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Subject: Public Consultation on the Draft Green Public Procurement Strategy and Action Plan
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To whom it may concern,

Please find attached Ibec's submission to the public consultation on the draft Green Public Procurement Strategy and Action Plan.

Regards,

[REDACTED]

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Head of Enterprise
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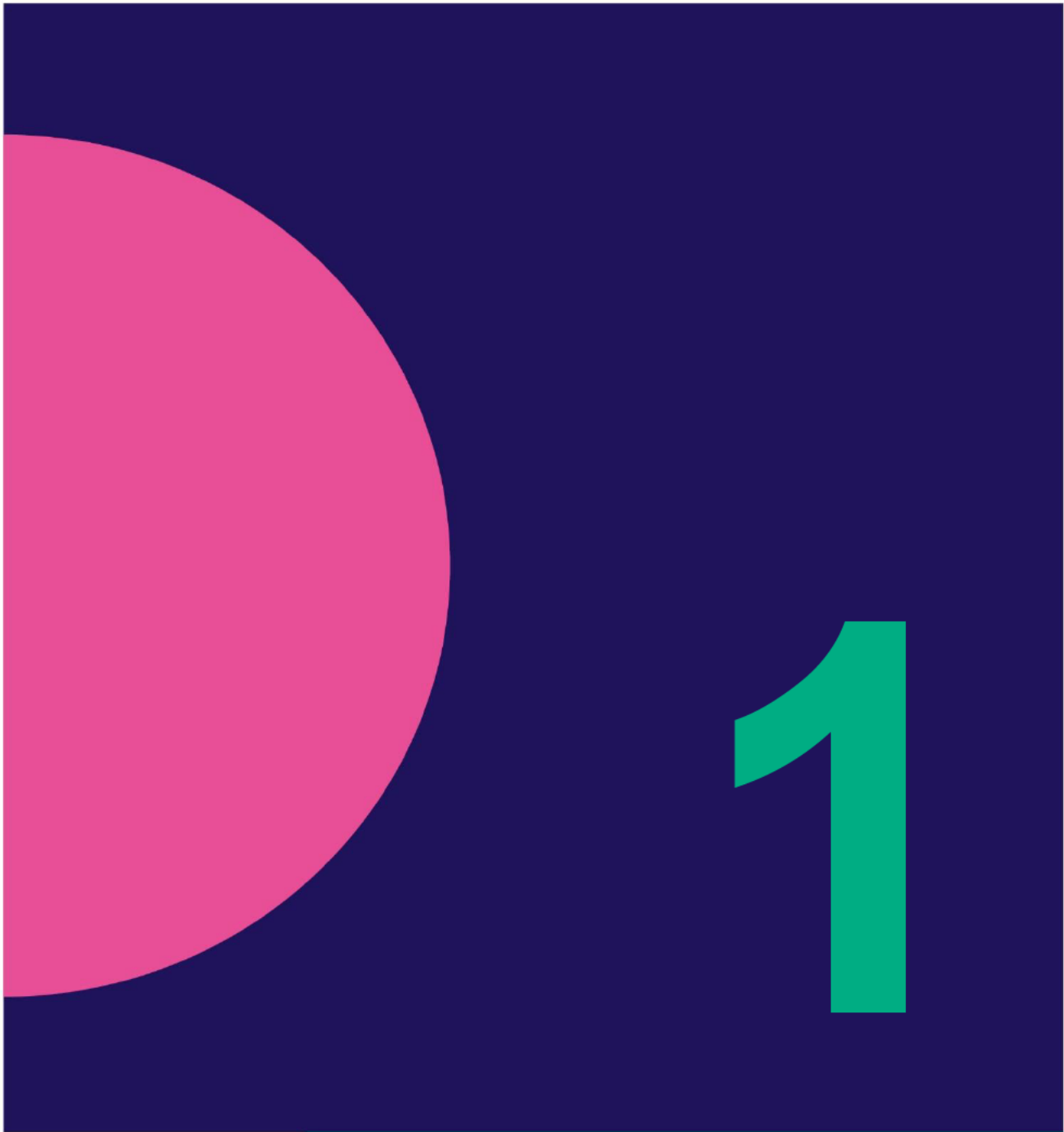
Buying Greener: Draft Green Public Procurement Strategy and Action Plan

Response to the Public
Consultation by the Department of
the Environment, Climate and
Communications

