitative selection of economic operators that procurer deems capable of executing the contract. The prescribed rules consist of three separate types, as follows:

1. The first group of rules governs the grounds that justify the exclusion of tenderers or candidates from participation in public procurement procedure.[[34]](#footnote-34) Those cover situations such as conviction for certain criminal offenses, non-payment of taxes or social contributions, etc. Procurer should also exclude economic operators which were found in violation of regulations governing environmental protection.[[35]](#footnote-35)
2. The second group involves criteria related to the fulfillment of requirements for performing economic operators’ professional activities, financial and economic capacities, as well as technical and professional capacities to execute certain contract. While appraising capability to execute contract, procurers may take into account specific experience and expertise related to environmental aspects that are relevant for the subject of the contract. For example, in their tender documents procurers may request proof of economic operators’ capability to apply measures for the management of environmental protection and supply chain in the course of execution of contract.
3. The third group, relevant for multi-phase public procurement procedures,[[36]](#footnote-36) governs the rules and criteria that apply to reducing the number of eligible candidates.

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## Grounds for exclusion

Grounds for exclusion refer to circumstances in which procurers must or may exclude an economic operator from given public procurement procedure.[[37]](#footnote-37) In certain cases, exclusion of economic operator is mandatory,[[38]](#footnote-38) whereas in other ones is optional, in that the procurer may exclude economic operator provided that the former had stipulated this ground for exclusion of the latter in its tender documentation.[[39]](#footnote-39)

From the point of green procurement, the most important grounds for exclusion of economic operator are as follows:

* violation of duties (within two years preceding the expiry of deadline for the submission of tenders or applications) in the area of environmental protection, including those stemming from the provisions of international conventions listed in Annex 8 of the PPL[[40]](#footnote-40)
* severe unprofessional conduct that calls into question the integrity of economic operator (within two years prior preceding the expiry of deadline for the submission of tenders or applications)[[41]](#footnote-41)
* failure to fulfill obligations under previously concluded public procurement contracts that resulted in termination of contract, collection of collateral, compensation for damages, or similar sanctions (within three years preceding the expiry of deadline for the submission of tenders or applications)[[42]](#footnote-42)
* providing untrue data as needed to verify the absence of grounds for exclusion or criteria for the selection of economic operator or situations where economic operator was unable to furnish evidence of the fulfillment of criteria for qualitative selection (within three years preceding the expiry of deadline for the submission of tenders or applications).[[43]](#footnote-43)

Procurers can exclude economic operator if able to prove by any suitable means that the latter has violated applicable obligations concerning environmental protection, not only those pursuant to national laws, but also international ones. The PPL allows exclusion due to violation of an exhaustive list of international conventions on environmental protection, as follows:

* The Vienna Convention on the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer;
* The Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal;
* The Stockholm Convention on Persistent Organic Pollutants;
* The Rotterdam Convention on the Prior Notification Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention).

*The following example was taken from the European Commission’s handbook “Buying green! A handbook on green public procurement” 3rd edition, 2016)*

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| **Example:**Procurer is obliged to exclude a waste disposal company that has unlawfully disposed waste, from the public procurement procedure for waste collection services. However, such economic operator must be nonetheless be given chance to prove its reliability, regardless of the existence of the grounds for exclusion.[[44]](#footnote-44) To this end, economic operator must prove that it has:* paid, or committed to pay compensation in terms of any damage caused by a criminal offense or an unprofessional conduct, and
* fully clarified the facts and circumstances by means of actively cooperating with the investigative authorities, and
* undertook specific technical, organizational, and staffing measures as appropriate for preventing further criminal offenses or unprofessional conduct

It is procurer’s prerogative to appraise the measures taken by relevant economic operator so to establish whether those are suitable to allow it participate in the procedure, and to state the reasons for either accepting or refusing the measures.[[45]](#footnote-45) |

## Criteria for selection of economic operators

The selection criteria appraise an economic operator’s capability to execute the contract. In an open procedure, procurer decides whether economic operator is or is not capable of executing the contract on the basis of fulfillment of the selection criteria. In multi-phased procedures, already mentioned in this document, they form a part of the first phase of qualification, and procurer may limit the number of candidates with recognized qualification who will be invited to submit tenders. The PPL provides for a detailed list of criteria that may be applied for the selection of economic operator[[46]](#footnote-46) and the type of evidence that may be requested to this end.[[47]](#footnote-47)

From the perspective of green procurement, the most relevant selection criteria concerning the technical and expert capacities of economic operators are as follows:

* Human and technical resources;
* Experience and references;
* Educational and professional qualifications of personnel (if not being evaluated within the contract award criterion/criteria);
* Systems and schemes for environmental management (such as EMAS, ISO 14001);
* Supply chain management systems / tracking systems;
* Product samples;
* Conformity assessment certificates.

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| **Important:**The most important requirement for all selection criteria is they must be *logically related to the procurement subject and commensurate with procurement subject*. This means that procurers need to adjust their approach to the specific requirements of the specific procurement subject, including its value and level of environmental risk. For example, the range of environmental selection criteria applied for works contract will usually be larger than the one for goods contract, unless the goods pose a particular risk to the environment, e.g., have to do with chemicals or fuels that must be stored safely. |

## Environmental - technical capacity

Meeting the requirements of green procurement can turn to be a complex task, as is the case where requirements concern the design and construction of energy-efficient buildings, or the provision of such printing service that reduces waste. To determine whether economic operators have capacities to meet such requirements, it makes sense to check their previous experiences and the human and technical resources at their disposal. Technical capacities for environmental protection may involve technical competence to minimize waste generation, avoid pollutant spillages/leaks, reduce fuel consumption, or minimize disturbance of natural habitats.

In practical terms, this typically has to do with questions such as:

* does tenderer (candidate) have previous experience in executing contracts in a sustainable manner?
* does tenderer (candidate) employ or otherwise hire personnel possessing necessary educational and professional qualifications and experience to deal with the environmental elements of the contract?
* does tenderer (candidate) possess or have access to necessary technical equipment for environmental protection?
* does tenderer (candidate) possess the means to ensure the quality of environmental aspects of the contract (e.g., access to relevant technical bodies and measures)?

A useful tool for integrating environmental criteria is a list of previously executed contracts. Procurers can use this criterion to verify previous experience of an economic operator in the execution of contracts with similar environmental requirements and (only for public works procurement contracts) certificates of satisfactory performance and outcome of the most important works. In doing so, they ought to clearly determine what type of information is considered relevant and how it will be evaluated. The PPL sets five years as the maximum reference period for contracts on public procurement of works and three years for contracts on public procurement of goods or services, unless a longer period is necessary to ensure an adequate level of competition. These periods are determined relative to the deadline for the submission of tenders.

Educational and professional qualifications of staff and their experience may also be relevant to green procurement.

*The following example was taken from the European Commission’s handbook “Buying green! A handbook on green public procurement” 3rd edition, 2016)*

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| **Example:**Where procurer is to award contracts for public procurement of the road transport service, it may wish to check whether drivers are trained in environmentally friendly driving in order to reduce fuel consumption and emissions.Staff working on a food service contract will have to possess qualifications for the proper handling of food, in order to ensure food safety and limit food waste. |

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| **Note:**Procurers should consider if it might be a better solution to appraise some environmental aspects within the award criterion. Should they opt so, those aspects should not be a part of the criteria for the selection of economic operator. At the phase of contract award, procurer has more flexibility in the way it defines the criteria and types of evidence they request. |

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## Systems of environmental management

Any organization (public or private) that wishes to improve its overall environmental performance, can decide to establish an environmental management system. The application of environmental management standards is governed by Article 127 of the PPL.

