

# Regional guidebook on Circular procurement



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Bulgarian Association of Recycling (BAR) is created in order to protect the interests of the companies which recycle secondary raw materials in the country to carry out an active dialogue with the state institutions in the protection of the legitimate rights of its members, to examine and assist the resolve issues related to the legal, economic, financial, environmental, customs, etc., aspects of the activities of the firms of the branch. Part of the activities of the Association include raising the awareness of the public in the correct way for the management of the materials for recycling and collection of waste, the hierarchy of the waste management, the projects of circular economy, increasing the environmental awareness of the children as a part of the future recycling societies, etc.

For more information on circular initiatives visit [www.bar-bg.org](http://www.bar-bg.org)

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## Glossary

| Abbreviation/term     | Definition   |
|-----------------------|--|
| <b>BAR</b>            | Bulgarian Association of Recycling   |
| <b>CO2</b>            | Carbon dioxide   |
| <b>CEAP</b>           | Circular Economy Action Plan   |
| <b>CircPro</b>        | Smart Circular Procurement   |
| <b>CP</b>             | Circular Procurement   |
| <b>CPA</b>            | Central Purchase Authority   |
| <b>EC</b>             | European Commission  |
| <b>EEA</b>            | Energy Efficiency Act  |
| <b>EMAS</b>           | The Eco-Management and Audit Scheme  |
| <b>EP</b>             | European Parliament  |
| <b>EPA</b>            | Environmental Protection act   |
| <b>ESCO contracts</b> | Energy savings performance contracts   |
| <b>EU</b>             | European Union   |
| <b>GDP</b>            | Gross domestic product   |
| <b>GPP</b>            | Green Public Procurement   |
|                       |  |
| <b>ICT</b>            | Information and communication technologies   |
| <b>ICLEI</b>          | Local Governments for Sustainability   |
| <b>IP</b>             | Innovation procurement   |
| <b>IPNSDPPS</b>       | Implementation Plan of the National Strategy for Development the Public Procurement Sector |
| <b>ISO</b>            | International Standardization Organization   |
| <b>IT</b>             | Information Technologies   |
| <b>LCC</b>            | Life cycle cost  |
| <b>LCPP</b>           | Low-carbon public procurement  |
| <b>MEAT</b>           | Most economically advantageous tender  |
| <b>MoEW</b>           | Ministry of environment and water  |
| <b>NAP</b>            | National Action Plan   |
| <b>NDP BG2030</b>     | National Development Program Bulgaria 2030   |
| <b>NEEA</b>           | National Energy Efficiency Act   |
| <b>NSACC</b>          | National strategy for adaptation to climate change   |
| <b>NSDPPS</b>         | National strategy for development the public procurement sector                            |
| <b>NWMP</b>           | National Waste Management Plan   |
| <b>OECD</b>           | Organisation for Economic Co-operation and Development                                     |
| <b>PP</b>             | Public Procurement   |
| <b>PPA</b>            | Public Procurement Act   |
| <b>PPI</b>            | Public procurement for innovations   |
| <b>PPP</b>            | Public procurement portal  |
| <b>PPR</b>            | Public Procurement Register  |
| <b>RAPPA</b>          | Regulations for application of the public procurement act                                  |
| <b>R&amp;D</b>        | Research and development   |
| <b>SDGs</b>           | Sustainable Development Goals  |
| <b>SG</b>             | State Gazette  |
| <b>SPP</b>            | Sustainable public procurement   |
| <b>TCO</b>            | Total Cost of Ownership  |
| <b>TS</b>             | Technical Specification  |
| <b>WMA</b>            | Waste Management Act   |

## Introduction

The project CircPro (Smart Circular Procurement)<sup>1</sup> aims at promoting the transition to a more circular economy related national and regional decision-making by increasing the implementation of the circular procurement. The project is funded by Interreg Europe Program (European Regional Development Fund) and it gathers 11 partners from 9 EU regions and Norway.

Main barriers that hinder the systematic implementation of the circular procurement are general lack of knowledge and expertise, procedural and legal barriers, and procurers' preconceptions about using, as well as lack of, recycled materials. CircPro tackles the challenge to analyze whether Circular Economy (CE) principles and Circular Procurement criteria could be included into the regional Policy Instruments as a general principle or as an award criterion to encourage applicants to systematically such model of assignment.

The project also focuses on exchange of experience within and between regions, at regional level by interacting with key stakeholders (procurers, suppliers, academic circles, decision-makers and other valid parties) in regional stakeholders groups, and at interregional level by organizing interregional stakeholders meetings for fostering the interregional learning.

Bulgarian Association of Recycling together with the project international partners aims at promoting the transition to a more circular economy by assisting Bulgaria in its efforts to implement "circular" public procurement as a practice, by raising awareness of the benefits of "circular" procurement, exchanging good practices and assisting contracting authorities and economic entities.

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<sup>1</sup> For further information <https://www.interregeurope.eu/circpro/>

## Chapter I

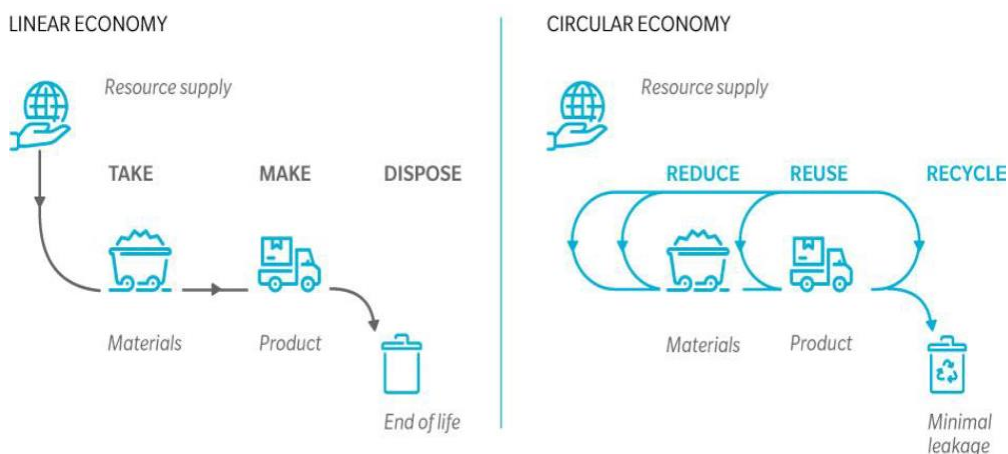
### Circular Procurement as an Emerging Concept in EU

*Today's world faces great challenges. Global economic, climate and technological changes are shaping society and our way of life. New needs and requirements are being determined, while uncertainty in certain areas is growing. Protecting the environment and human health, as well as reducing waste, are among the main priorities of the European institutions. In this context, the circular economy (CE) is a system-oriented approach capable of developing a positive vision for the future of the European Union (EU)*

## Circular Economy concept and political framework in EU

Past and current patterns of resource use have led to high pollution levels, environmental degradation and the depletion of natural resources. EU waste policy has a long history and has traditionally focused on more environmentally sustainable waste management<sup>2</sup>. The official position of the European Commission (EC) on the circular economy was presented in 2012 under the title Manifesto for a Resource Efficient Europe<sup>3</sup>. The document emphasizes from the first paragraph that: "In a world with increasing pressure on resources and the environment, the EU has no choice but to make the transition to a resource-efficient and, ultimately, regenerating circular economy." This perception is built in contrast to the traditional linear model, in which raw materials are used, things are created that are consumed, and residues are discarded. The circular economy is a model aimed at extending the life cycle of products. In practice, this means sharing, borrowing, reusing, repairing and recycling existing materials and products for as long as possible<sup>4</sup>. The differences between the linear and circular economy are presented in fig. 1

**Figure 1. Linear vs. Circular Economy**



**Source: Supporting The Circular Economy transition, Oliver Wyman**

Europe's transition to a circular economic model is complex, based on three pillars: environmental benefits in terms of limiting the impact on it and reducing the use of primary resources, saving costs from reduced needs for natural resources and creating new markets that provide additional economic benefits from circular practices, for example in terms of job creation or welfare improvement. After announcing its intention for resource efficiency and clean

<sup>2</sup> Resource efficiency and the circular economy, European Parliament, 2021, <https://www.europarl.europa.eu/factsheets/bg/sheet/76/resource-efficiency-and-the-circular-economy>

<sup>3</sup> Manifesto for a Resource-Efficient Europe, European Commission Memo 12/989, 17 December 2012, Brussels;

<sup>4</sup> Towards a circular economy: A zero waste programme for Europe, European Commission, Document COM(2014) 398 final, Brussels, 2014

nature, the European Commission is taking a series of legislative changes and initiatives, the most significant of which are presented below:

- ✓ An **Action Plan** was adopted in 2015 to accelerate Europe's transition to a circular economy, strengthen global competitiveness, promote sustainable economic growth and create new jobs. The plan contains 54 measures to "close the circle" of the product life cycle - from production and consumption to waste management and the market for secondary raw materials. The plan also identifies five priority sectors to accelerate the transition along the value chain (plastics, food waste, critical raw materials, construction and demolition, biomass and bio-based materials). It emphasizes building a solid foundation for prosperous investment and innovation<sup>5</sup>.
- ✓ **The Paris Agreement**<sup>6</sup> on Climate Change is the first universal, legally binding global climate agreement ratified by the European Union in 2016. The main objectives of the agreement are to limit global warming to less than 2 degrees Celsius by 2050. , enhancing the ability to adapt to the negative effects of climate change, promoting the resilience of climate change and encouraging the flow of funds to these activities. In addition, the agreement aims to reduce greenhouse gas emissions. The main obligation of each of the signatories to the Paris Agreement is to present a plan every five years, detailing the ways in which measures will be taken to tackle climate change<sup>7</sup>.
- ✓ In 2019, the **European Green Deal** was presented, which provides an ambitious roadmap for achieving a climate-neutral circular economy in which economic growth is not dependent on the use of resources. As a result of the measures, the pressure on natural resources will be reduced and the goal of climate neutrality by 2050 will be achieved, as well as stopping the loss of biodiversity. In addition, the circular economy will have a positive impact on GDP growth and job creation, as the implementation of ambitious circular economy measures in Europe could increase EU GDP by another 0.5% by 2030, creating around 700,000 new jobs<sup>8</sup>.
- ✓ Building on what has been done so far, in 2020, a new, revised package of measures related to the circular economy is adopted. The **New circular economy plan** is one of the key building blocks of the European Green Pact and ensures that the circular economy

<sup>5</sup> Closing the loop of product life cycle, European Commission, 2015, [https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/towards-circular-economy\\_bg](https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/towards-circular-economy_bg)

<sup>6</sup> European Commision, [https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement\\_en](https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement_en)

<sup>7</sup> [https://en.wikipedia.org/wiki/Paris\\_Agreement](https://en.wikipedia.org/wiki/Paris_Agreement)

<sup>8</sup> New action plan for the circular economy, European Commission, 2020, [https://ec.europa.eu/bulgaria/news/circular-economy-action-plan-2020\\_en](https://ec.europa.eu/bulgaria/news/circular-economy-action-plan-2020_en)



provides opportunities for all, without neglecting anyone. The measures are focused on:

- Making sustainable products the norm in the EU;
- More rights for consumers;
- Emphasis on the sectors in which the most resources are used (electronics and ITC, batteries and vehicles, packaging, plastics, textiles, construction and buildings, food);
- Guarantee for less waste<sup>9</sup>.