November 2023

Contents

1. Introduction	4
Circular and green public procurement	4
2. Observations	7
The need for robust, but clear guidance for buyers	7
Embedding GPP across the public sector marketplace	7
Embedding GPP at the corporate level	7
The need for the publication of annual/multiannual procurement strategies	7
GPP criteria must not hold back innovation or new approaches	8
Standard terms & conditions	8
GPP training, awareness, and upskilling requirements	8
Engage internationally on the GPP agenda	9
Peer-to-peer learning and knowledge-exchange	9
Market and supplier engagement strategy	9
The need for a collaborative approach to public procurement	9
Innovation should be a priority in GPP actions	10
Dispute resolution and the issue of seeking remedies	10
Achieving consistency between GPP policy & SME access to public contracts	10
Standard terms & conditions	11
Training for suppliers	11
GPP strategy and action plan implementation	11



Introduction

1. Introduction

As the government embarks on its Whole of Government Circular Economy Strategy 2022 – 2023, with the stated goal of seeing the principles of a circular economy implemented into all aspects of public life, it is only right that it reviews its own procurement procedures to adapt them to the new, ambitious targets set out in the national circular economy strategy. Given the extent of our current infrastructural deficit, the scale of project delivery envisioned under Ireland 2040 and other development plans and our unique position as a European nation with a steadily growing economy and a steadily growing population to match – not only is it vital that state projects do not embed carbon emissions into our future projections. Green public procurement should be a leading force in mitigating against linear consumption patterns and towards circularity.

For Government to deliver on its own targets and balance the often-combatting forces of cost effectiveness and sustainable development, it must hold the non-monetary benefits of circularity and low-carbon procurement in similar esteem to rigid Benefit-Cost-Ratios (BCR) and allocating to the lowest bidder. As our waste reduction targets go unmet and our recycling statistics stagnate according to the EPA, the challenge of incorporating circularity and waste reduction in a growing economy with a growing need for capital investment should be addressed by this renewed push for green public procurement. Cross-sectoral consultation with providers, contractors and suppliers would allow government to infuse circularity into industry at large. Government's annual procurement spend is a tool to encourage circularity whilst keeping business in the fold through transparency, consistent engagement, and steadfast long-term commitments. This will allow time for business innovation in products, reflected in the upcoming European Eco-Design for Sustainable Products Regulation (ESPR), but also time to adjust supply chains as logistical challenges persist.

Circular and green public procurement

Selling to the public sector is an important channel for Irish business. Over the past decade, public procurement has been undergoing considerable change. The Office of Government Procurement (OGP) has been established. New EU rules have come into force. Greater centralisation and aggregation of contracts for goods and services can be expected. Buying decisions should no longer be based solely on lowest price, a major barrier for SMEs, and the new centralised structures should focus on value for money.

Public procurement is a cornerstone of the EU Single Market as it is an essential component of competitiveness and growth. EU procurement rules are designed from the supplier point of view, not the buyer. This is overlooked in national public procurement policy discussions and must be reflected in the new GPP Strategy and Action Plan. They should also acknowledge that strategic procurement across the EU embraces the pivotal importance of SMEs in contributing to future growth.

Leveraging the buying powers of the public sector is increasingly viewed by European Commission and national governments to drive specific policy objectives. Collaboration is key to embedding policy proposals. Policy makers must work together in the development of procurement practices to deliver on policy goals such as GPP and climate action measures, innovation, social considerations etc. This has not always been the case. Business must also be part of the discussion.

Ibec participated in the consultation process that resulted in the publication of the Whole-of-Government Circular Economy Strategy 2022-2023. Public procurement was a priority area of focus in our submission. We participated in the procurement discussions with the OECD, under its programme, The Circular Economy in Cities and Regions: the case of

Ireland. In September 2023, Ibec made a submission as part of the Environmental Protection Agency's GPP guidance and criteria.

Green public procurement is not a new area. Over the years, Ibec has engaged with Government through the OGP and its forerunners, the Environmental Protection Agency, the HSE, the local government sector, and various government departments on the topics of green, sustainable, social, and innovation aspects of public procurement. This includes but is not limited to Green Tenders – An Action Plan on Green Public Procurement (2012) and The Green Public Procurement Guidance for the Public Sector (2014). We have also been active on this agenda at European level. Ibec is also a member of the OGP's SME Advisory Group.