## Systems of environmental management

Environmental management systems are tools related to the organization that strives to improve its own overall environmental characteristics.

Such systems enable organizations to get clearer picture of own environmental impacts, help them become aware of substantial impacts and manage them well, in terms of continuous improvement of own environmental performance.

Relevant areas for improvement could be the exploitation of natural resources, such as water and energy; employee training; using environmentally friendly production methods; and purchasing greener office supplies.

Organization which is establishing an environmental management system can request certification under one of the two leading environmental management systems in use in the EU:

1. “Eco-Management and Audit Scheme” (EMAS), or
2. European / international standard for environmental management systems (EN/ISO 14001).

EMAS scheme is primarily used by organizations located in the European Union or the European Economic Area, although it can also be used by organizations and locations situated elsewhere (but checks are always carried out under the control of the European Accreditation Body).

The ISO scheme is open for organizations across the world.

Worldwide, there are some 250,000 ISO 14001 certified organizations, and more than 4,000 organizations and 7,500 locations registered under EMAS. EMAS certification covers requirements of EN/ISO 14001, but also includes additional elements such as verified compliance with environmental legislation, commitment to constant improvement of environmental characteristics, involvement of employees, and mandatory public communication of annual performance (environmental statement) confirmed by a verification body. This latest element is what distinguishes EMAS from other systems, since it provides a public and transparent overview of environmental characteristics of a registered organization.

Procurers may request confirmation of economic operator’s compliance with environmental management systems or standards for any contract, provided that it is proportionate and related to the procurement subject. Certificates of equivalence must be accepted, while other types of evidence (such as internal systems) must be taken into account when an operator obviously has no access to third-party certificates or cannot obtain them within reasonable time for reasons beyond its control.

Use of EMAS is not limited to providing evidence on technical capacity for undertaking environmental management measures. Where procurer sets other environmental selection criteria (such as requirements on technical equipment or training), the EMAS, if it has relevant information on those, could serve as a means of demonstrating capacity.

It is important to take note of the actual elements of technical capacity covered by EMAS that are relevant to the procurement subject, and not of the mere existence of an independent body’s confirmation. While setting requirements for application of environmental management measures, one should keep in mind the principle of proportionality. Namely, a contract of low value and low impact might not be suitable for setting such requirements.

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## Measures of supply chain management

All environmental impacts take place not only at the point of delivery of the final product or service, but also before that, along the supply chain. For instance, IT equipment typically contains components originating from many parts of the world, including metals and other substances that pose high risk of harmful environmental impacts during the course of their extraction and processing.

For such types of contracts, it is reasonable for procurers to look beyond the primary or the first contractor, so to ensure that environmental protection requirements will be met. One way to go ahead is to insert special contractual provisions concerning subcontractors.

In the selection phase, procurers may request the following information:

* information about segment of the contract that operating entity intends to subcontract, and
* information about the supply chain management system and monitoring systems that economic operator will be able to use during the execution of the contract.

Both requirements can help determine how to manage environmental impacts in the context of given contract, and select operators with powerful systems.

## Samples of products, checks, and conformity assessment

Where contract involves the delivery of products or materials, procurer may request a sample (or description, or photo) during the phase of selecting economic operator. It may also request conformance or quality certificates. This can prove useful in checking whether products meet certain specific environmental requirements for procurement, for example in terms of durability or energy consumption.

Procurers have available an additional option, namely, to control economic operator’s production or technical capacities, as well as their means of examining and research, and quality control measures. This can be done where products or services to be supplied are complex or, exceptionally, necessary for a specific purpose.

The control can only be carried out by procurers or by authorized body in the country of economic operator’s establishment.

**Method of proving**

 Following the requirements of the EU Directives, the PPL contains provisions on the method of proving criteria for the qualitative selection of economic operator. The most important point is that procurers are obliged to accept, as preliminary evidence, the Statement on fulfillment of criteria for qualitative selection of economic operators (hereinafter: the Statement).[[48]](#footnote-48) This Statement is the Serbian equivalent of the Uniform European Procurement Document, set forth under the Procurement Directive of 2014.[[49]](#footnote-49) The Statement has to be submitted on a standard form, with economic operator therein confirming that:

1. there are no grounds for exclusion of given economic operator;
2. it meets the required criteria for the selection of economic operators;
3. it meets the rules or criteria formulated to reduce the number of qualified candidates, where those are applied in a given procedure.

 In the Statement, economic operators have to name the issuers of proof of fulfillment of criteria for the qualitative selection and to state that they will be able to submit such proof at the request of procurer, and to do so without any delay.

 In the Statement, economic operators can further provide data such as the Internet address of the database, any necessary identification data, and a statement of consent, on the basis of which could be obtained evidence of, or gained insight into, the fulfillment of criteria for the qualitative selection. Economic operator can reuse its Statement that has already been used in previous public procurement procedures, on the condition that data contained therein are still accurate. The standard form of this Statement was developed by the Public Procurement Office, in line with the Uniform European Procurement Document established by the European Commission.

 Prior to making decision in public procurement procedure, procurer should request the tenderer that has submitted the most economically advantageous tender to furnish evidence of the fulfillment of criteria for the qualitative selection of economic operator, in the form of uncertified copies, within a reasonable period not shorter than five working days.[[50]](#footnote-50)

 Procurer is not obliged to do so in the case of public procurement with estimated value equal to or lower than 5,000,000.00 dinars.[[51]](#footnote-51) Procurer does not have to request tenderers and candidates to furnish evidence of the fulfillment of criteria for the qualitative selection, where:

1. according to data specified in the Statement, it can obtain evidence, or have insight into evidence, on the fulfillment of the criteria
2. procurer already possesses valid relevant evidence.[[52]](#footnote-52)

Notwithstanding the estimated value of public procurement, procurer may request tenderers and candidates to submit all, or a part of, evidence of the fulfillment of criteria for the qualitative selection, in order to verify data specified in the Statement, if necessary for the proper conducting of the procedures.[[53]](#footnote-53)

**Groups of economic operators and green contracts**

 Economic operators applying for participation in public procurement procedures and contract awarding may opt to join specialist expertise to address green requirements. For instance, economic operator for managing facilities may collaborate with a consultant for environmental protection to manage building in a more sustainable way. In this case, technical capacities and experiences of both should be evaluated in the selection phase.

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| **Important:**While evaluating operator’s technical capacities, procurer should keep in mind that economic operators can always resort to using the capacities of other operators, irrespective of the legal nature of their mutual relationship.This means that, for example, where two or more economic operators wish to submit a joint tender, regardless of whether they have established a formal consortium, or have any legal ties, procurers should take into account their combined capacity.In this case, economic operator should be capable of proving to the procurer that it is going to have at its disposal another operator’s resources necessary for the execution of the contract, for example, by accepting obligations of other operators.When relying on another operator’s capacity, economic operator must also prove that there are no grounds for exclusion on the part of that other operator, and that the latter meets the relevant selection criteria applied in the public procurement procedure. |

Where tender (or application) is submitted by a group of economic operators, this requires submission of separate Statements of each member of the group of economic operators, containing the above data for relevant capacities of the group member. Where economic operator intends to subcontract a segment of the contract, or to use capacities of other operators, it should also provide a separate Statement containing the above data for relevant capacities of the subcontractor or other operator that it intends to use.