### The role of public procurement in EU circular economy transition

The transition to a circular economy requires changes both in production systems and in the practices and consumption patterns of all actors in the supply chain, including the public sector.

In this regard, procurement costs incurred by contracting authorities play a significant role in accelerating the transition in terms of the way goods and services are delivered at national level.

According to the European Commission, every year more than 250,000 public bodies in the EU spend about 14% of GDP on services, construction and goods<sup>10</sup>. This amounts to about 1.9 trillion. EUR, which go annually to national public procurement budgets. These figures show that the purchasing power of public authorities can serve as a powerful driver of demand for sustainable products.

The public sector needs to set an example and support companies investing in circular solutions by facilitating their access to public auctions, because circular procurement can help stimulate demand for more sustainable goods and is therefore incentive for social or eco-innovation.

Also, the proper use of public spending will ensure the support and implementation of the objectives set by the European Green Pact and the Circular Economy Action Plan. This seems to be an ideal (but not an easy) step to put the principles of the circular economy into practice, in response to resource management associated with scarcity and depletion of primary resources.

**Circular public procurement (CPP)** is a powerful tool that takes into account the role of public contracting authorities and at the same time achieves:

- ✓ Reduced environmental impact;
- ✓ Closing the circle of energy and materials within the supply chains;

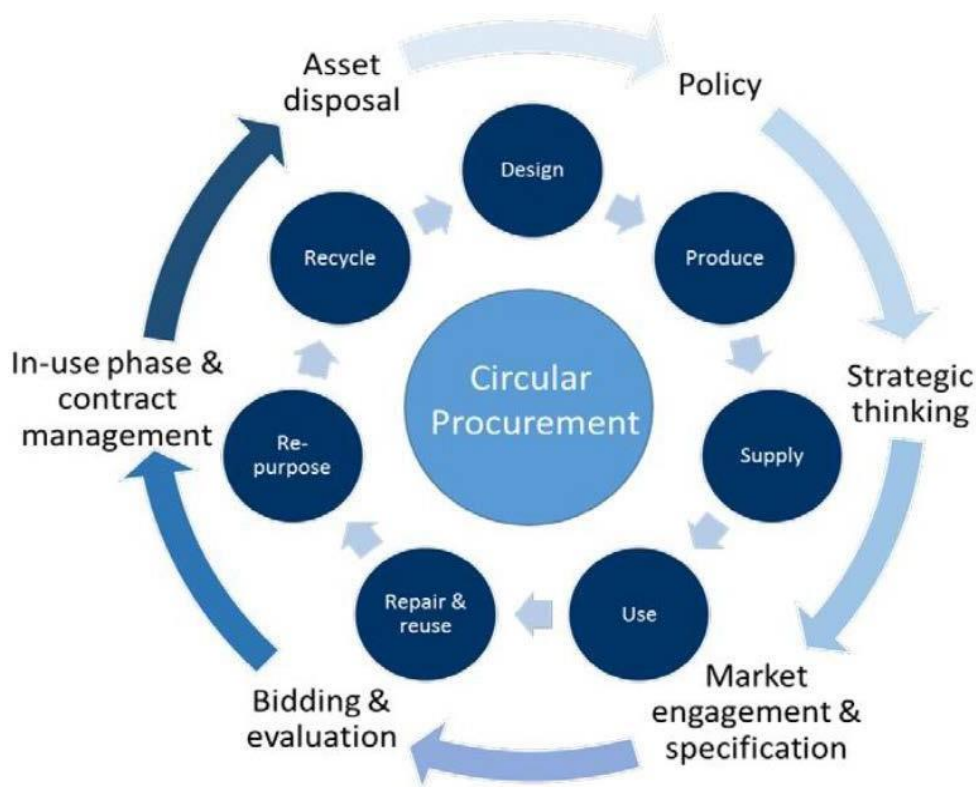
<sup>9</sup> Ibidem.

<sup>10</sup> [https://ec.europa.eu/growth/single-market/public-procurement\\_en](https://ec.europa.eu/growth/single-market/public-procurement_en)

- ✓ Minimise or avoid negative environmental impacts and waste creation throughout the whole life-cycle;
- ✓ Promoting the replacement of products by services<sup>11</sup>.

As such CPP can significantly stimulate demand for products and services that are made according to circular economy principles and support the new and innovative circular business models and related networks. Therefore, it can be seen as a strategic instrument that plays important role in the transition towards circular economy. A diagram of the circular public procurement is presented in Figure 3.

**Figure 3. Circular procurement diagram**



**Source: Circular Public Procurement, Circular Europe Network**

Nowadays, some public organizations already carry out assignments in accordance with the principles of the circular economy, for example, the purchase of recycled products and materials, the inclusion of durability requirements and repair of acquired goods, etc.

<sup>11</sup> Roadmap: Circular Public Procurement, Circular Europe Network, <https://www.circular-europe-network.eu/library/thematic-guidance-material/roadmap-circular-public-procurement/#1524821004181-d984db0a-b554>

This approach needs to be recognized and integrated into a single framework for public contracting authorities in the EU. This concerns changes in the various stages of contracting and purchasing, especially in the initial phase of identifying needs and identifying the best strategy to meet them.

In this context, more and more European initiatives are being set up to help public authorities. A good example is the European Declaration on Circular Cities 2020 (managed by ICLEI Europe). Participants are part of a powerful, integrated group of cities that helps raise awareness of the long-term political, social, environmental and financial benefits of circular public procurement and contributes to the development of a supportive policy framework.<sup>12</sup>

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<sup>12</sup> Circularities Declaration, 2020, ICLEI <https://circularcitiesdeclaration.eu/about/about-the-declaration>

## CHAPTER II.

### Circular Procurement

*The significance of procurement in reaching sustainability related goals is inevitable. The relatively new concept of circular economy in the EU seeks to achieve sustainability goals on a higher level and thus circular procurement processes should also adapt to higher standards in terms of the life-cycle approach.*

## The EU legal framework

Environmental protection policy is a priority for the European Community (EC) and this is confirmed by the amendments made to the Treaty on European Union of 1992. In Art. 130 states that environmental protection requirements must be integrated into the definition and implementation of other Community policies. This treaty adopts more than 200 legislative instruments relating to actions to combat air, water and soil pollution, waste management, product safety standards, environmental impact assessment and nature protection.

As a result of these changes, the EU presents the Green Paper on Public Procurement in the European Union: Exploring the Way Forward (1996)<sup>13</sup> and the White Paper on Public Procurement in the European Union (1998)<sup>14</sup>, which provide an incentive to consider a variety of environmental considerations through a broader interpretation of existing public procurement directives. Following these first documents, the European Commission is developing various initiatives and policy documents to promote the concept of GPP.

In 2001 an Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement" was launched underlying the interlinkages between the scarcity of natural resources and the sustainable production and consumption as well as highlighting the use of public procurement to favour environmentally-friendly products and services<sup>15</sup>. Two years later, in 2003, the European Commission in its "Communication on Integrated Product Policy"<sup>16</sup> encouraged member-states to sketch out publicly available National Action Plans (NAPs) to enhance GPP. The NAPs, which are not legally binding, should assess the existing situation as well as set ambiguous targets for the next three years, specifying which measures shall be taken to achieve them.

According to the Communication at stake, green procurement implies five key principles:

(i) focus on the "life cycle" of the products - the life cycle of the products is assessed and the aim is to reduce their cumulative impact on the environment, through the so-called "cradle to grave" approach;

<sup>13</sup> COM(96)583 final, Green Paper Public Procurement in the European Union: Exploring the Way Forward, 27 November 1996.

<sup>14</sup> COM(1998) 143 final, PUBLIC PROCUREMENT IN THE EUROPEAN UNION, 11 March 1998

<sup>15</sup> EK, Commission interpretative communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement, 28 November 2001

<sup>16</sup> COM(2003) 302 final Integrated Product Policy Building on Environmental Life-Cycle Thinking, 18 June 2003

(ii) working with the market, which sets incentives so that the market moves in a more sustainable direction by encouraging the supply and demand of greener products;

(iii) stakeholder involvement, aimed at supporting all those involved in the products (producers, consumers, government, etc.) to make an impact in their sphere of influence;

(iv) continuous improvement in the design, manufacture, use and disposal of products, as improvements can have an impact on environmental protection at every stage of the product life cycle.

(v) a variety of policy instruments, because there are such a variety of products available and different stakeholders involved.<sup>17</sup>

In this respect, as common procurement practices do not cover all these principles, the EU Commission is committed to establishing framework conditions for continuous product improvement at all stages of production.

Such commitment was eventually transposed in Directive 2004/18/EC<sup>18</sup>, though it was thanks to the 2008 that public authorities gained the guidelines to effectively include environmental protection objectives in their procurement procedures and processes.

