



Competitive dialogue procedure for sustainable public procurement



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ABSTRACT

The construction sector has adopted green public procurement to improve its environmental performance. Green public procurement is a process whereby contracting authorities aim to procure services and products that meet environmental requirements. In recent years, green public procurement has extended to sustainable public procurement, which involves the incorporation of both environmental and social considerations in the procurement of goods and services. Previous studies have suggested the relevance of contractor engagement strategies and the need for appropriate models to promote dialogue in sustainable public procurement. This paper illustrates one such model called the competitive dialogue procedure. This newly introduced procurement procedure allows the contracting authority to hold discussions with shortlisted contractors regarding the authority's requirements. The paper uses the practical case of the Kvarnholmen link project in Sweden. The Kvarnholmen link is an infrastructure project that includes the construction of a bridge, tunnel, underpass and pedestrian and bike path. Action research was conducted to examine the competitive dialogue procedure. This paper has strengthened the conceptualisation that the procedure can facilitate sustainable public procurement with the aid of its key elements, such as provisionally preferred solution and dialogue sessions. In addition, the paper analyses the consequences of the weight used for environmental considerations in the bid evaluation process. This paper recommends that contracting authorities implementing competitive dialogue procedure must use provisionally preferred solution to identify sustainable public procurement preferences. Dialogue sessions with contractors should involve discussions regarding sustainable public procurement to ensure consistency between the weight for environmental considerations and respective preferences.

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1. Introduction

The construction sector is in crucial need of better environmental performance and has therefore adopted several policy instruments such as green public procurement (GPP). GPP is defined by the European Commission as “a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured” (CEC, 2008). In terms of stimulating innovation in GPP, a Nordic study has indicated that national-level

institutions should identify appropriate models for promoting more dialogue in tender processes and especially in construction work. Such models include a “competitive dialogue procedure (CDP)” (Nordic Council of Ministers (2010)). This relatively new procedure allows authorities to hold discussions with shortlisted candidates regarding the authority's requirements before the authority invites final written tenders (Brown, 2004). The public procurement directive defines the competitive dialogue procedure as “a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidate admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender” (OJEU, 2004). As indicated in the public procurement directive,¹ the contracting authority should assess the

List of acronyms: AHP, analytic hierarchy process; CDP, competitive dialogue procedure; CJEU, Court of Justice of the European Union; EIA, environmental impact assessment; EPC, energy performance contracting; GPP, green public procurement; LCA, life cycle assessment; MEAT, most economically advantageous tender; PPS, provisionally preferred solution; SPP, sustainable public procurement.

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¹ It must be noted that this study was conducted prior to the introduction of the revised public procurement directive or the Directive 2014/24/EU on public procurement.

received tenders on the basis of the award criteria specified in the contract notice and select the most economically advantageous tender (MEAT). MEAT is the weighted sum of different aspects of a product or service that provides value to the procurer in terms of economy, quality, environmental considerations and social aspects. Hence, MEAT implies that other award criteria will be considered in addition to price. However, because there is no specific guidance in the aforementioned directive for formulating MEAT, the weightings for different aspects may not reflect the impacts related to such aspects (Parikka-Alhola and Nissinen, 2012). For instance, the linkage between project action, environmental aspects and environmental impacts is discussed by Sánchez and Hacking (2002). They suggest that it is important to identify the mechanisms by which the project actions can interact with the environment to predict the environmental changes that a project proposal can cause. Such causal mechanisms are the environmental aspects that help determine the connection between an activity, product or service and its environmental impacts. In terms of GPP, a Swedish study showed that the criteria are derived from a limited impact perspective (Bratt et al., 2013).