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# *AWARDING CONTRACT*

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## Criteria for awarding contract

In the phase of awarding contracts in public procurement procedures, procurers evaluate tenders and compare the costs of different tenders. While evaluating tenders, they ought to adhere to certain award criteria, published in advance, to decide which is the best.

In line with the EU rules, and pursuant to the provisions of the PPL, all contracts are awarded to the most economically advantageous tender.[[54]](#footnote-54) Most economically advantageous tender should be identified on the basis of one of the following criteria:

1. price, or
2. costs, by applying cost-efficiency approach, such as life cycle costing, or
3. the ratio of price to quality, namely, of cost to quality, as evaluated on the basis of criteria, including qualitative, environmental, and/or social aspects.

Costs or price must form a part of the assessment in any procedure, and can be calculated on the basis of life cycle costs, as explained below. Besides the costs, from the procurer’s point of view, there is a wide range of factors that can affect the value of tender, which also includes environmental aspects. It is necessary that the award criteria (and also selection criteria, technical specifications, and provisions on the execution of contract) are related to the subject of the contract.[[55]](#footnote-55)

The award criteria are considered to be related to the subject of the contract if they apply to the works, goods or services that are the subject of given contract in any respect and at any stage of their respective life cycles, including factors concerning:

* 1. a particular process of production, execution of works, delivery of goods, or provision of, or trading in, services, or
	2. a particular process of some other phase of their life cycles.[[56]](#footnote-56)

These factors do not have to be a part of ‘material content’ of what is being purchased, i.e., do not have to be visible or discernible in the final product or service. This means that, as in technical specifications, contract award criteria can relate to sustainability issues, such as energy from renewable sources or organic production, or to greenhouse gas emissions associated with a particular product or service.

Generally, the choice between the offered criteria is left to the discretion of procurers, with a few exceptions.

The first exception is represented by certain types of public procurement procedures, where procurers do not have the right to choose the type of criteria for awarding the contract, but instead must select the type prescribed by the provisions of the PPL. Namely, in competitive dialog[[57]](#footnote-57) and innovation partnership[[58]](#footnote-58), procurers must apply the award criterion based on the price and quality.

The second exception, applicable since January 1, 2024, says it is impossible to apply the contract awarding criterion solely based on price in procedures of public procurement for exactly defined public procurement subjects. This involves the following services: computer program development services, architectural services, engineering services, translation services, and consulting services. In procedures for these public procurements, procurer may define the award criterion based on the ratio of price to quality, or on costs by applying cost-efficiency approach.

Where procurer opts to apply criterion based on the ratio of price to quality, the selection of the best tender is based on the combination of factors chosen by procurer. The PPL provides for a non-exhaustive list of such factors. Among those are some related to green procurement: environmental advantages and environmental protection, and energy efficiency.

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| **Note:**The key difference between technical specifications and the award criteria is that technical specifications are appraised on the pass/fail bases, whereas award criteria are weighted and scored so that tenderers offering better environmental characteristics are given more points.There are several considerations to be taken into account while deciding whether an environmental characteristic should be a minimum requirement (specification) assessed against a pass/fail test, or a preference (award criterion) to be used to select, among acceptable tenders, the best one as seen from the procurer’s perspective.It may be reasonable to apply environmental criteria for awarding contract, for instance, where procurer is unsure of the price and/or market availability of products, works, or services that satisfy certain environmental goals. By including these factors into its award criteria, procurer can weigh them against other factors, including the costs.Also, procurer can specify minimum performance level in technical specifications, and then award additional points for even better characteristics in the tender evaluation phase. This approach is successfully used by many procurers to maintain flexibility in conducting green procurement. |

The PPL also provides for certain basic rules governing the applying of contract award criteria, which transpose the EU public procurement directives and requirements contained in the judgments of the Court of Justice.

*Criteria for awarding contract must never grant an unlimited freedom of choice to procurers.*

This means that these criteria must provide objective basis for distinguishing the tenders, and be adequately specific. According to the Court of Justice jurisprudence, award criteria must be formulated in a way that will enable all “reasonably well-informed and ordinarily diligent tenderers” to interpret them in the same way.

*Criteria for awarding contract must be formulated in a way that will enable subsequent objective verification and tender evaluation.*

Where award criteria concern such factors that cannot be verified by procurer, it will be difficult to prove that those were applied objectively. This means that procurers should consider in advance what data and evidence tenderers can provide for each award criterion, and how are procurers going to evaluate such data and evidence.

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| Example:Case C-513/99 (“Concordia Bus”) dealt with applying of environmental criteria for the selection of the best tender.The City of Helsinki organized public tender for procurement of a dozen buses. According to tender documents, the contract was to be awarded to the supplier whose tender would be most economically advantageous for the City. Tenders were evaluated on the basis of three criteria:1. total bus price,
2. quality of the vehicle fleet, and
3. operator’s program for the quality and environment.

In terms of the second criterion, tenderer may gain additional points for various sub-criteria, among other things, for the use of buses with emissions nitrogen oxides below certain threshold and external noise below certain level. A participant in the procedure (Concordia Bus) filed request for the suspension of the award decision, reasoning that only one participant in the procedure could offer buses that meet those conditions.The Finnish court that tried this lawsuit decided to send a list of questions to the Court of Justice. It basically asked whether the use of relevant environmental criteria is acceptable on the basis of relevant EU directives on public procurement.The Court of Justice held, first of all, that according to EU directives, where contract is awarded on the basis of the most economically advantageous tender, procurer may take into account various factors related to the procurement subject, such as price, quality, aesthetic and functional features, technical assistance, etc. The Directive’s operating part suggests that the list of those factors is an open one. According to the Court of Justice, Directives cannot be construed as if all factors taken into account must be strictly economic.The Court of Justice concluded that EU law does not prohibit the application of environmental criteria. However, certain conditions must be met, as follows:* all applied criteria must be related to the subject of given public procurement
* they must be applied in line with the procedural requirements of the Directives, especially in terms of transparency - all criteria must be specified in the public call or tender documents
* they must be in line with the basic principles, especially the prohibition of discrimination and, lastly,
* procurer cannot have an unlimited freedom of choice.

Having in mind that the city of Helsinki, prior to evaluating tenders, developed and published the system for awarding additional points for lower levels of noise and nitrogen oxide emissions, the Court found that procurer’s requirements were adequately formulated and objective. |

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| **Example:**The matter of discrimination in applying award criteria was emphasized in the above “Concordia Bus” Case.One of arguments cited by Concordia Bus was that the criteria set by the City of Helsinki (in terms of the level of nitrogen oxide levels) were discriminatory, since only one participant could satisfy procurer’s requirements.The Helsinki KL Bus Company was the only participant in the procedure possessing vehicles running on natural gas that could get additional points per this criterion.The Court of Justice ruled that the fact that additional points within one of the award criteria could only be attained by a single company did not in itself turn this criterion into a discriminatory one.The establishing whether a contract award criterion is discriminatory requires that all facts of the case be taken into account.The court found that, in the case at hand, the principle of equal treatment was not violated because, in addition to the criterion that only one tenderer could satisfy, the procurer also applied other award criteria. Therefore, it was possible that companies which did not satisfy the emission criterion nonetheless win the contract. |

*Non-discriminatory character of award criteria.*

The award criteria should ensure the chances for effective competition. Environmental contract award criteria should not be formulated in a way prone to artificially close the market. Given that one of the objectives of award criteria is to inspire the market to develop and deliver environmentally friendlier solutions, it should always be possible to enable different economic operators to get points for such criteria. To this end, a good practice is to discuss environmental award criteria with potential tenderers in the context of pre-procurement market consultations.