The Communication "Public Procurement for a Better Environment" (16 July 2008) provides guidance on reducing the negative impact caused by public sector consumption and hence how to use green public procurement to stimulate innovation in environmental technologies, products and services, recognizing that green public procurement is **"... a process in which public authorities seek to procure goods, services and works with a reduced impact on the environment throughout their life cycle compared to goods, services and works with the same basic function that would otherwise be purchased"**<sup>19</sup>.

It is important to note that ecological public procurement is not a separate type of award procedure. It is a set of environmentally friendly requirements designed to facilitate public authorities in purchasing goods, awarding services and construction works.

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<sup>17</sup> Ibidem, page 5.

<sup>18</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

<sup>19</sup> COM(2008)400 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Public procurement for a better environment, 16 July 2008.

In order to facilitate the inclusion of these requirements in the documentation for public procurement, the EC develops and adopts criteria for environmentally friendly public procurement in various areas of the economy and business - electricity, design, construction and management of buildings, transport and others.

They are particularly convenient for contracting authorities because, if they are deemed appropriate, they can be included directly in the tender dossier with the minimum necessary revisions.

The criteria are split into exclusion grounds<sup>20</sup>, selection criteria<sup>21</sup>, technical specifications and labels<sup>22</sup>, award criteria<sup>23</sup> and contract performance terms and conditions<sup>24</sup>.

They are distinguished in two types:

- (i) core criteria — which are designed to allow for easy application of GPP, focusing on the key area(s) of environmental performance of a product and aimed at keeping administrative costs for companies to a minimum;
- (ii) comprehensive criteria — which take into account more aspects or higher levels of environmental performance, for use by authorities that want to go further in supporting environmental and innovation goals<sup>25</sup>.

### Circular public procurement and environmental protection policies

Recent policy and legislative developments in the field of environmental protection are driving forces to strengthen the role of public procurement as a mechanism for complying with regulatory requirements, going beyond the simple act of purchasing a good or service. On the basis of these documents, the official definition of circular public procurement is formed and the role that the circular criteria play in the implementation of the goals for achieving a circular economy is defined. According to the definition given by the European Commission<sup>26</sup>, it refers to an approach to greening public procurement by recognizing the role that public authorities can play in supporting the transition to a circular economy.

<sup>20</sup> EU Directive 2014/24, Art. 57.

<sup>21</sup> EU Directive 2014/24, Art. 58, selection criteria are divided into: a) suitability to pursue the professional activity; (b) economic and financial standing; (c) technical and professional ability.

<sup>22</sup> EU Directive 2014/24, Art. 42-43.

<sup>23</sup> EU Directive 2014/24, Art. 67-68.

<sup>24</sup> EU Directive 2014/24, Art. 70-73

<sup>25</sup> At the following link you could find the complete list of GPP criteria in place at European level: [http://ec.europa.eu/environment/gpp/eu\\_gpp\\_criteria\\_en.htm](http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm).

<sup>26</sup> European Commission, Public Procurement for a Circular Economy - Good Practice and Guidelines, 2017, p. 5. Available at: [https://ec.europa.eu/environment/gpp/pdf/Public\\_procurement\\_circular\\_Economic\\_brochure.pdf](https://ec.europa.eu/environment/gpp/pdf/Public_procurement_circular_Economic_brochure.pdf).

The Circular economy package from 2015 seeks to separate economic growth and prosperity from ever-increasing waste generation, to strengthen environmental waste management, to improve eco-design, to achieve higher levels of recycling and waste reduction, to stimulate competitiveness and resource efficiency, innovation and investment, while maintaining added value in products for as long as possible on the market.

EU policy outlines the interrelationship between resource, substance, product and waste, emphasizing the link between waste, product and chemical legislation, given that waste - other than pollution - can be designed and used as a primary material in the production process. Namely, the life-cycle thinking included in the CE concept emphasizes the need to take into account the environmental impacts of the whole life-cycle of materials in an integrated way.

The fact that CE puts the emphasis on life-cycle perspective is a clear sign of the link between legally binding product standards, resource and waste legislation and policy, and chemicals legislation, given that decisions taken during the period when The product is conceptualized and manufactured by the industry (design stage), are extremely important for all stages of its life. In this sense, the 2015 CE package recognizes public procurement as a key driver in the transition to a circular economy and identifies several actions that the European Commission will take to facilitate the integration of circular economy principles into GPP<sup>2728</sup>. Legislative proposals have been prepared on the Waste Framework Directive (2008/98/EC), the Landfill Directive (99/31/EC), the Packaging and Packaging Waste Directive (2015/720/EC), as well as the Directives on end-of-life vehicles (2000/53/EC), batteries and accumulators (2006/66/EC) and waste electrical and electronic equipment (2012/19/EC).

Circular public procurement also has an indirect impact on the achievement of the goals set in the Circular Economy Package 2015, namely:

- ✓ Recycling 65% of municipal waste by 2030;
- ✓ Recycling 75% of packaging waste by 2030;
- ✓ Reducing the landfilling of waste to a maximum of 10% of municipal waste by 2030;
- ✓ Banning the landfilling of separately collected waste;

<sup>27</sup> Towards Mandatory Green Procurement Requirements (GPP) under the EU Green Deal: Reviewing the Role of Public Procurement as an Environmental Policy Instrument, K. Pouikli, 2020

<sup>28</sup> European Parliament: Green public procurement and the EU action plan for the circular economy, study for the ENVI Committee (2017). Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/602065/IPOL\\_STU\(2017\)602065\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/602065/IPOL_STU(2017)602065_EN.pdf)



- ✓ Promotion of economic instruments to discourage landfilling;
- ✓ Simplified and improved definitions and harmonised calculation methods for recycling rates throughout the EU;
- ✓ Concrete measures to promote re-use and stimulate industrial symbiosis - turning one industry's by-product into another industry's raw material;
- ✓ Economic incentives for producers to put greener products on the market and support recovery and recycling schemes.

The first Report on the implementation of the Plan (COM (2017) 0033 final) highlights actions taken, starting in 2016. Several legislative proposals have been drafted such as the proposal on online sales of goods and fertilisers, and initiatives have been launched e.g. by adopting work plans for the Ecodesign Directive or 'innovation deals'. In the implementation report it is mentioned *that GPP will play a key role in the transition towards a Circular Economy*, although it is not specified how, or which of the measures will contribute the most to this transition.

From the point of view of the Green Deal, a Climate law has been proposed that makes the role of public procurement in the EU more important than ever. The CPP offers authorities the option to make purchase decisions based on implicit carbon prices that are higher than the general carbon price, as well as taking into account more environmental impacts than solely carbon emissions<sup>29</sup>. This implies that when buying green products and services, authorities can substantially reduce their own environmental impact<sup>30</sup> by using their discretion towards the actual integration of more stringent climate consideration in their public procurement decisions. Member States need to start designing and implementing more ambitious low-carbon strategies in which public procurement can play a more important role in ensuring compliance with relevant environmental objectives.

Given that the transition to a circular economy at EU level remains one of the first priorities of the EU Green Deal, the second Circular economy plan 2020 emphasizes the need to address the environmental and climate impacts of our products and economic activities<sup>31</sup>. The Plan puts the spotlight on the creation of an overarching sustainable product policy framework as a way to ensure that products which are either short-lived, toxic, unrepairable, unrecyclable or simply untraceable, are phased out from the EU market. Hence, the focus is on the sectors that use most resources and where the potential for circularity is high such as: electronics and ICT, batteries and vehicles, packaging, plastics, textiles, construction and buildings, food, water

<sup>29</sup> Martinez Romera and R. Caranta, EU Public Procurement Act Off-Price Purchases in the Age of Climate Change, EPPPL, 3/2017, p. 282.

<sup>30</sup> Chiapinelli, O., Zipper, W.: Using public procurement as a decarbonisation policy: a look at Germany. DIW Econ. Bull. 49, 523–533 (2017)

<sup>31</sup> [https://ec.europa.eu/environment/strategy/circular-economy-action-plan\\_en](https://ec.europa.eu/environment/strategy/circular-economy-action-plan_en)

and nutrients. Additionally, there is a proposal to develop waste prevention targets, expand the use of Extended Producer Responsibility tools and restrict the waste exports outside the EU. In this context, the crucial role of public procurement in treating waste as a resource with energy and materials embedded in products, which must be kept in the economic process for as long as possible and at the higher level of quality<sup>32</sup>, was reiterated in the new CE measures.

The new plan provides the public sector with guidance and appropriate means to make sustainable investments. In addition, this year (2021), the Commission will propose minimum mandatory green criteria or targets for public procurement in sectoral initiatives, EU funding or product-specific legislation. Such de facto minimum criteria will define a common definition of what constitutes an 'environmental purchase', allowing the collection of comparable data from public purchasers and laying the groundwork for assessing the impact of green / circular procurement. Public authorities across Europe will be encouraged to integrate green / circular criteria and use labeling in their public procurement. The Commission will support these efforts with guidelines, training activities and the dissemination of good practices. At the same time, life-cycle costing methodologies should be applied by public purchasers where possible. The Commission calls on all actors, including industry, to develop such credible methodologies<sup>33</sup>.