2

Observations

2. Observations

The need for robust, but clear guidance for buyers

Public procurement has been an easy target to implement policy priorities. However, these need proper guidance and may require specific training in how to approach purchasing. For example, guidance and training is required on lifecycle costing. GPP policy has been decoupled from general public procurement policy, and greater alignment is needed between the OGP and circular economy stakeholders such as DECC and the EPA. The OGP is responsible for ensuring that new policy developments are consistent with the EU directives. It also has responsibility for developing specific guidance (e.g., social considerations) and ensuring it is disseminated across the public procurement community. This is in line with Action 1.

Embedding GPP across the public sector marketplace

The Irish public sector marketplace is the most centralised in Europe. This is due to the nature of our system of public administration. There has been a strong focus has been on embedding collaborative procurement across the public sector, with the establishment of the OGP and category councils. This has resulted in greater centralisation and aggregation of contracts. The emphasis has largely been on achieving short-term savings rather than strategic purchasing. There is the need to understand the market characteristics of different goods and services, delivering local requirements effectively. This is the challenge that the GPP Strategy and Action Plan must address. This includes embedding GPP criteria across the public sector (Actions 1 to 5, and 12 to 15), securing ISO 204000:2017 accreditation (Action 6), replacement of Circular 20/2019 on Promoting the use of Environmental and Social Considerations in Public Procurement (Action 11), as well as implementation of the GPP Mandate (Acton 18).

Embedding GPP at the corporate level

Promoting green or sustainable procurement requires measures to improve public procurement more generally. For example, there is the urgent need to counter the continued perception around emphasis still being placed on lowest price over value for money when awarding contracts to a tenderer. Buying green could result in higher cost items or services, whilst representing better value for the State. This requires a mindset change and acknowledgement that increased costs may occur. As such, it is important that corporate procurement plans should specifically address circular or GPP practices. This is specifically called out in Action 5, which states that “all public bodies in updating their corporate policies and strategies, and Corporate Procurement Plans are to set out how they will adhere to GPP Strategy and Action Plan obligations related to their organisation”. This has long been a recommendation by Ibec.

The need for the publication of annual/multiannual procurement strategies

In addition to the incorporation of GPP considerations in corporate procurement strategies, large or centralised buyers should be required to publish annual/multiannual procurement plans. These would inform the marketplace, make it easier to prepare for upcoming competitions, and to identify upcoming opportunities in the GPP public sector marketplace. Multiannual and/or annual procurement plans should set out their procurement approach and methodology, indicative timelines, and mechanism for market engagement. All buyers must be required to clearly show how goods, services and works are procured (e.g. directly, via Framework Agreements, incorporation of green criteria etc), this is in line with

Actions 3 and 4. However, multiannual/annual procurement plans would better inform the marketplace. This would allow business to tailor their sales strategies through enhanced visibility of the approach of public sector buyers. As such, this should be reflected in the Actions 1 to 6.

GPP criteria must not hold back innovation or new approaches

It is beyond time that the Green Public Procurement Guidance for the Public Sector (2014) to be updated. The GPP approach taken since then is to largely focus on standard commodity items within the following sectors: construction, transport, energy, food and catering, textiles, cleaning products, paper, and IT equipment. Updated criteria will include items like furniture etc. However, many of these items are not produced here and may be sourced through companies acting as agents or distributors, for example. Sectoral/product targets set out in the GPP Strategy and Action Plan (T1 to 11) should be constantly reviewed with the ongoing input of companies within those sectors. There could be new and/or replacement products, as well as new approaches already out there in the Irish business-to-business marketplace, which could be deployed by the public sector. New approaches could be taken to the built environment across a range of areas such as use of off-site-construction or modern methods of construction through to building projects constructed, financed, designed, and managed through public private partnership arrangements. The new guidance must better allow for new and innovative products to be purchased, and should include how they are purchased (e.g. as a service etc). A more dynamic approach market engagement will help. This is not limited to using Dynamic Purchasing System, but rather seeking information and ideas from the market ahead of a competition being initiated. Clear guidance must be given on the importance of pre-commercial procurement. This should be acknowledged in the GPP Strategy and Action Plan.