*Presence or absence of nexus with public procurement subject.*

In the “Concordia Bus” Case, the Court of Justice held that the award criteria concerning the levels of nitrogen oxide emissions and noise for buses to be used for communal transport fulfilled the requirement of nexus with the subject of public procurement. On this same matter, the Court of Justice also tried another case.

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| **Example – Court judgment of December 4, in Case C – 448/01:**In the “Wienstrom” Case, tender documents required tenderers to supply electricity from renewable sources. Tenderers were obliged to prove they had, or would have available, on an annual basis, a minimum amount of electricity from renewable energy sources that is equivalent to the estimated annual consumption of the offices of the Republic of Austria. In addition, the award criterion was determined, with valuation of 45%, and with points to be awarded peer the amount of excess electricity from renewable sources that tenderer is able to supply relative to the estimated demands of the Republic of Austria. The Court of Justice held that the solutions applied by the procurer were not in accordance with EU requirements.The Court of Justice concluded that:* it is acceptable to apply an environmental criterion for awarding contract, even if given criterion does not bestow a direct benefit to the procurer
* further, it is allowed to give substantial value to such criteria
* also clearly, it is possible to establish an award criterion concerning the product’s method of production, where relevant to the contract
* however, to be acceptable, criterion should definitely be linked to the subject of public procurement, and should be verifiable, which implies that procurer ought to request, for example by means of a certificate, such elements that allow it to verify data submitted by tenderers in connection to this criterion
* it is not allowed to apply an award criterion which is based on the total amount of electricity from renewable sources that could be secured in volume that is greater than the volume required under the contract, since this requirement is not related to the subject of the contract at hand, and results in unjustifiable discrimination of tenderers who are fully capable of fulfilling the requirements of the contract.

In its conclusion of the “Wienstrom” Case, it established two key elements for the application of environmental criteria:1. criteria must be accompanied by requirements that enable procurer to verify data provided by tenderers so to appraise the extent to which the tenders meet the contract award criteria in terms of environmental protection
2. contract award criteria must be definitely related to the subject of given contract, rather than to the overall capability of economic operator. However, it is not excluded that such capacity be examined during the phase in the public procurement procedure, which deals with criteria for the selection of economic operators.
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## Transparency of the contract award criteria

The rules of public procurement require that the contract award criteria be published in advance, and that their relative importance in weightings be set in tender documents. Consequently, in their tender documentation procurers must specify the following:

* criteria to be applied to identify most economically advantageous tender, and
* relative importance in weights for each contract award criterion, either as exact numbers or as ranges with corresponding maximum variance.

## Approaches to weighting

The weight given to each award criterion determines its impact on the final evaluation of tender. The weighting of environmental award criteria may reflect the extent to which environmental aspects have already been included in technical specifications. Where specifications already contain strong environmental requirements, they may carry less weighting in the award criteria, and vice versa.

There is no prescribed maximum for the weighting assigned to environmental criteria. To establish adequate weighting, procurers should take into account the following:

* how important the environmental objectives are to the contract, relative to other considerations such as costs and overall quality;
* to which extent are these considerations best resolved through the award criteria;
* how many points procurer can ‘afford’ to assign. This will vary, depending on the product/service and market conditions. For instance, where product’s prices vary in a low degree, but environmental characteristics vary widely, it is reasonable to assign more points to the appraising of product’s environmental features (the share of products meeting ISO Type I labels or equivalent) and the quality of the environmental training program.

**Use of testing reports and certificates**

In certain cases, procurers may request test reports or certificates issued by conformity assessment body in order to verify the levels of environmental performance by the offered products.[[59]](#footnote-59) For example, for a lighting contract, they can assign more points to lighting solutions with longer replacement periods (either as a criterion of its own, or as part of life cycle costs). In this case, procurer may ask tenderers to furnish testing reports, or certificates thereon. Where procurer has no access to such reports or certificates, and on the condition that inability to obtain those is not caused by any action on its part, then procurer must consider other evidence, such as the manufacturer’s technical file, if this accounts for adequate evidence.[[60]](#footnote-60)

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## Life cycle costs and environmental considerations

Whenever procurer purchases goods, services or works, there is always a price to pay. However, this purchase price is only one of the cost elements in the overall process of purchasing, possessing, and disposing of the product. Life cycle costs include consideration of all costs that will arise during the lifetime of a product, work, or service, as follows:

* Purchase price and all related costs (delivery, installation, insurance, etc.);
* Operating costs, including consumption of energy, fuel and water, spare parts, and maintenance;
* End-of-life costs, such as discontinued use, or disposal.

Life cycle costs can also include costs of external environmental factors (such as greenhouse gas emissions) under special conditions. The PPL requires that where life cycle costs are applied, the calculation methods and data to be furnished by tenderers must be specified in the documentation on procurement. Further, special rules apply to the method used to estimate the costs attributable to external environmental factors, and their purpose is to ensure that such methods are fair and transparent.

By applying life cycle costs, procurers take into account the costs of using, maintaining, and disposing of resources that are otherwise not reflected in the purchase price. This will often result in win-win situations, whereby ‘greener’ products or services are cheaper, too. The key potential for savings during the life cycle of goods, works or services is given below.

*Savings on the use of energy, water, and fuel*

The costs of energy, water, and fuel consumption during the use are typically a substantial part of the total cost of possessing a product, work, or service, as well as of its environmental impact during respective life cycles. Hence, for the user it makes sense to reduce such consumption, both financially and environmentally. In some cases, the greenest alternative will be one that is designed to extend the replacement time and/or reduce the amount of maintenance work that has to be done. For instance, the choice of materials on the exterior of building or bridge can have major impact on the frequency of maintenance and cleaning activities. The most durable option may be one that helps avoid such costs, and this can be assessed as part of life cycle costs.

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| **Important:**During the course of procuring a product or building project, one easily overlooks the disposal costs. Eventually, disposal costs will have to be paid, although sometimes much later. Failure to pay attention to these costs can turn a seemingly good deal into an expensive purchase. Disposal costs range from costs of physical removal to payments for safe disposal. Disposal itself is often governed by strict regulations. In certain cases, there may be a positive return to the owner at product’s end-of-life, for example when vehicles or equipment can be sold or recycled profitably. |

*Assessment of external environmental costs*

Besides the financial costs directly borne by it, procurer can also take into account external environmental factors. External factors are damages or benefits not paid by the polluter or user under normal conditions. They are defined as “costs and benefits occurring when the social or economic activities of one group of people affect another one, and when the first group fails to fully take into account their impact”.[[61]](#footnote-61) Examples of external factors are costs associated with climate change, or with soil or water acidification.