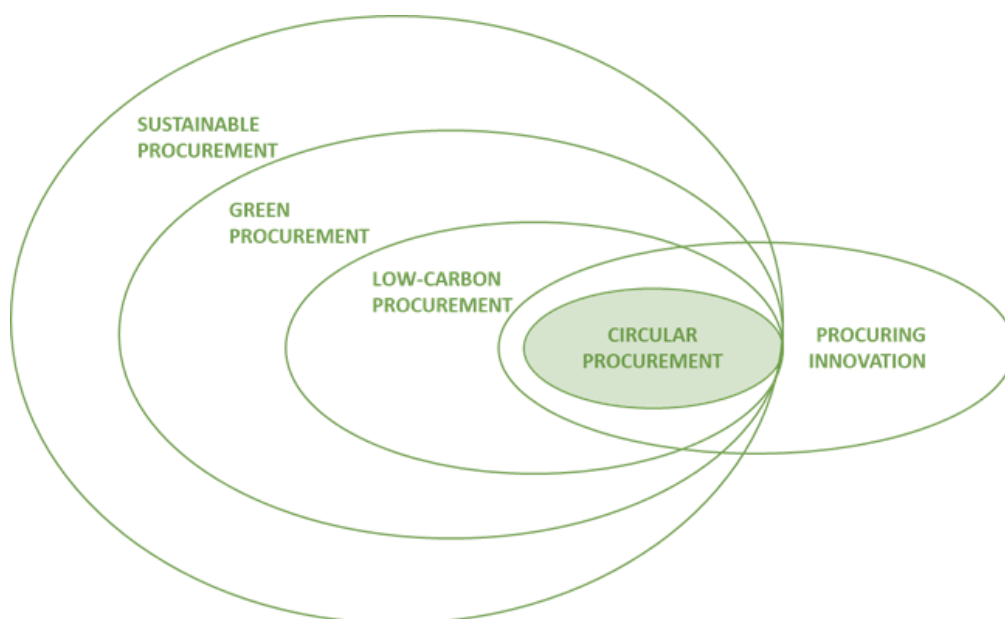
### **Circular procurement and other related procurement concepts**

During the last decades various procurement concepts have emerged to promote more sustainable consumption of public sector. The main concepts that are used now are sustainable procurement, green, circular procurement and innovation procurement. These are sometimes used simultaneously as synonyms, even though there are many similarities, there are also some differences. In the following chapter these concepts are explained and linkages between them are described.

<sup>32</sup> ZeroWaste Europe: Redesign of producer responsibility - a new OP is needed for the circular economy (2015)

<sup>33</sup> EC, New Policy Changes - EPA and European Green Pact, March 12, 2020

Figure 4. Public procurement concepts



Source: *Kymenlaakso Regional guidebook on circular procurement (Finland), Kouvola Innovation, 2021*

- ✓ **Sustainable public procurement (SPP)** can be defined as a process by which public authorities seek to achieve the appropriate balance between the three pillars of sustainable development - economic, social and environmental - when procuring goods, services or works at all stages of the project. To procure in a sustainable way involves looking beyond short-term needs and considering the longer term impacts of each purchase. Sustainable procurement is used by both public and private sector organisations to ensure that their purchasing reflects broader goals linked to climate change, social responsibility, human rights, resource efficiency, and economic resilience.
- ✓ **Green Public Procurement (GPP)** aims to reduce the environmental impact throughout the life cycle of a product or service. They are part of sustainable public procurement and cover environmental aspects, but do not contain social and / or public criteria.
- ✓ **Circular procurement (CPP)** sets out an approach to green public procurement which pays special attention to "the purchase of works, goods or services that seek to contribute to the closed energy and material loops within supply chains, whilst minimising, and in the best case avoiding, negative environmental impacts and waste creation across the whole life-cycle"<sup>34</sup>.

<sup>34</sup> Public procurement for circular economy. European Commission 2017

- ✓ **Low-carbon procurement (LCP)** is the process whereby organizations seek to procure goods, services, works and utilities with a reduced carbon footprint throughout their life cycle and/or leading to the reduction of the overall organizational carbon footprint when considering its direct and indirect emissions<sup>35</sup>
- ✓ **Procurement for innovations (PPI)** on the other hand, does not have an explicit focus on sustainability, but it has a potential to address sustainability challenges. There may be strong links between innovation and sustainable performance where, for example, new technologies extend the lifetime of a product therefore reducing the need of replacing it in the short term, or where better access to information translates into public services being provided more effectively and inclusively. Procuring innovation that leads to increased sustainability through the inclusion of environmental and social criteria provides an important contribution to ongoing sustainability commitments such as the sustainable development goals (SDGs) that specifically mention sustainable public procurement.

### Approaches/ categories of circular procurement

Circular public procurement has been realized in different forms and different sectors (e.g. construction, waste management, food and catering as well as certain product groups such as furniture textiles)<sup>36</sup>. It is possible to define different procurement categories or approaches to circular procurement. One is clear, a circular procurement process has a broader scope than just placing the order for a product. The focus of the circular procurement approach can shift from better quality in circular terms to new and innovative products and services, new business models and finally - the creation of circular ecosystems.

The choice of starting point in the circular public procurement depends on the award strategy, the ambitions and priorities of the contracting authority or the public organization. It is essential to give an internal definition of what a "circular" model is and what the results of its use will be. Contracting authorities must approach the critical moments in the tender procedure responsibly and assess the impact they would have on potential tenderers. These steps help to determine the scope of the award and the choice of an appropriate procurement strategy.

The principles of the circular economy can be promoted through public procurement in several ways. At least four different approaches were recognised that facilitate closed loops (based on Circular Public Procurement in the Nordic Countries, 2017) (see also Table 1).

<sup>35</sup> <https://www.sciencedirect.com/science/article/abs/pii/S1478409213000034>

<sup>36</sup> Circular Public Procurement in the Nordic Countries, 2017, <https://norden.diva-portal.org/smash/get/diva2:1092366/FULLTEXT01.pdf>

### **1. Procurement of improved products and services by adding GPP-based “circular criteria”**

Circular procurement can be promoted by adding “circular criteria”, i.e. criteria for recyclability, reuse of materials, use of recycled materials, etc. This means buying improved products and services, such as paper made from 100% recycled material. Some of these criteria that support circular elements can be found in the GPP criteria palettes or eco-labels. This may be considered the simplest way or the first phase of buying in a circular manner.

### **2. Procurement of new and innovative products, services and materials promoting circular economy-based business**

In accordance with the principles of the circular economy, public procurement could provide conditions that stimulate innovative solutions and create new business and markets for new products. This means products that are considerably better in terms of recyclability, recycled materials, disassembly, long lifespan, and so on. These are products that are commercialised but have not been on the market for a long time, or products that would be developed as a result of the procurement process. This approach highlights the procurer’s ability to conduct an innovative procurement process. Examples of such products are textiles with 100% recycled content or building components made of recycled plastic

### **3. Procurement of services and new business concepts**

The focus of procurement could be on the process of procuring or on the business concept that responds the procurer’s need, rather than on the product itself. These include product-service systems, leasing concept, share buy-per-use<sup>37</sup> and buying and selling back. More traditional examples include furniture leasing and car hiring. New thinking is needed for buying services instead of products, e.g. lighting for the next 30 years instead of lamps.

### **4 Procurement promoting industrial symbiosis and circular ecosystems**

This approach addresses large investments and the creation of ecosystems that call for commitment from different stakeholders. Circular ecosystems could be efficient platforms in supporting closed loops, and creating networks in which the waste from one actor would be used as a raw material for another. Examples include buses running by locally produced bioenergy, or construction sites that utilise materials effectively use.

<sup>37</sup> **Buy-per-use** is a payment model in which the customer pays for the use of the product instead of having to buy it. In other words, the more the customer uses the product, the more he pays and vice versa.

Table 1: Four approaches to circular public procurement <sup>38</sup>

| Procurement including GPP based “circular” criteria  | Procurement of new “circular” products and materials  | Procurement of services and new business concepts  | Procurement promoting circular ecosystems  |
|--|---|--|--|
| Better quality products  | New products  | Product service systems  | Circular ecosystems  |
| <p>Improved products and services are procured by adding GPP and circular criteria to the tender competition:</p> <ul style="list-style-type: none"> <li>• Prevention of waste;</li> <li>• Recyclability;</li> <li>• Share of recycled materials</li> <li>• Reusability;</li> <li>• Avoidance of certain hazardous chemicals</li> </ul>  | <p>New products are purchased and / or developed through innovative public procurement. These products are significantly better in terms of:</p> <ul style="list-style-type: none"> <li>• Recyclability;</li> <li>• Share of recycled materials;</li> <li>• Long lifespan;</li> <li>• Disassembly, etc.</li> </ul>  | <p>Product-service systems are procured, and new approaches are applied that promote circular aspects:</p> <ul style="list-style-type: none"> <li>• Combined product service business models;</li> <li>• Leasing concepts;</li> <li>• Renting;</li> <li>• Shared use;</li> <li>• Buy-per-use;</li> </ul>     | <p>Procurement stimulates the development of industrial symbiosis and other circular ecosystems:</p> <ul style="list-style-type: none"> <li>• Develop or support closed loops;</li> <li>• Support industrial symbiosis based collaborative network;</li> <li>• Create new Networks and alliances;</li> </ul> |
| <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• Paper products (e.g. copying paper made from 100% recycled paper fibres);</li> <li>• Office IT equipment and other ICT devices (e.g. avoidance of hazardous substances, product life-time extensions);</li> <li>• Furniture (e.g. providing easy-to-disassemble, repairable and recyclable furniture);</li> <li>• Cleaning products and services (e.g. avoidance of hazardous substances);</li> </ul> | <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• Building components of recycled materials;</li> <li>• Textile products made of recycled materials</li> <li>• Furniture (e.g. redesigned, reused, refurbished furniture and related services to prolong the life-time);</li> <li>• Building and construction (e.g. use of recycled asphalt, circular reconstruction of buildings);</li> </ul> | <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• Leasing furniture instead of buying it;</li> <li>• Leasing football stadiums (artificial turf) instead of building and owning them;</li> </ul> <p>Additional services that enable the prolonged life-time of used products and services</p> | <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• Buses running by locally produced biogas</li> <li>• Locally managed and produced biomass based renewable energy production systems;</li> <li>• Construction projects with closed material loops</li> </ul>                                  |

<sup>38</sup> Circular Public Procurement in Nordic Countries, 2017

As can be seen from the above, the reference framework for circular procurement can vary considerably depending on the extent to which contracting authorities intend to engage in the circular action and transpose it into public procurement processes. This is a decision that ultimately stems from the level of understanding of the circular principles and needs assessment. It is also important whether solutions are already available in the market. In case the available solutions are not sufficient, public procurement for innovation could definitely be an option to explore innovative ways of implementing life cycle management and thus stimulate the circular transition on the demand side<sup>39</sup>.