Standard terms & conditions

Consideration could be given to the development of standard GPP clauses that could be included in standard terms of conditions for goods, services and works contracts. Model contracts have been used for commonly procured areas. Providing standard GPP clauses could provide a layer of certainty to buyers and suppliers. However, standardised T&Cs currently in circulation are not suitable for more complex contracts. GPP clauses would have to be tailored to the complexity of the good, service or works being sought. Action 3 states that “by end of 2024, OGP to amend Goods and Services template RFTs and template contracts to increase awareness, where relevant, of the option to include GPP selection and award criteria and technical specifications, and associated contract performance clauses”. Amendments to the template RFTs and template contracts for goods and

GPP training, awareness, and upskilling requirements

The OGP should coordinate the training, upskilling and professionalisation of public sector buyers, particularly in terms of advancing the GPP agenda. This applies to Actions 27 and 31. It should be conducted as part of all public procurement training across the civil service and public sector, as set out in Action 27. This will ensure better incorporation of GPP considerations into the procurement process. Staff should be suitably trained in GPP as it relates to the organisation’s buying process. However, it should not solely be confined to those directly working in public procurement roles, as training should be offered to decision-makers in the buying-process (e.g. facilities manager, staff in IT etc). It must also actively support formal and informal training opportunities available to suppliers, including providing speakers, guidance material and facilitate engagement with the broader public sector. Guidance on the Sustainable Procurement website, including external links, in line with Action 30 should be accompanied by plain English or clear examples of how these could be applied at national, sub-national or sectoral levels.

Engage internationally on the GPP agenda

The European Commission has long recognised the importance of public procurement as a strategic tool to foster sustainable and innovative growth and they underline the need for a level playing field in public procurement to ensure fair competition for a competitive European economy. Continued participation on the EU GPP Advisory Group is welcome. Government must look to Europe, as well as individual member states, for guidance and best practice on how to embed GPP and circular public procurement into the buying process. For example, in October 2017, the European Commission published Public Procurement for a Circular Economy, which provides guidance and case studies on integrating circular economy principles into procurement. Other GPP policies and guidance are available from the European Commission, as well as Guidance on Innovation Procurement (2021) and the updated Buying Social - a guide to taking account of social considerations in public procurement (May 2021). It should be noted that public procurement was also addressed under the OECD's programme, The Circular Economy in Cities and Regions: the case of Ireland. Government must utilise the OECD in mainstreaming GPP across the Irish public sector. These steps should be reflected in the output of Actions 40 and 41.

Peer-to-peer learning and knowledge-exchange

Public buyers must become strong advocates for peer-to-peer knowledge sharing in terms of promoting procurement best practices. The OGP has a key role in facilitating this but also buyers should look across the EU to learn how similar goods and services are procured. This will be important as Ireland and Europe look to better embed GPP across the public sector. GPP case studies are also available in the European Commission's Good Practice Library. This should be recognised in the GPP Strategy and Action Plan, as it would lead to more strategic purchasing under the focused sectors, as well as identify new approaches and/or different ways of purchasing in line with European procurement rules.

Market and supplier engagement strategy

Effective roll-out of circular or GPP practices requires a communication and supplier engagement strategy. Market research and analysis will inform public buyers of what goods and services exist, which would support circular objectives. Pre-commercial engagement must be embedded as standard across the public sector. Public buyers must engage with the marketplace outside of formal tender procedures to understand the products and services available in the marketplace. Dedicated 'meet the buyer' events and supplier briefings on circular or green public procurement must be held. This would allow the public sector, from those scoping the requirement to those making the purchasing decisions, to understand new and innovative products that may be available but have not yet been procured by the public sector. Action 42 should be more ambitious than annual awards etc and should reflect the approach detailed above. The proposed 'best practice showcases', as detailed under Action 43, should be run on a sectoral basis as 'meet-the-buyer' events, as well as an economy-wide basis. They need the active participation of individual public sector buyers, not just the EPA.

The need for a collaborative approach to public procurement

A collaborative approach between buyers and sellers will be essential, especially as GPP criteria is incorporated into more and more procurement competitions. Framework contracts are the most visible manifestation of collaborative procurement in Ireland. Aggregation of contracts have the tricky task of achieving economies of scale as opposed to diseconomies of scale. Getting it wrong could lead to fewer bidders, higher costs, and a lack of innovation. There is a need nationally for a new collaborative procurement strategy, which takes the following into consideration:

- > Appropriate assessment of impact on the marketplace
- > Supports roll-out of standardised and simplified tendering documentation
- > Development of true centres of procurement expertise
- > Achieves buy-in and commitment from public sector buyers
- > Management of contracts is streamlined in terms of size and complexity

Buyers should be supported by an up-to-date management information system, which provides spend analytics capabilities to allow evidence-based decision making and most appropriate purchasing strategies suitable for the market.