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| **Example:**The construction sector generates large amounts of waste. Demolition of old buildings involves not only the removal of large quantities of debris, but also the management of hazardous materials, such as asbestos. Accordingly, in its tender documents procurer may ask tenderer to supply data on how much hazardous waste it expects to generate during demolition, and the costs of removal. In other cases, for example in road construction, it should be possible to calculate savings from the use of recycled waste materials, such as used asphalt, or demolished construction materials. |

Where procurer intends to use the costs of external environmental factors as part of the award criterion, the PPL requires that the method applied by procurer for assessment should meet the following conditions:

* method should be based on objectively verifiable and non-discriminatory criteria,
* method is available to all interested parties, and
* conscientious economic operators are able to supply required data by investing reasonable efforts.

Even though it is possible to develop method for calculating life cycle costs suitable for given contract, such method must not unjustifiably place certain economic operators in a more favorable or disadvantageous position.

Where duty to apply a common method for calculating life cycle costs is provided for under EU law, then procurer must apply that method.[[62]](#footnote-62) According to the applicable EU rules, this only applies to road transport vehicles, pursuant to the Clean Vehicles Directive, which provides for both common methodology and minimum costs to be assigned to the specified external environmental factors, where their monetary values can be determined and verified.

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| **Note:**The Clean Vehicles Directive obliges procurers to take into account energy and environmental impacts when purchasing road transport vehicles – be that in specifications or award criteria. The Directive provides methodology for monetizing these impacts, for the sake of estimating life cycle operational costs. This model assigns monetary values to several types of emissions – carbon dioxide (CO2), nitrogen oxide (NOx), non-methane hydrocarbons (NMHC), and particulates. Thus, lifetime emissions of each offered vehicle can be given a cost, to be added to other direct costs such as purchase price, fuel costs, and maintenance. |

*Applying life cycle costs*

More and more public authorities in Europe are using life cycle costing to evaluate tenders, so that different tools of varying complexity and scope have been developed. An overview and links to some relevant life cycle costing tools can be found at: [*http://ec.europa.eu/environment/gpp/lcc.htm.*](http://ec.europa.eu/environment/gpp/lcc.htm)

To properly assess life cycle costs, one must consider certain questions:

* **Lifespan** – inevitably, the frequency with which product needs to be replaced will substantially impact its cost, especially over a longer period. In the long run, a cheap product that needs frequent replacements can prove to cost more than a higher priced product that lasts for years. This should be taken into account when determining the number of years for which procurers wish to compare life cycle costs.
* **Discount rate** – given that costs in the future are not as ‘worth’ as those incurred presently, because society places higher importance on positive and negative impacts of present day than on those in the future. 100 EUR invested today with 5% of interest would be worth 105 EUR in a year. Therefore, 105 EUR to be spent in one year is presently ‘worth’ only 100 EUR - this is its net present-day value. Net present-day value can be taken into account when comparing life cycle costs by applying the social discount rate to future costs. The rate varies from one country to another, but usually ranges between 3% and 8% (adjusted to eliminate effects of inflation).
* **Data availability and reliability** – assessment of life cycle costing inevitably includes an element of unpredictability in terms of costs that are going to arise in the future (such as are the maintenance costs, the energy consumption, and the product’s actual lifetime). This is why it is important to request detailed information in order to estimate the tenderer’s costs. In some cases, where future costs are the responsibility of contractors (e.g., the contractors are responsible for the maintenance or disposal), procurers can formulate the maximum future prices into their terms of contract, thus granting greater certainty to their life cycle cost calculations.

*Life cycle costing tools*

This is a non-exhaustive list of available life cycle costing tools:

* The European Commission’s life cycle cost calculator for the purchase of a vehicle:

<http://ec.europa.eu/transport/themes/urban/vehicles/directive/>

* The typical European Commission’s method for life cycle costs in the construction:

<http://ec.europa.eu/growth/sectors/construction/support-tools-studies/index_en.htm>

***ABNORMALLY LOW TENDER***

In some cases, procurer might receive a tender that seems unusually low relative to the other tenders, or to prices or costs of the goods, services or works the procurer expects. From the perspective of green procurement, a tender’s low costs could raise doubts about tenderer’s compliance with environmental law and/or the tender’s sustainability in terms of environmental requirements.

In such instances, procurer must request the tenderer to provide its explanation of the reasons for offering such an abnormally low price or cost.[[63]](#footnote-63) Legitimate factors such as specific method of production or technical solutions applied by tenderer, or extremely favorable conditions available to it, might explain the low price (costs) of the tender at hand.[[64]](#footnote-64) Procurer may reject the tender in question only where given explanation and supplied evidence fail to provide adequate explication of an abnormally low tender, taking into account data supplied by tenderer.[[65]](#footnote-65) In some instances, the investigation may reveal that the price is abnormally low because tender does not comply with environmental obligations, for example, because certain components or materials were obtained unlawfully. In these cases, procurers are obliged to refuse any abnormally low tender.[[66]](#footnote-66)

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## CONDITIONS FOR THE EXECUTION OF CONTRACT

The conditions for the execution of contract are used to determine the way the contract has to be executed.

Environmental aspects can be included in the conditions for the execution of contract, provided that they were published in the public call or tender documentation and that they are related to the procurement subject. All special environmental conditions should be stated in advance, to ensure that economic operators are aware of these duties and are able to reflect them in the price of their tenders.

Procurer may stipulate that tender will be rejected if it contravenes the required conditions for the execution of contract. Where mandatory conditions are stipulated, it is important to apply them to all tenderers, and to do so in the manner specified in tender documents.

 *The following example was taken from the European Commission’s handbook “Buying green! A handbook on green public procurement” 3rd edition, 2016)*

**Example:**

For example, in contract for the provision of catering services for a school canteen, procurer may require the provision of sustainable and organic food, the reduction of packaging and waste, and the use of equipment and methods for food preparation that ensure an effective use of resources such as electricity and water. Procurers may request tenderers to commit to specific objectives within each of these requirements, which may be evaluated against the award criteria but also may form part of the final contract with the successful tenderer.

*Conditions for the execution of contract on public procurement of goods*

In contracts on procurement of goods, environmental provisions may be included in the terms of delivery. Simple ways to improve a contract’s environmental impact include the following:

* delivering the product in appropriate quantities; this typically means delivering in bulk, as more environmentally efficient in terms of the impact of transport per item, as opposed to more frequent delivering of smaller quantities. Setting a maximum number of deliveries per week or per month may be another way of achieving the same outcome;
* request to deliver goods outside ‘rush hours’ so that deliveries make no input to traffic congestion;
* request that supplier takes back (and recycle or refurbish) any packaging coming with the product – with dual benefit of both collecting the packaging prior to refurbishing or recycling, and stimulating the supplier to reduce unnecessary packaging;
* request that supplier regularly reports on greenhouse gas emissions caused by the product delivery, with an indication of measures taken to reduce these emissions throughout the contract duration (the latter would not apply to one-off contracts for the procurement of goods).

Where procurer included specific materials or production processes or methods in its technical specifications, these can also form part of contractual provisions for public procurement contracts.

For instance, a contract on paper products may stipulate that those will be “predominantly or completely chlorine-free”.