Moreover, GPP is evolving towards the inclusion of social considerations and thereby being considered sustainable public procurement (SPP). Walker and Brammer (2012) define sustainable procurement in the public sector as “the pursuit of sustainable development objectives through the purchasing and supply process, incorporating social, environmental and economic aspects”. In SPP, the procurement specifications require a product/service with minimum or lower environmental impact and/or a positive social outcome in relation to another product/service that meets the same purpose. SPP offers governments an opportunity to lead sustainable development in a country by utilising its procuring power as an incentive for contractors or suppliers to shift towards sustainable practices (Claro et al., 2013). In recent years, many countries have adopted national action plans for SPP and set targets. The introduction of SPP in certain countries should have stimulated a profound change in the implementation of GPP, implying first and foremost that the scope of GPP must have expanded. However, certain studies show that SPP, in practice, has not triggered movement beyond the environmental criteria (cf. Melissen and Reinders, 2012). Hence, there is a need to engage with a process that enhances the understanding of the complex interconnections between the procurement activities, “the delayed and distal impacts” (Sterman, 2012) of procurement decisions and “the aspects that help to identify what characterises sustainability” (Weingaertner and Moberg, 2014). In addition, the process should promote better communication among the various parties involved in construction and facilitate a commitment-based “collaborative climate” (Eriksson and Westerberg, 2011) among project actors. In SPP, it is necessary to incorporate contractor engagement strategies, moving from policing and compliance activities to collaborative activities with contractors (Meehan and Bryde, 2011). There is a need for instruments that support contractor engagement. One such instrument is CDP, which is addressed in this paper to strengthen contractor involvement as well as sustainability considerations in GPP/SPP. The overall aim of this paper is to contribute to the knowledge concerning the promotion of sustainable development in the construction sector, with specific aims to gain insight into the implementation of CDP and explore how CDP can facilitate SPP.

1.1. Theoretical basis

Bouwer et al. (2005) defined GPP as “the approach by which public authorities integrate environmental criteria into all stages of their procurement process, thus encouraging the spread of

environmental technologies and the development of environmentally sound products, by seeking and choosing outcomes and solutions that have the least possible impact on the environment throughout their whole life-cycle”. In terms of GPP, “environmental technologies are procured when a public body asks for outcomes and solutions (equipment, goods and services, [managerial] procedures) that prevent, reduce, manage and treat pollution and the environmental impact of a product, activity and process throughout their whole life cycle. These technologies improve organisation’s efficiency and competitiveness and provide solutions for the sustainable growth of the public and private markets” (Bouwer et al., 2005). The fundamental concept of GPP is based on establishing environmental criteria for products and services (Evans et al., 2010). The establishment of criteria requires the identification of aspects. For instance, Ireland’s national action plan on GPP (DECLG and DPER, 2012) describes the key aspects in the construction sector, which can include design, energy, materials, ecology and site utilities. All these aspects play a role in understanding how GPP can be incorporated in the construction sector. However, one of the challenges (also applicable to SPP) is identifying and describing the key environmental impacts of proposed projects. Such key environmental impacts can include those resulting from the consumption of energy for construction purposes, emissions caused by the transportation of construction materials and the consumption of natural resources in the project (EC, 2008). There could also be indirect impacts such as those resulting from the production of energy. One way to address the challenge of identifying environmental impacts is to draw a linkage between project actions, aspects and environment impacts (Sánchez and Hacking, 2002). The information regarding these impacts serves to determine the environmental criteria. However, the extension of GPP to SPP involves several issues. A critical issue raised by McCrudden (2004) is whether the term SPP will enable us to understand the commonalities of green and social public procurement or serve only to camouflage their essential differences. Social public procurement herein refers to socially responsible procurement, which is about using the procuring power of public and private organisations to purchase products, works and services that have a positive social impact. The implementation of socially responsible procurement can consider an umbrella of issues, including health and safety at work, international labour standards, the fight against illegal and child labour and the ethical procurement of raw materials (Defranceschi and Vidal, 2007) as well as human rights, philanthropy and community (Carter, 2004). Another issue concerns the extent to which sustainability requirements can be incorporated in procurement. For instance, ClientEarth (2012) have argued that the comprehensive incorporation of sustainable development considerations is hindered by the tendency in the OJEU (2004) to stipulate what concerns can and cannot be stated in technical specifications and/or award criteria. In the procurement procedure, technical specifications indicate the prerequisites to submitting a tender, and the award criteria enable the procurer to compare the relative advantages of different tenders by giving weights to the criteria and scoring each tender on the basis of the level of fulfilment of each criterion. In many cases, social issues are relegated to contract performance conditions, whereby the contracting authority is not able to assess compliance with these conditions as part of its selection of eligible tenders. Such restrictions on the type of concerns stated in the technical specifications/award criteria have been suggested with the intention to maintain the relevance of the incorporated considerations to the functional objectives or use of the procured services, supplies or works (ClientEarth, 2012). The Court of Justice of the European Union (CJEU) has held that award criteria stated in public procurement contracts must be linked to the subject matter of the contract. In certain cases, CJEU has

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