To make a change at the system level, a combination of circular public procurement criteria and social criteria could be the final option. This would help shift the focus from goods / services to processes and from there make public procurement a strategic tool for promoting social policies. Ultimately, circular public procurement is not only a matter of public procurement intended for the acquisition of products, works and services, but rather of controlling the possible relationship between the contracting authority and the supplier throughout the term of the contract. They require forms of cooperation between the contracting authority and the supplier that could facilitate the achievement of the objectives of prevention, reuse, recycling and recovery, meeting the needs of the contracting authority and achieving social impact. Often, responsible and ethical purchasing can create incentives for entrepreneurs to engage in more sustainable management of the production process, which can ultimately bring benefits in terms of more sustainable management of the consumption process. In this regard, it is useful to note that there are a number of different guides designed to assist contracting authorities in the implementation of public procurement with circular criteria:

- ✓ **Guidance for public authorities on Public Procurement of Innovation** (easy-to-understand information for all public authorities on how to award innovation contracts)<sup>40</sup>;
- ✓ **PUBLIC PROCUREMENT FOR A CIRCULAR ECONOMY/** Good practice and guidance (A guide to good practice and recommendations on the use of circular public procurement to achieve the goals of the circular economy, written by ICLEI on behalf of the European Commission)<sup>41</sup>;

<sup>39</sup> According to Article 2 (22) of Directive 2014/24 / EU, "innovation" means the application of a new or significantly improved product, service or process, including, but not limited to, production or construction processes, a new marketing approach or a new method of organization. economic activities, the workplace or external relations, inter alia, in order to help address societal challenges or implement the Europe 2020 strategy for smart, sustainable and inclusive growth;

<sup>40</sup> [https://www2.aop.bg/wp-content/uploads/2019/04/PPI-Platform\\_Guide\\_new-final\\_download.pdf](https://www2.aop.bg/wp-content/uploads/2019/04/PPI-Platform_Guide_new-final_download.pdf)

<sup>41</sup> [https://ec.europa.eu/environment/gpp/pdf/Public\\_procurement\\_circular\\_economy\\_brochure.pdf](https://ec.europa.eu/environment/gpp/pdf/Public_procurement_circular_economy_brochure.pdf)



- ✓ **Procura+ Network** (including a handbook with practical advice on how to integrate sustainability into public procurement)<sup>42</sup>;
- ✓ **Buying Green! - A Handbook on green public procurement** (comprehensive guide to the implementation of the PPL, according to the EU public procurement directives, written by ICLEI on behalf of the European Commission)<sup>43</sup>



<sup>42</sup> <https://procuraplus.org/home/>

<sup>43</sup> [https://ec.europa.eu/environment/gpp/buying\\_handbook\\_en.htm](https://ec.europa.eu/environment/gpp/buying_handbook_en.htm)



## CHAPTER III.

### Guidance for circular procurement in Bulgaria

***Circular procurement and life-cycle thinking require collaboration with a wide range of internal stakeholders (eg executives, decision-makers, budget allocators, financiers, public procurement team, consumers, etc.) and external stakeholders. (eg suppliers and supply chain), and are crucial for the implementation of a circular approach to public procurement.***

### Circular / green framework for public procurement in our country

Within the framework of the European legislation the legal regime of the public procurements, incl. GPP is regulated in two main directives - Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC. Through them, the Member States of the Union are bound to achieve concrete results within certain time limits, but have the freedom to choose the most appropriate legal means for their implementation. The rules of the directives are essentially transposed into the domestic Bulgarian legislation through the **Public Procurement Act (PPA)** and the **Regulations for implementation of the PPA (RIPPA)**. The PPA contains specific provisions on the opportunities for contracting authorities to set environmentally friendly requirements - when setting the selection criteria, when formulating the technical specifications, as an indicator in the evaluation of tenders, etc. Pursuant to the Law, the contracting authorities are obliged to remove from participation in the public procurement procedures candidates / participants who have been convicted with an effective sentence for crimes in the field of environmental law. In addition, in all cases of the award of public service or works contracts, contracting authorities are required to require declarations from tenderers to comply with their environmental obligations. When supplying road vehicles of certain categories, the contracting authorities are obliged to take into account the energy aspects and the impact on the environment throughout the life cycle of the vehicles.

**Tab.2 Stages of the procurement process with the possibility of green requirements**

| STAGES OF THE PROCUREMENT PROCESS  | PPA PROVISION |
|--|---------------|
| Market dialogue  | Art. 44       |
| Technical Specification  | Art. 48       |
| Terms of performance of the order  | Art. 54 - 67  |
| Personal status of the participants  | Art. 54 - 58  |
| Demonstration of the technical capabilities and /or<br>Qualification of the participants | Art. 64       |
| Quality management systems for environmental protection                                  | Art. 64 (10)  |
| Award criteria for public procurement  | Art. 70       |

The leading strategic document, which outlines the state policy in the field of public procurement, is the **National Strategy for Development of the Public Procurement Sector in Bulgaria for the period 2014 - 2020 (NSDPPS)**. The specific measures for its implementation are specified in the **Implementation Plan of the National Strategy for Development the Public Procurement Sector in Bulgaria for the period 2014-2020 (IPNSDPPS)**. It includes a specific goal to accelerate the development of green public procurement.

The strategy is based on the experience from the implementation of the Green Public Procurement Plan 2012-2014 (GPPP), which was developed jointly with the Ministry of Environment and Water and the Energy Efficiency Agency. This plan provides practical guidance on green public procurement, encourages the use of environmental criteria and sets binding targets for contracting authorities by 2014. Unfortunately, this plan has not been updated, but the results of its implementation show that public contracting authorities in Bulgaria have the potential to implement environmental public procurement, if there is an established framework for their implementation. As a result of this need, the Public Procurement Agency (PPA) initiated a research project and forecasting the potential of the national market for green public procurement. The planned activities have been implemented and in 2019 product groups have been identified and a manual has been prepared to provide practical guidance to contracting authorities in the field of green public procurement<sup>44</sup>.

In order to develop a **Strategy for the Development of the Public Procurement Sector 2021-2027**, in 2020 the PPA publishes an analysis of the current situation, the existing commitments of the country, as well as trends and priorities arising from the EU policies in the field of public procurement orders. An initial strategy has been developed, proposing a common policy framework for the sector until 2027 (including priorities and targets), ensuring continuity of established good practices and building on what has been achieved so far, as well as addressing new challenges and responsibilities. The measures envisaged for the future improvements are based on experience, weaknesses and problems identified, as well as suggestions and recommendations from the International Bank for Reconstruction and Development<sup>45</sup>.

A number of other normative acts are related to “green” procurement - for example, the **National Energy Efficiency Act (NEEA)** (Article 30a) obliges public contracting authorities to use energy efficiency criteria when awarding public procurement contracts in certain cases. The **Environmental Protection Act (EPA)** aims to reduce the negative impact of consumption and production on the environment, health, climate and natural resources.

<sup>44</sup>[https://www2.aop.bg/wpcontent/uploads/2019/04/PwC\\_Handbook\\_A5\\_Print\\_Single-page\\_new.pdf](https://www2.aop.bg/wpcontent/uploads/2019/04/PwC_Handbook_A5_Print_Single-page_new.pdf)

<sup>45</sup> Public Procurement Agency, Annual Report, 2020, p.8

**Ordinance № H-18** from 08.08.2016 on determining the methodology for calculating certain costs for the entire life cycle of road vehicles, which facilitates the green purchasing of cars by using the indicator "life cycle cost".

The **Ordinance on construction waste and the use of recycled construction materials** from 08.12.2017 is also a good example of applying green criteria. It regulates the requirements for the use of recycled construction materials in construction, and its main objectives are to prevent and limit air, water and soil pollution, as well as to limit the risk to human health and the environment as a result of the collection, treatment and transportation of construction waste. The ordinance also encourages the recycling and recovery of construction waste to achieve the objectives of the **Waste Management Act (WMA)** (Article 32).

Other strategic documents that are relevant to the implementation of the GPP are:

- ✓ **The National Development Program: Bulgaria 2030 (NDP BG2030)** - a strategic document, the highest in the hierarchy of national programming documents, defining the vision and general objectives of development policies in all sectors of government, including their territorial measurements. The document defines three strategic goals, for the implementation of which it groups the intentions of the government in five areas (axes) of development and raises 13 national priorities. Priority №4 is the transition to a low-carbon and circular economy, by increasing the productivity of resources throughout their life cycle and the rate of circular (secondary) use of materials in the economy, extending the life of the product itself, reducing waste and controlling the need to extract new resources<sup>46</sup>;
- ✓ **National Waste Management Plan (NWMP) for the period 2021-2028** - has a key role in the efficient and effective waste management in the Republic of Bulgaria. The plan aims to reduce the harmful effects of waste on the environment and the health of the population, as well as to achieve the most efficient use of resources, open new markets and create new jobs. An important part of the plan is to create maximum conditions for waste prevention. Based on the CircPro project, in the National Plan, circular public procurement is a recognized tool for achieving the goals of the circular economy<sup>47</sup>;
- ✓ **National Strategy for Adaptation to Climate Change until 2030 (NSACC)** - the strategy aims to serve as a reference document setting out a framework for action on adaptation to climate change and

<sup>46</sup> <https://www.minfin.bg/bg/1394>

<sup>47</sup> [https://www.moew.government.bg/static/media/ups/tiny/%D0%A3%D0%9E%D0%9E%D0%9F/%D0%9D%D0%9F%D0%A3%D0%9E-2021-2028/NPUO\\_2021-2028.pdf](https://www.moew.government.bg/static/media/ups/tiny/%D0%A3%D0%9E%D0%9E%D0%9F/%D0%9D%D0%9F%D0%A3%D0%9E-2021-2028/NPUO_2021-2028.pdf)

priority areas until 2030, Identifying and confirming the need for action on climate adaptation for both the economy as a whole and the sectoral level, while emphasizing the consequences of inaction. The strategy contains key recommendations from the European Commission on the development of a set of key climate conditions for wider use after 2020. These conditions must be taken into account for better use of environmental/green public procurement<sup>48</sup>;

- ✓ **National Strategy and Plan for Transition to Circular Economy 2021-2027 (DRAFT)** - both documents are prepared in implementation of measure 589 "Preparation of a national strategy in connection with the circular economy package" of the Management Program of the Government of the Republic of Bulgaria for the period 2017 - 2021, as one of the set goals (Goal 147) for achieving resource efficiency by applying the waste hierarchy, waste prevention, promotion of reuse and recycling, reduction of landfilling and limiting the harmful effects on the environment and human health. With this strategy, the government is committed to providing resources and means to achieve a circular economic model. The measures outlined in this document are aimed at increasing resource productivity and introducing new business models. "Waste" is beginning to be seen as a "resource" for the economy. The aim is to keep the materials in production for as long as possible and to recycle them with high quality, to produce better quality raw materials, to reduce the dependence of the country's economy on the import of raw materials. Green public procurement is identified as a key tool for achieving environmental policies, preventing waste of raw materials, and reducing environmental pollution.