*Conditions for the execution of contract on public procurement of goods*

Examples of possible conditions for the execution of contracts on public procurement of goods include the following:

How to perform service or work:

* Application of special environmental management measures, as applicable, in accordance with an independent party’s certified system, such as EMAS or ISO 14001;
* Reporting on any environmental issues that arise during the execution of contract, and taking steps to eliminate them, e.g., discharge, or use of hazardous substances;
* Efficient use of resources such as electricity and water at construction sites;
* Use of dosing indicators, in order to ensure the use of adequate amounts of cleaning products, etc.

Training of contractor’s personnel:

* Personnel are trained on the impact of their work on the environment, and on the environmental protection policy of the procurer in whose buildings they are going to work;
* Drivers are trained on eco-driving techniques to save emissions and fuel.

Transport of products and tools to the construction site:

* Delivery of products to the construction site in concentrated form, and thereafter their dilution on the site;
* Use of reusable containers or packaging to transport products;
* Reduction of CO2 or other greenhouse gas emissions associated with the transport. Disposal of used products or packaging:
* Products or packaging suitable for reuse, recycling, or appropriate disposal;
* Targets for reducing the landfill-bound waste.

***MONITORING COMPLIANCE WITH THE CONDITIONS FOR THE EXECUTION OF CONTRACTS***

Environmental contractual provisions are only effective where procurers properly monitor the compliance with these provisions. There are different forms of monitoring the compliance with the contractual provisions that can be applied:

* supplier may be required to provide evidence of compliance;
* procurer may carry out on-site checks, or
* a third party may be obligated to monitor the compliance.

Contract should stipulate appropriate penalties for non-compliance or bonuses for good performance.

**Example:**

Many procurers include key performance indicators (KPIs) in contracts, which can be linked to the contractor’s right to claim payment. Since good environmental performance also helps contractor establish one’s good name, incentives can take the form of positive publicity through informing the public and other procurers thereon.

KPIs or other forms of monitoring the compliance with environmental obligations should take into account the time and resources that will be needed to implement them in practice. It could be better to insert a smaller number of such indicators that can be meaningfully applied, if it proves unrealistic to follow a long list of obligations. KPIs should always go beyond basic compliance with environmental law or other duties that the contractor would anyway have to fulfill.

## CRITERIA FOR GREEN PUBLIC PROCUREMENT (GPP CRITERIA)

In order to help procurers to identify and procure greener goods, services and works, a number of environmental procurement criteria (criteria for green public procurement) has been developed in the European Union.

At the time of drafting this document, there are criteria for green public procurement available for 14 groups of products and services. Those criteria can be directly inserted in tender documentation. Green public procurement criteria are regularly reviewed and updated, so to take into account the latest scientific data on products, new technologies, market developments, and legislative changes. Most of those criteria are available in all official EU languages. They are available on the European Commission website:

<http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm>.

The basic concept of criteria for green public procurement relies on the existence of clear, verifiable, justifiable, and ambitious environmental criteria for products and services, based on life cycle approach and on the scientific evidence base.

The underlying idea of ​​creating criteria for green public procurement was that criteria used by European Union Member States should be similar, so to avoid distortion of the single market and the reduction of competition throughout the EU. The existence of common criteria substantially lessens the administrative burden for economic operators and contracting authorities conducting green public procurement. Common criteria are particularly useful for economic operators running business in more than one Member State, and to small and medium-sized enterprises (which have limited capacity to adopt different procurement procedures).

The priority sectors for implementing green public procurement were selected through a multi-criteria analysis, which includes:

* framework for environmental improvement;
* public spending;
* potential impact on suppliers;
* the potential to set an example for private or corporate consumers;
* political sensitivity;
* existence of relevant and simple criteria;
* market availability and economic efficiency.

At the time of drafting this document, there are criteria for green public procurement available for:

* road transport
* indoor cleaning services
* road lighting and traffic signaling
* paints, varnishes, and road markings
* textile products and services
* computers and monitors
* data centers, server and cloud services
* furniture
* electricity
* food and catering services
* maintenance of public areas
* recording equipment
* design, construction, and management of office buildings
* design and maintenance of roads.

All criteria for green public procurement have similar structure. In essence, they monitor the procurement process and include issues such as:

* defining the subject of public procurement;
* minimum technical and functional specifications;
* selection criteria in terms of tenderer’s capacity to execute given contract;
* contract award criteria used to compare tenders and select the best one, and
* provisions on the execution of contract.

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| **Note:**Criteria for green public procurement are not legally binding. EU Member States are invited, however, to include criteria for green public procurement in their national public procurement plans (policies), and individual procurers to apply them in their public procurement procedures. In practice, numerous EU Member States have either referred to the EU criteria for green public procurement in own national action plans, or have adopted national criteria that reflect the former very well. The point of divergence in criteria adopted by Member States may reflect national differences in the availability of products or services on the market, access to procurement, and environmental and other priorities. Similarly, some procurers may opt to adjust the criteria so to meet their respective specific requirements. Individual procurers may choose which criteria to apply, in the absence of specific national laws governing this matter.Criteria for green public procurement are based on data from the database, on existing eco-labels criteria, and on information gathered from stakeholders in the industry, civil society, and member states. The evidence database uses available scientific information and data, adopts life-cycle approach, and engages interested parties which meet to discuss issues and reach consensus. |

Criteria for green public procurement were adopted in accordance with the following approach - for each sector, two types of criteria were proposed:

1. basic criteria, and
2. comprehensive criteria.

The basic criteria are those that are suitable for use by any procurer in all Member States and that deal with key environmental impacts. These were developed so to be applied with minimum additional checks or costs.

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| **Example:**The following basic criteria for cleaning services are specified in terms of technical specifications:*“The following types of cleaning products [the list of cleaning products to be determined by the procurer - for instance, all-purpose cleaning products, sanitary cleaning products] that will be used for contract-related tasks must comply with criteria 1 and 4 of the EU Ecolabel for hard surface cleaning products, on toxicity to aquatic organisms, i.e., on excluded or restricted substances.”*It is more complex to check, during the execution of contract (option B), that: *at least A% of all cleaning products, by volume, to be used to perform contract-related tasks must comply with criterion 1 on toxicity to aquatic organisms and criterion 4 on excluded and restricted substances of the EU Ecolabel for hard surface cleaning products.*As for the award criteria, the basic contract award criteria that may be applied is the use of eco-labeled cleaning services: *points will be awarded proportionally to tenders in which more than A% of all cleaning products, by volume, to be used to perform contract-related tasks, indeed comply with criterion 1 and criterion 4 of the EU Ecolabel for hard surface cleaning products, that is, for aquatic organisms and for excluded or restricted substances* (this criterion may only be applied in combination with the above-cited option B). |

Comprehensive criteria, on the other hand, are for those procurers wishing to buy the best environment-friendly products available on the market. This may require additional verification efforts or a slight increase in costs relative to other products having the same functionality.

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| **Example:**Also concerning cleaning services, a comprehensive criterion that can be applied in technical specifications is the requirement that *“all textile cleaning accessories (such as cloths, mop heads) to be used to contract-related tasks must be made of microfiber or meet the requirements specified in the EU Ecolabel for textile products”.* |

In addition, criteria for green public procurement contain methods to verify those criteria are met. For example, when it comes to indoor cleaning services, criteria for green public procurement state that tenderer must provide a list of cleaning products to be used for the execution of the contract together with documentation evidencing their compliance with the requirements. Products that were given the EU Ecolabel for hard surface cleaning products are considered to meet the requirements.