Innovation should be a priority in GPP actions

Innovation in procurement should be increased. However, confusion exists amongst buyers on the topic. There is a significant difference between buying innovatively (i.e. using new processes, approaches etc) and buying new/innovative products. Public bodies should take full advantage of the opportunities to promote innovation through pre-commercial opportunity (e.g. SBIR scheme, Innovation Partnerships etc). Public sector bodies should also look to pre-commercial procurement opportunities funded by the European Commission (e.g. Horizon Europe programme). The public procurement process, if conducted properly, should be the hidden hand of the supply chain. Procurement can play a key role in promoting innovation and green business, while also ensuring better value for the public sector. Contracting authorities can stimulate innovation by describing their needs in a broad and performance-based way, which allows the bidders to propose better and a wider variety of solutions. This should be reflected in Actions 48 and 49.

Dispute resolution and the issue of seeking remedies

Awarding a contract according to specific green or sustainable criteria could be the basis for legal challenge. Government must ensure the remedies and redress provision for public procurement in Ireland functions efficiently. This is important not just for buyers and suppliers. However, Ireland ranks last in the EU in terms of time taken to reach a decision on public procurement appeals. There is no recognition of dispute resolution mechanisms in the GPP Strategy and Action Plan. Also, the OGP must continue to raise awareness of the Tender Advisory Service (TAS) by developing a standard information notice and require all public sector bodies to include it in their tender documentation alongside the request for further clarification section. However, the TAS should not be confused with the post-procurement mechanisms as it is an informal service that complements the pre-tender submission phase. It is not available at the time when companies or individuals have a substantive complaint. The EU is prioritising the establishment of fast and fair remedy bodies in all EU Member States. Government should introduce a non-judicial or administrative first instance review body.

Achieving consistency between GPP policy & SME access to public contracts

In procurement policy, the EU considers SMEs (< 250 employees & ≤ € 50 m turnover) but in Ireland we are talking about small and micro-enterprises. These can be innovators in green, circular, and sustainable goods, and services. It must be recognised that GPP, if implemented bluntly, could become a significant barrier to entry for SMEs into the Irish public sector market. It is important that the OGP leads in not only the development of, but new whole-of-government SME strategy, which builds on the aspirations of Circular 05/23.

Standard terms & conditions

Consideration could be given to the development of standard GPP clauses that could be included in standard terms of conditions for goods, services and works contracts. Model contracts have been used for commonly procured areas. Providing standard GPP clauses could provide a layer of certainty to buyers and suppliers. However, standardised T&Cs currently in circulation are not suitable for more complex contracts. GPP clauses would have to be tailored to the complexity of the good, service or works being sought. Debate on public procurement policy is too focused on the buyer. The term procurement is essentially purchasing. But there are people on the selling side too. Sales tactics and approaches by individual companies can too often take a back seat to discussions over bureaucracy and administrative burden. A better approach all round to procurement benefits companies, not just buyers, because after-all procurement is a transaction.

Training for suppliers

It is important that Government continues to invest in training, upskilling and professionalisation of public sector buyers, particularly in terms of advancing the SME agenda. The OGP must actively support formal and informal training opportunities available to suppliers, including providing speakers, guidance material and facilitate engagement with the broader public sector. Finally, SMEs should be made aware of the standards and regulations sought in GPP tenders; these standards should not be a barrier to competing for contracts and clear supports put in place by applicable enterprise agencies to assist companies to be compliant with the applicable GPP tender requirements.

GPP strategy and action plan implementation

The oversight process for the implementation of the GPP Strategy and Action Plan must examine its performance from the point of view of buyers and suppliers. It is not sufficient to consider the SME Advisory Group as the sole mechanism to provide for industry feedback. Its remit (e.g. SME, not sectoral and/or overall market focus) is not sufficiently robust to consider it the only body for engagement with industry. Input from, and consultation with, the OGP SME Advisory Group should be limited to its specific areas under its remit. Whereas the GPP Action Plan Task Force, to be established (Action 50), should have external membership from industry (e.g. industry representative bodies) involved in the monitoring of the implementation of the GPP Strategy and Action Plan. This gives due recognition to the fact that many of the actions have a direct impact on the businesses of all size and activity.

For further information:

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About Ibec

Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 36 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels. With over 240 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad. Ibec also provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.

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