### Key stakeholders in circular procurement

The policy at the national level in the field of public procurement is conducted by the Minister of Finance, assisted by the Public Procurement Agency. The PPA is responsible for ensuring the regulatory framework in the field of public procurement, and in this regard:

- ✓ develops drafts of normative acts in the field of public procurement;
- ✓ provides methodological support to contracting authorities, opinions on specific inquiries of contracting authorities, direct consultations, etc.;
- ✓ develops a monthly bulletin with indicators that characterize the main elements of the public procurement market;
- ✓ monitors public procurement, based on the information published in the Public Procurement Register (PPR);

<sup>48</sup> <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1294>

- ✓ ensures the implementation of public procurement procedures in the conditions of publicity and transparency, and for this purpose maintains:
  - PPR and public procurement portal (PPP).
  - Lists of contracting authorities.
  
- ✓ The PPA also has functions related to the cooperation in the field of public procurement with other bodies, as well as with branch organizations; sends appropriate information to the EC in accordance with the conditions set out in the PPL; maintains and updates the information that is collected and stored in the electronic database of the European Commission (e-Certis), and upon request - provides other Member States with explanations regarding the information in e-Certis.

Other bodies related to public procurement are Commission for Protection of Competition (CPC), Bulgarian National Audit Office (BNAO), Public Financial Inspection Agency (PFIA) and Supreme Administrative Court of Bulgaria.

In addition to the PPA, the institution responsible for and contributing to the promotion of green, including circular public procurement in the Republic of Bulgaria, is the Ministry of Environment and Water (MoEW). It develops and implements the state policy in the field of environment, as its main aspects are related to: legislative initiative - preparation of normative regulation; strategic planning - preparation of national plans and strategies; implementation of sectoral policies - water, waste, climate, air, nature, soils, noise, radiation; exercising preventive activities - regulatory and control functions for prevention of environmental pollution;

### Green public procurement market in Bulgaria

In the last few years, the concept of environmental procurement is gaining more and more popularity in Bulgaria. The reasons for the positive attitudes are related to:

- ✓ Updated legislation on the circular economy at EU level;
- ✓ The need to respond to 'competitive pressure' to provide better services at a lower cost, but also to use global markets that offer increasingly efficient solutions;
- ✓ Growing public vigilance regarding the spending of public funds;
  
- ✓ The new concept of the "most economically advantageous tender" (MEAT). Value is measured not only by price, but also by the

sustainability of the investment, including the “life-cycle costs” and the impact on the environment and society;

- ✓ The social challenges facing the world often require solutions that do not yet exist or do not fall into traditional supply systems. Public authorities are beginning to accept that they need to share with large and small companies the risk of finding new approaches.

Bulgaria is bound by a number of specific global strategic documents, which favors the promotion of green and circular procurement, which is why the share of the GPP in the country is constantly increasing. An analysis by the Public Procurement Agency (PPA), the results of which were published in the “Practical Guide to Green Public Procurement” in 2019, indicates that the overall potential for development of the GPP market in the short term (2-year) plan is in the range from 5% to 7%, and the cumulative potential in the medium-term (5-year) plan for the period 2018 - 2022 is within 10% - 15%.

Another positive trend is the development and publication on the PPA website of a list of product groups intended to facilitate national contracting authorities to implement green public handles. The list has been compiled within the framework of the Bulgarian-Swiss program, based on an evaluation and consultations and includes:

- ✓ *Wastewater infrastructure;*
- ✓ *Food preparation and delivery services (food products);*
- ✓ *Computers and Monitors;*
- ✓ *Copy and graphic paper;*
- ✓ *Furniture;*
- ✓ *Cleaning products and services;*
- ✓ *Maintenance of public;*
- ✓ *Design, construction and management of buildings;*
- ✓ *Design, construction and maintenance of roads;*
- ✓ *Transport;*
- ✓ *Street lighting;*

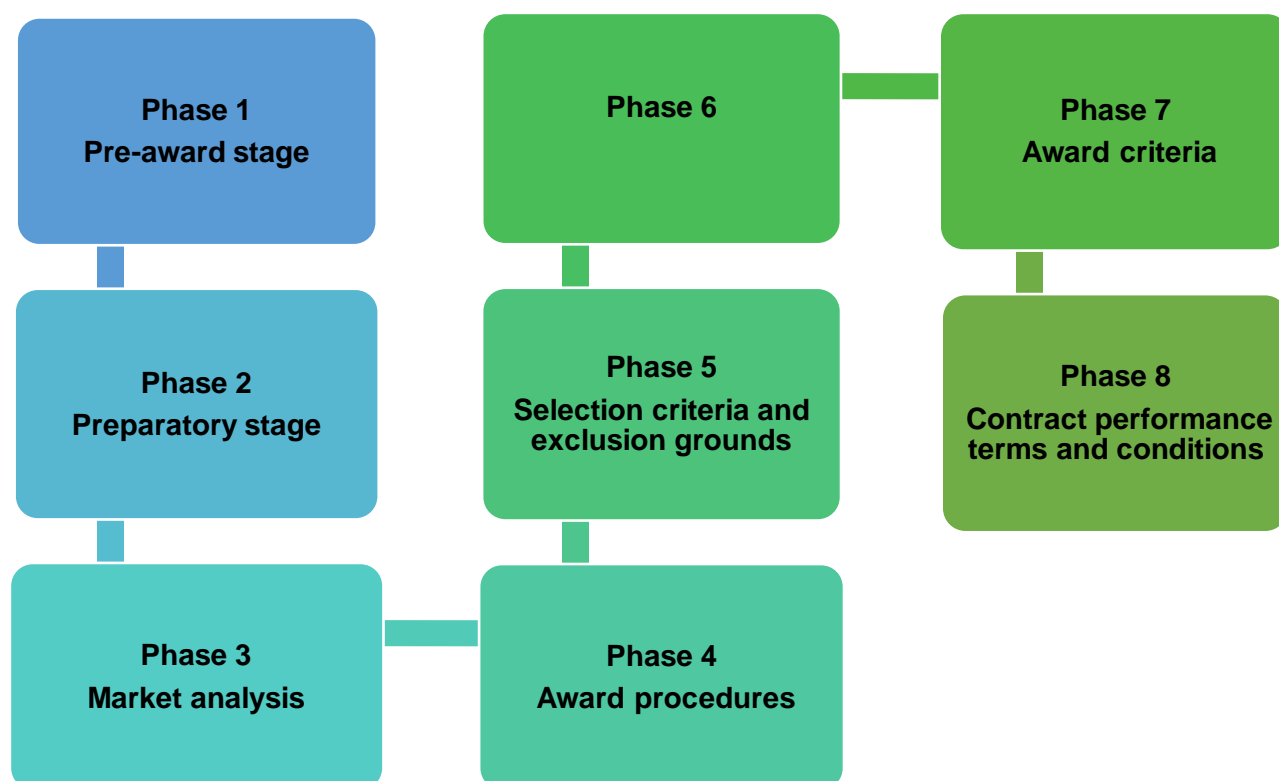
In order to support the green / circular public market, the MoEW envisages the inclusion of a definition of green public procurement in the Public Procurement Act. This change will lead to legislative and behavioral changes that will accelerate the transition of our country to sustainable consumption and a circular economy.

## Procurement phases

Public authorities are responsible for the proper definition, implementation and control of public procurement. When they contain additional circular criteria, the responsibility becomes even greater, because in addition to the financial and qualitative aspect - the circular public procurement aims at the sustainability of goods - construction and services.

The transition of events represents the phases of public procurement. Their consistent monitoring creates an operational environment that allows for a more systematic and effective application of round procurement practices. All phases are based on the provisions of the EU directives and the Bulgarian national legislation in the field of public procurement.

These guidelines are based on procurement phases, which are as follows:





## Phase 1 Pre-award stage – change in the internal model of the organization



*The phase is preparatory and includes steps that will help contracting authorities to make the best sustainable decision: this is where the circular thinking about goods, services and construction is built. In this way the public procurement model (system, supply model, product model / zero waste design) is determined. Defining an appropriate circular model identifies the next steps to be taken throughout the life cycle of the circular public procurement.*

The pre-award phase is the initial stage and its proper implementation is vital for finding the right approach in the implementation of the CPP. One of the first practical steps here is to consider how CPPs can be integrated into the organisation's existing procurement practices and systems. Establishing a circular policy in the field of public procurement or incorporating the principles of the circular economy into existing GPP or SPP policies can be an effective first step in ensuring priority in these areas.

There are three types or 'levels' of models for implementing circular procurement. The first is at the 'system level', which concerns the contractual methods that the purchasing organisation can use to ensure circularity. This ranges from supplier take-back agreements, where the supplier returns the product at the end of its life in order to re-use, remanufacture or recycle it, to product service systems, where the contract provides both services and products. An example of a product service system is a printing contract using a pay-per-copy model, in which the supplier provides all equipment, repairs, replacements and training rather than simply selling copy supplies. The 'supplier level' model describes how suppliers can build circularity into their own systems and processes, in order to ensure the products and services they offer meet circular procurement criteria. 'Product level' is related to this, but is focused solely on the products that suppliers to public authorities may themselves procure further down the supply chain<sup>49</sup>.