Criteria for green public procurement are prepared so to be inserted directly in tender documentation. Criteria for green public procurement do not specify details about each aspect of a product’s life cycle. Instead, by means of judicious use of published Ecolabel and/or life cycle information, they focus on key aspects.

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# EXAMPLES OF APPLYING ENVIRONMENTAL ASPECTS FROM TEMPLATE TENDER DOCUMENTS PUBLISHED ON THE PPO WEBSITE

In accordance with its legal powers, the PPO has published several models of tender documents for green public procurement on its website.[[67]](#footnote-67)

Within the project titled “Effective public procurement in the service of economic growth”[[68]](#footnote-68) implemented by NALED with the support of the Swedish International Development Cooperation Agency (SIDA)” 5 models of tender documents were developed for the following public procurement subjects: office supplies, communal electric vehicle, reconstruction and replacement of part of the public lighting system, design and reconstruction of public building by applying green criteria, and asphalting of streets, roads, pavements (rehabilitation).

Examples of the application of environmental aspects are also given in the published models of tender documents for the following procurement subjects: services for cleaning buildings and hygiene products.

In addition to the above, in order to help procurers prepare tender documents for procurement subjects for which they are required to apply environmental aspects staring from January 1, 2024, by the time of drafting this document, two models of tender documents were prepared, notably, one for procurement of photocopier paper and the other for procurement of cleaning products.

Within the model of tender documentation for procurement of photocopier paper, environmental aspects are foreseen in terms of technical specifications. Namely, the model of tender documentation foresees four items - Photocopier paper A4 (positions under ordinal numbers 1 - a total of 100 reams, and 3 - a total of 850 reams), and photocopier paper in A3 format (positions 2 - a total of 50 reams, and 4 - a total of 500 reams). Positions under ordinal numbers 1 and 2 stipulate that producer of tendered paper must have either an FSC or PEFC certificate, or equivalent, and this is an environmental aspect. Therefore, in this particular case, procurer fulfilled its legal duty in that it stipulated that, relative to the total volume of the procurement subject, at least 10% of the procurement subject must possess environmental-friendly features.

For the means of proving required features of the paper, it is stipulated that economic operator submitting its tender is obliged to attach to it the following documentation, through the Portal:

* Technical sheet of paper producer, certified and signed by this paper producer, under its letterhead, thereby confirming that the offered paper meets the required features. Technical sheet of paper producer must not be older than 6 (six) months before the expiry of deadline for the submission of tenders;
* Confirmation by paper producer or authorized distributor (by proxy or other document) that tenderer is authorized to sell the tendered paper, that is, paper which is the subject of public procurement. Where an economic operator submits authorization document issued by authorized paper distributor, it must also provide document issued by paper producer, evidencing that the distributor has the status of authorized distributor. Where distributor takes the role of tenderer, it has to submit document, issued by producer, evidencing that the former possesses the status of authorized distributor. Where the role of tenderer is taken directly by producer, authorization is not required;
* Valid FSC or PEFC certificate or equivalent (for items under ordinal numbers 1 and 2).

When it comes to procurement of cleaning products, model of tender documents provides for various goods, such as washing machine detergent, dishwasher salt, liquid for washing glass surfaces (with or without a pump), cobweb brush with a telescopic handle (cobweb duster), liquid hand soap, fully biodegradable, etc. Technical specifications specify cleaning products without detailed characteristics of each product. Model of tender documentation makes the point that detailed characteristics of each product and product’s size, that is, the packaging, defines procurer in accordance with its needs. Model further states that it is necessary for procurer, while defining the detailed features, to diligently research the market and establish whether the products of such features can be eco-products, all this in order to be able to proceed in accordance with its Rulebook. This public procurement includes a total of 270 products, which in turn means that at least 27 products must possess environmental characteristics. For instance, a Rulebook requirement is fulfilled where the procurer marks the products from items under numbers 2, 17 and 25 as eco-friendly products (30 products in total). Environmental characteristics for the subject of this public procurement can be the following:

* products contain environmental labels;
* products are biodegradable;
* textile cleaning products are made of microfiber;
* cleaning accessories are intended to be reusable;
* products are delivered in packaging that can be recycled or is reusable, etc.

There are also examples of ECO labels that tenderers can submit:

* EU Ecolabel - EU Ecolabel is a label confirming that the product meets high standards of environmental protection. Products with assigned Eco label mean they are made from renewable, recycled resources, and with reduced energy and greenhouse gas emissions in production;
* The Blue Angel - Der Blaue Engel is German eco label that sets strict standards for environmentally friendly products. The Blue Angel label guarantees that the product has smaller impact on the environment and the climate, and that it meets high standards in terms of the protection of human health.
* NF Environnement - NF Environnement is label issued by AFNOR (Association Française de Normalisation (AFNOR, English: French Standardization Association). AFNOR is the French national organization for standardization and a member of the international organization for standardization. Unlike the European eco label, this is the official French environmental certificate. This label means that the goods and packaging have low impact on the environment during their life cycles.

# *RECOMMENDATIONS*

Green public procurement is an important tool for achieving the environmental policy goals concerning climate change, use of resources, and sustainable consumption and production, especially having in mind the significance of the public sector spending on goods and services.

Green public procurement has many advantages: political (sets good examples for the public), environmental (raises awareness of environmental issues in the society), social and health (capable of improving quality of life) and economic ones (enables monetary savings due to life cycle costs).

Contrary to popular belief, green products or services are not necessarily more expensive than traditional ones. Studies demonstrate that, when using the life cycle costing approach, greener alternatives prove to be cheaper in the long run even if their initial purchase price happens to be higher.

The PPL provides for various avenues to integrate issues of environmental protection into public procurement process, especially when determining the subject of procurement (drafting technical specifications or functional requirements), applying criteria for the qualitative selection of economic operator, and applying criteria for awarding contracts. In addition, procurers may impose additional conditions in terms of execution of the contract that are compliant with the provisions on public procurement.

It is vital to present the novelties that are in effect from January 1, 2024, and that imply mandatory application of environmental aspects when purchasing specified goods. In the following period, additional analyses are needed so to determine possible mandatory application of environmental aspects in procurement of other goods, services or works.

Thanks to new legal and by-law acts, and also to published models of tender documents, as well as to organized trainings on green public procurement, the Republic of Serbia can be proud of huge progress in the application of environmental aspects in public procurement procedures.