<sup>49</sup>[https://ec.europa.eu/environment/gpp/pdf/Public\\_procurement\\_circular\\_economy\\_brochure.pdf](https://ec.europa.eu/environment/gpp/pdf/Public_procurement_circular_economy_brochure.pdf)

Table 3. Circular procurement levels

| System level   | Supply level  | Product level of zero waste desing   |
|--|---|--|
| <b>Product service system;</b><br><b>Public Private Partnership;</b><br><b>Cooperation with other organisations on sharing land reuse;</b><br><b>Rent/lease;</b><br><b>Supplier take-back systems including reuse, recycling, refurbishment and remanufacturing;</b> | <b>Supplier take-back system;</b><br><b>Design to disassembly;</b><br><b>Reparability of standard products;</b><br><b>External reuse/ sale of products;</b><br><b>Internal reuse of products;</b> | <b>Materials in the product can be identified;</b><br><b>Products can be disassembled after use;</b><br><b>Recyclable materials;</b><br><b>Resource efficiency and</b><br><b>Total Cost of Ownership</b><br><b>Recycled materials;</b> |

Source: SPP Regions Best Practice Report

## Phase 2 Preparatory stage - determining the requirements and needs of the contracting authorities, subject



### *Legal background*

*EU Directive 2014/24, Art. 18(2)-70*

*EU Directive 2014/25, Art. 36(2)-87*

In a circular procurement, it is necessary not only to understand what the products are made of and where they come from, but also how they will be

used and what happens to them after the end of their initial life. In many respects, the procurement cycle reflects the waste hierarchy - prevention, re-use, recycling and recovery. Therefore, the greatest opportunities for reducing the environmental impacts and maximizing the economic and social impacts within the cycle exist in the early stages of public procurement.

The challenges here include expanding the circle of thinking beyond the financial aspect, various risks for the contracting authority as a buyer, lack of market competition, as well as the need to improve inter-organizational cooperation.

**The needs analysis<sup>50</sup>** aims to ensure that there is a real demand for the goods, services or works to be purchased and to identify the most effective and sustainable way to meet this need.

Examples of how the needs assessment may affect the results of the procurement:

- ✓ The municipality prefers to repair furniture instead of buying new ones;
- ✓ The state administration buys fewer desktops because employees prefer to work on laptops;
- ✓ An educational institution concludes a contract for the supply of food, according to which the portions are determined by the presence of the students and are not strictly set.

The needs analysis saves funds and resources, which makes it a major part of the preparation of the circular public procurement. It may be necessary to make a complete change in the management of an organization - instead of thinking about the number of purchases, to think about meeting the needs in a sustainable way.

### **Consumer needs assessment<sup>51</sup>**

Users of a service, product or construction are often not the ones who buy it. They can be other people from the same organization, employees of another public body or citizens (eg. hospital patients, locals, pupils or students). To avoid making unnecessary purchases, consumer consultation is used in one of the following ways;

- ✓ preparation of a questionnaire or online survey to determine the needs and preferences of users;
- ✓ analysis of existing models;

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<sup>50</sup> GPP Training toolkit, EC,

<sup>51</sup> Ibidem.

- ✓ a review and planning meeting to which all related stakeholders are invited;

Based on the information gathered during the consumer consultation, the needs are formulated, which describe the reasons for the purchase or its appropriate alternatives.

Often it is the purchase alternatives that follow the principles of the circular economy. These may include sharing resources within the organization or with another organization (eg. meeting rooms and equipment), repairing items instead of buying new ones (eg. furniture, computers) and leasing or renting instead of buying funds).

Based on the needs analysis, the subject of the circular public procurement is determined. This means:

- ✓ to determine whether the contract relates to supplies, services or construction;
- ✓ to choose a title and a short description of the contract;
- ✓ select the CPV response codes.

These elements inform the market about the needs of the organization and should include the relevant circular characteristics (eg. "Supply of energy saving equipment"). In some cases, it may be more efficient to award a service contract - e.g. to maintain a certain temperature in buildings - instead of paying for gas and electricity to meet the need for heating. The choice of subject determines the permissible scope of the specifications and other criteria that can be applied, as well as what circular approach will be used in the procedure.

### Cost estimation<sup>52</sup>

A necessary requisite in the public procurement is the total quantity or scope of the contract. This gives suppliers an idea of the volume and value of the purchase. The calculation may take the form of a range (for example 50-70 for a period of three years) and, in the case of a framework contract, should reflect all planned purchases by contracting authorities that intend to use it.

The needs assessment helps to ensure that the quantity of the purchase is sufficient and minimizes the risk of losses. For example:

- ✓ The size of a new office building should be in line with the current needs of the user and the planned growth, taking into account the trends of work from home, shared jobs, etc .;

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<sup>52</sup> Ibidem.

- ✓ The frequency of street cleaning services should be based on monitoring and analysis of the area, taking into account all waste reduction and recycling initiatives .;
- ✓ The number of printers should be based on current usage, taking into account the planned print management activities in order to reduce demand. In some cases, it may be more efficient to use only a few larger printers instead of a large number of small printers.

## Phase 3 Market analysis: Methodology for involving economic operators in the circular procurement process



### Legal background

*EU Directive 2014/24, Art. 40-41*

*EU Directive 2014/25, Art. 58-59*

Circular public procurement is most effective if there is a clear understanding of what it is and how to implement it properly.

Market analysis can be useful to determine if there are suitable alternatives that can reduce the environmental impact. In addition, the transparency of circular public procurement is crucial for stakeholder retention.

**The market analysis** can be carried out before, during and after a formal tender procedure. If it takes place before the tender procedure, it is used to identify potential suppliers and the relevant products / services and to enable suppliers to prepare for the tender procedure, for example by forming partnerships. At this stage, it is permissible to make contact only with certain suppliers. However, they must not allow any unfair advantage to be granted to these suppliers in the subsequent tender procedure, which means that all information provided by the contracting authority during the market engagement process should be provided with the documentation for the public procurement. Alternatively, a prior information notice may be used to inform more market participants about the engagement.

If it is during a tender procedure, the contracting authority may meet with tenderers - especially in a competitive dialogue or a negotiated procedure. If it is after the end of the tender procedure, the tenderers may be offered a tender.

As far as the contracting authority is concerned, the market engagement process should involve public procurement staff and, where applicable, end-users. In the case of circular procurement, it may be advisable to involve staff dealing with environmental / sustainability issues.

Suppliers should be encouraged to include those employees who will actually be involved in the performance of the procurement contract, and not just marketing or sales staff. It is usually not necessary to involve lawyers<sup>53</sup>.

### Criteria for market analysis

**How complex is the product / service** - when the requirements of the contract are complex, it can be difficult to present them clearly to market participants in the written documentation for the public procurement. Therefore, clarifying the requirements face-to-face can be extremely useful and encourage compliance with specification, innovation and competition.

**How complex is the market** - is there a monopoly, perfect competition or something in between? This can have an impact on the value of engaging with one, two or many market participants and determine the engagement styles that could be most effective.

**How mature the market is** - if many suppliers in a given market do not have experience with public sector procurement procedures, this can have a significant impact on competition if they are not offered sufficient support. In particular, SMEs experiencing difficulties in securing resources to meet procurement opportunities may need special support both before and during the procurement procedure.

**What is the opportunity for innovation** - when there is a desire for some kind of innovation in relation to a contract, market analysis is essential. Two-way communications with market participants allow the head of public procurement to assess the risks and opportunities associated with the expected level of innovation. In many cases, a thorough market engagement process can be used before the start of the procurement procedure in order to avoid the use of time-consuming and resource-intensive procurement procedures, such as competitive procedure with negotiation or competitive dialogue; although they are sometimes likely to be required nonetheless.

**What is the value of the order** - for some types of market engagement processes may require a lot of time and resources. It is essential for the long-term success of a market engagement approach to ensure that resource allocation is justified.

<sup>53</sup> GPP Training Toolkit Module 6: Market Engagement, ICLEI, 2019, [http://ec.europa.eu/environment/gpp/index\\_en.htm](http://ec.europa.eu/environment/gpp/index_en.htm)

***What is the balance of knowledge between the buyer and the supplier -***

when the buyer is very well informed about the goods / services to be delivered, there may only be a requirement for one-way communication. However, when suppliers and other market participants are more aware of goods / services, two-way communication is more likely to be needed.

**Market consultations are an option according to national legislation, and are not mandatory. Contracting entities may introduce several methods for conducting market consultations, such as:**

- ✓ **a questionnaire for economic operators;**
- ✓ **phone contact: telephone interviews based on standard questions;**
- ✓ **outsourcing the consultation: this is done in order to ensure professionalism in the preparation of the documents certifying its implementation, equal treatment of participants, based on pre-formulated questions from professionals;**
- ✓ **web-based contact: online platform for market consultations with economic operators;**
- ✓ **open market consultations: meetings and live interviews in which economic operators are invited to participate and for which experts of the municipality or the external contractor have prepared the questions for discussion in advance. The questions may be related to the technical specifications, the specific subject of the contract and its contractual specifics, etc.**

**The questions can be related to the technical specifications, the specific subject of the contract and its contractual features, etc.**

**Market consultations allow contracting authorities to obtain better information on the structure of the market, the capabilities of contractors and changes in the prices of goods, services and construction.**

**Regardless of the way in which it is decided to conduct the market consultation, it must be clearly and unconditionally announced in the buyer's profile.**

**Actions are taken in connection with the preparation of market consultations, e.g. A report shall be drawn up when the consultations take place on the spot.**

## Phase 4 – Award procedures



### Legal background

*EU Directive 2014/24, Art. 26-33*

*EU Directive 2014/25, Art. 43-51*

The EU Directives about Research and Development (R&D) Procurement are applicable when:

- ✓ the benefits accrue exclusively to the contracting authority / entity for use in its own affairs;
- ✓ the service provided is fully paid by the contracting authority.

Research and development (R&D) refers to the activities that a business carries out in order to improve its products and processes or to create new ones. As a result of research, innovations are established, which are the basis for the development of competitiveness and the improvement of people's quality of life. This activity is different from the operational activities that are performed in a company.

The most striking examples of R&D results today are in the field of information technology, but more and more companies from traditional industries and sectors see the long-term benefits of investing in R&D<sup>54</sup>.

R&D (EU Directive 2014/24, Art. 14; EU Directive 2014/25, Art. 32), including eco-innovation and social innovation, are among the main drivers of future growth and are at the heart of the Europe 2020 for smart, sustainable and inclusive growth. Public authorities should use public procurement in the best strategic way to stimulate innovation and round public procurement (EU Directive 2014/24, recital 47; EU Directive 2014/25, recital 57).