1. *European Commission: Communication “Public procurement for a better environment” (COM (2008) 400), published on July 16, 2008.* [↑](#footnote-ref-1)
2. [*https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation\_en.*](https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en.) [↑](#footnote-ref-2)
3. [*https://jnportal.ujn.gov.rs/annual-reports-ppo-public*](https://jnportal.ujn.gov.rs/annual-reports-ppo-public) [↑](#footnote-ref-3)
4. *“Circular economy” is defined as an economic system whose goal is to minimize waste and maximize utilization of resources.* [↑](#footnote-ref-4)
5. *Directive 2014/24/EU of the European Parliament and of the Council dated February 26, 2014 on public procurement repealing Directive 2004/18/EC, Directive 2014/25/EU of the European Parliament and of the Council dated February 26, 2014 on procurements by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EZ, and Directive 2014/23/EU of the European Parliament and of the Council dated February 26, 2014, on the award of concession contracts.* [↑](#footnote-ref-5)
6. *Regulation No. 174/2013 on amending Regulation No. 106/2008 on the Community program for labeling energy efficiency for office equipment.* [↑](#footnote-ref-6)
7. *Directive 2019/1161 on amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles.* [↑](#footnote-ref-7)
8. *Directive EU/2024/1275 on the energy performance of buildings.* [↑](#footnote-ref-8)
9. *Directive EU/2023/1791 on energy efficiency.* [↑](#footnote-ref-9)
10. [*https://naled.rs/htdocs/Files/12835/Analiza-rezultata-istrazivanja-primena-zelenih-kriterijuma-na-23-predmeta-nabavki.pdf*](https://naled.rs/htdocs/Files/12835/Analiza-rezultata-istrazivanja-primena-zelenih-kriterijuma-na-23-predmeta-nabavki.pdf) [↑](#footnote-ref-10)
11. *Article 52 of the PPL.* [↑](#footnote-ref-11)
12. *Article 53, Paragraph 6 of the PPL* [↑](#footnote-ref-12)
13. *Article 64, Paragraph 2 of the PPL* [↑](#footnote-ref-13)
14. *Article 55 of the PPL* [↑](#footnote-ref-14)
15. *Article 57 of the PPL* [↑](#footnote-ref-15)
16. *Article 59 of the PPL* [↑](#footnote-ref-16)
17. *Article 98 of the PPL* [↑](#footnote-ref-17)
18. *Article 100 of the PPL* [↑](#footnote-ref-18)
19. *Article 103 of the PPL* [↑](#footnote-ref-19)
20. *Article 98, Paragraph 4 of the PPL* [↑](#footnote-ref-20)
21. *Article 136 of the PPL* [↑](#footnote-ref-21)
22. *Article 136, Paragraph 2 of the PPL* [↑](#footnote-ref-22)
23. *Article 136, Paragraph 4 of the PPL* [↑](#footnote-ref-23)
24. *Article 136, Paragraph 5 of the PPL* [↑](#footnote-ref-24)
25. *Article 2, Paragraph 1, Point 21) of the PPL* [↑](#footnote-ref-25)
26. *Article 2, Paragraph 1, Point 22) of the PPL* [↑](#footnote-ref-26)
27. *Article 102 of the PPL* [↑](#footnote-ref-27)
28. *Article 102, Paragraph 5 of the PPL* [↑](#footnote-ref-28)
29. *EU Ecolabel or EU Flower is a voluntary* [*eco-label*](https://en.wikipedia.org/wiki/Ecolabel) *plan, published in 1992 by the* [*European*](https://en.wikipedia.org/wiki/European_Commission)[*Commission.*](https://en.wikipedia.org/wiki/European_Commission) [↑](#footnote-ref-29)
30. *The Nordic eco-label, or the Nordic Swan is the official eco-label of sustainability for the Nordic countries, introduced in 1989 by the Nordic Council of Ministers. This is achieved by a voluntary permit system, whereby the applicant agrees to follow a particular criterion set by the Nordic eco-label in cooperation with interested parties.* [↑](#footnote-ref-30)
31. *The Blue Angel (Der Blaue Engel) is a German certificate for products and services having environmentally acceptable aspects. It has been awarded by Umveltzeichen since 1978*  [↑](#footnote-ref-31)
32. *jury comprising 13 people from environmental and consumer groups, industry, trade unions, trade, media, and churches. Blaue Engel is the world’s oldest eco-label that covers some 10,000 products in around 80 product categories.*

 *An international, non-profit, multi-stakeholder organization was founded in 1993 in order to promote responsible forest management worldwide. The FSC does this by setting standards for forest products, together with certifying and labeling the products as environmentally friendly.*  [↑](#footnote-ref-32)
33. *An international, non-profit, non-governmental organization that promotes sustainable forest management through independent third-party certification. It is considered to be a certification system for small forest owners.* [↑](#footnote-ref-33)
34. *Articles 111 – 112 of the PPL* [↑](#footnote-ref-34)
35. *Article 111, Paragraph 1, Point 3, of the PPL* [↑](#footnote-ref-35)
36. *Restricted procedure, competitive procedure with negotiation, competitive dialog, innovation partnership* [↑](#footnote-ref-36)
37. *Articles 111-112 of the PPL* [↑](#footnote-ref-37)
38. *Article 111 of the PPL* [↑](#footnote-ref-38)
39. *Article 112 of the PPL* [↑](#footnote-ref-39)
40. *Article 111, Paragraph 1, Point 3) of the PPL* [↑](#footnote-ref-40)
41. *Article 112, Paragraph 1, Point 2) of the PPL* [↑](#footnote-ref-41)
42. *Article 112, Paragraph 1, Point 5) of the PPL* [↑](#footnote-ref-42)
43. *Article 112, Paragraph 1, Point 6) of the PPL* [↑](#footnote-ref-43)
44. *Article 113 of the PPL* [↑](#footnote-ref-44)
45. *Article 113, Paragraph 2 of the PPL* [↑](#footnote-ref-45)
46. *Articles 114 - 117 of the PPL* [↑](#footnote-ref-46)
47. *Articles 118 through 125 of the PPL* [↑](#footnote-ref-47)
48. *Article 118 of the PPL* [↑](#footnote-ref-48)
49. *Article 59 of Directive 2014/24* [↑](#footnote-ref-49)
50. *Article 119, Paragraph 1 of the PPL* [↑](#footnote-ref-50)
51. *Article 119, Paragraph 2 of the PPL* [↑](#footnote-ref-51)
52. *Article 119, Paragraph 4 of the PPL* [↑](#footnote-ref-52)
53. *Article 119, Paragraph 3 of the PPL* [↑](#footnote-ref-53)
54. *Article 132 of the PPL* [↑](#footnote-ref-54)
55. *Article 132, Paragraph 1 of the PPL* [↑](#footnote-ref-55)
56. *Article 133, Paragraph 3 of the PPL* [↑](#footnote-ref-56)
57. *Article 58, Paragraph 17 of the PPL* [↑](#footnote-ref-57)
58. *Article 59, Paragraph 8 of the PPL* [↑](#footnote-ref-58)
59. *Article 103, Paragraph 1 of the PPL* [↑](#footnote-ref-59)
60. *Article 103, Paragraph 2 of the PPL* [↑](#footnote-ref-60)
61. *European Commission, Directorate-General Environment: A Study on the Economic Valuation of Environmental Externalities from Landfill Disposal and Incineration of Waste. Final Main Report October 2000.* [↑](#footnote-ref-61)
62. *Article 134, Paragraph 4 of the PPL* [↑](#footnote-ref-62)
63. *Article 143, Paragraph 2 of the PPL* [↑](#footnote-ref-63)
64. *Article 143, Paragraph 3 of the PPL* [↑](#footnote-ref-64)
65. *Article 143, Paragraph 4 of the PPL* [↑](#footnote-ref-65)
66. *Article 143, Paragraph 7 of the PPL* [↑](#footnote-ref-66)
67. [*https://www.ujn.gov.rs/?page\_id=1195*](https://www.ujn.gov.rs/?page_id=1195) [↑](#footnote-ref-67)
68. [*https://www.naled.rs/projekti-efektivne-javne-nabavke-u-sluzbi-ekonomskog-rasta-4719*](https://www.naled.rs/projekti-efektivne-javne-nabavke-u-sluzbi-ekonomskog-rasta-4719) [↑](#footnote-ref-68)