**Pre-commercial procurement** is an approach within public procurement for innovation, developed specifically for the procurement of R&D services, not

<sup>54</sup> The essence of research and development and its benefits, Ministry of Economy, 2021 <https://www.mi.government.bg/bg/pages/sashtnost-na-nauchnoizsledovatelската-i-razvojnata-deinost-i-305>.



real goods and services<sup>55</sup>. The main idea of "supply of R&D products" is to use the needs of the population as a tool to stimulate innovation activity in macro- and micro-economic aspects. In addition, pre-commercial procurement has been introduced as a possible solution to social problems related to improving the quality and efficiency of public services. If goods or services developed during the R&D phase need to be purchased, this must be based on a separate procurement process<sup>56</sup>.

It should be noted that the scope of Pre-commercial procurement is limited to the market entry phase of the product. R&D procurement should be understood as a single approach to obtaining research and development services, in which the benefits do not remain with the contracting authority, whether it has paid in part or in full for the provision of the service. In this way, the contracting authority and the innovation organization share among themselves the risks and benefits of the research product or service created. Crucial to 'R&D supplies' is that they do not constitute State aid, but are essentially R&D activities that precede the pre-commercial part of a research project<sup>57</sup>.

Pre-commercial procurement includes activities grouped into three main phases with a total duration of approximately five years.

During the first phase of the process, design and research activities are carried out. During this period, project proposals are collected, and the participation of each "innovative" organization in the public procurement is realized on a competitive basis. The proposed alternative solutions are subject to joint evaluation between the contracting authority and the organization itself.

The received project proposals are evaluated on the basis of predefined criteria. During the second phase of the process, the selected "suppliers" of R&D carry out research activities until the development of non-commercial prototypes. Positively evaluated prototypes are created in limited quantities, and the experimental series is tested during the last phase of the process. After testing the experimental series, the results of the research project can be launched on the market. However, the commercialization of the product or service created does not fall within the scope of "development supplies". Therefore, the main purpose of Pre-commercial procurement is not the commercial production and supply of an innovative product or service, but rather

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<sup>55</sup> PRE-COMMERCIAL PUBLIC PROCUREMENTS AS AN INSTRUMENT FOR FINANCING THE RESEARCH ACTIVITIES OF ENTERPRISES IN BULGARIA, Georgieva D, International Higher Business School - Botevgrad

<sup>56</sup> Innovation procurement: policies and emphases, Research Council of Norway, [https://unece.org/fileadmin/DAM/ceci/documents/2015/ICP/TOS\\_ICP/10\\_Remeoe\\_17\\_Dec\\_Public\\_Procurement\\_for\\_Innovation\\_UNECE.pdf](https://unece.org/fileadmin/DAM/ceci/documents/2015/ICP/TOS_ICP/10_Remeoe_17_Dec_Public_Procurement_for_Innovation_UNECE.pdf)

<sup>57</sup> For more details see: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. R & D supplies: Promoting innovation to ensure the sustainability and high quality of public services in Europe, Commission of the European Communities, COM (2007) 799, p.2, p. 3.

the aim of 'proving' the possibilities for an idea to 'acquire a material character'.

**Public Procurement of Innovative solutions** are used by the public sector in the market introduction of innovative products and services of a social nature. In this case, the role of the public sector is to be the first buyer of innovative product or service created but not yet commercialized. Another important feature of Public Procurement of Innovative solutions is that they use technologies or services that have already been developed and are at a stage where they should be introduced to the market<sup>58</sup>.

Public Procurement of Innovative solutions refers to any procurement that is characterized by one or both of the following aspects:

- ✓ purchase of the innovation process - services for research and development - with (partial) results;
- ✓ purchasing the results of innovation.

The public buyer first describes his need by encouraging businesses and researchers to develop innovative products, services or processes that do not yet exist on the market to meet the need.

In the second case, the public buyer, instead of buying market-established products, acts as an “early consumer”<sup>59</sup> and buys a product, service or process that is new to the market and contains characteristics that are essentially innovative<sup>60</sup>.

Such innovations, which provide greater efficiency and added value for different stakeholders, sometimes fit into the traditional context (phased innovations), but often disrupt the old system by creating different actors, flows, values (revolutionary innovations), or even require more comprehensive transformation, as they meet unmet needs and require structural or organizational reforms (transforming innovations). to them in the procurement process.

**An innovation partnership** can be established if a particular product or service is not currently available on the market. The Innovation Partnership is a new type of public procurement procedure provided for in Directive 2014/24 /

<sup>58</sup> For more details see: <https://ec.europa.eu/digital-agenda/en/public-procurement-innovative-solutions>

<sup>59</sup> The term 'early consumer' refers to the first 20% of consumers in the market who buy a new or significantly improved product, service or process. This includes public procurement for products, services or processes that have already been demonstrated on a small scale and may have almost reached the market or are already available in small quantities but have not yet been widely accepted by the market. This also includes existing solutions that are used in a new or innovative way.

<sup>60</sup> INFORMATION FROM THE INSTITUTIONS, BODIES, OFFICES AND AGENCIES OF THE EUROPEAN UNION, Official Journal of the European Union, C 267, Year 64, 6 July 2021.

EU (EU Directive 2014/24, Art. 31. See also Articles 65 and 66 below; See also EU Directive 2014/25, Article 49). It is regulated in the Bulgarian legislation for the first time in 2016 with the adoption of the Public Procurement Act (Promulgated SG No. 13 of 16 February 2016) - Art. 18, para. 6 provides that "Innovation Partnership is a procedure in which the contracting authority negotiates with the admitted candidates after pre-selection in order to establish a partnership with one or more partners to carry out a specific research and development activity."

Although the procedure is called "partnership" and potential suppliers - partners, it is still a public procurement procedure to which the rules of the European Union and the World Trade Organization apply, incl. and the fundamental principle of non-discrimination enshrined in the EU Treaty.

The purpose of the procedure in question is to more effectively meet the needs of contracting authorities in areas where it is necessary to implement innovative approaches and the use of non-traditional and inaccessible technologies. The idea is to enable contracting authorities and economic operators to establish a long-term partnership that combines in the same procedure the stage of developing an innovative product, service or construction with that of its subsequent purchase. It is the purchase of innovative products that proves to be key to increasing the efficiency and quality of public services and contributes to achieving a better ratio between the quality obtained and the public funds invested.

This, in turn, would lead to wider economic, environmental and social benefits associated with the emergence of new ideas, their transformation into innovative products and services and hence - the achievement of sustainable economic growth.

An essential feature of the Innovation Partnership is that the innovation occurs during the implementation of the contract. For comparison - in most other procedures, the contracting authority already knows what kind of solution it buys, as the innovation marks its appearance at the pre-contractual stage and ends with the conclusion of the contract itself.

In an Innovation partnership, the public buyer contracts with the best potential innovation providers. Their task is to create an innovative solution and to ensure its implementation in real scale for the specific contracting authority. It is crucial that the needs of the public buyer are described accurately enough to make potential bidders aware of the nature and scale of the challenge. Detailed information at an earlier stage will help them decide whether or not to participate.

From a formal point of view, the Innovation Partnership process takes place in three main stages. The first stage - that of selection, takes place at the very beginning of the procedure. It consists in selecting one or more of the most

suitable partners based on their skills and abilities. The contracts for the establishment of the Innovation Partnership are then awarded to the best value for money proposed. This process itself is analogous to the restricted procedure. The next stage is when the partners develop the new solution in cooperation with the public buyer. This research and development could be further divided into different periods - concept evaluation, prototyping, performance testing and more. At each stage, the number of partners could be reduced depending on pre-set criteria. Last is the trade stage, during which the partners provide the final results of their activities. It is interesting to note that since the introduction of the institute in the Bulgarian legislation in 2016, only three procedures for awarding public contracts of the type "Innovation Partnership" have been conducted in Bulgaria so far. This in itself is an indicator of the need to stimulate them, as they are particularly suitable for the development of innovative products, services and construction. The reason for the still weak implementation of the Innovation Partnership could be, on the one hand, the ignorance of its practical advantages, and on the other - the risks that invariably accompany flexibility and - the creation of innovations with less than necessary results, difficulties in providing the necessary funding, unforeseen circumstances that may compromise the entire process of developing the final product, etc. In conclusion, in the framework of projects and programs financed by the European Union, the Innovation Partnership is applicable mainly in the case of R&D. Such programs are targeted at specific beneficiaries and therefore cannot be used to carry out tasks assigned to a wider range of contracting authorities.

The other procedures applied by procurers are as follows (EU Directive 2014/24, Art. 26; EU Directive 2014/25, Art. 44):

- in **an open procedure**, any operator may submit a tender (EU Directive 2014/24, Art. 27; EU Directive 2014/25, Art. 45);
- in **a restricted procedure**, the environmental technical capacity in a prior stage can be assessed and also limit the number of operators invited to tender (EU Directive 2014/24, Art. 28, 65 and 66; EU Directive 2014/25, Art. 46);
- **the competitive procedure with negotiation** and competitive dialogue procedures can be used by public authorities for purchases which require an element of adaptation of existing solutions; design or innovation; or in certain other circumstances (EU Directive 2014/24/EU, Art. 29).

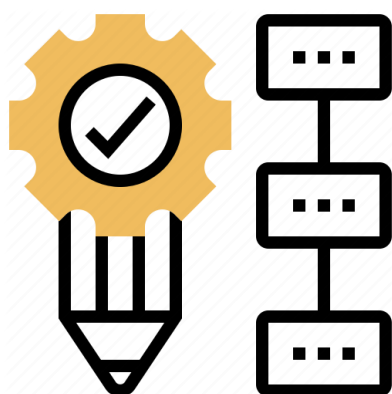
The **competitive dialogue**, in which any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority. In this case contracting authorities have to provide information on needs re-

quested. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice (EU Directive 2014/24, Art. 30; See also EU Directive 2014/25, Art. 48).

Only in exceptional situations (e.g. where extreme urgency brought about by events unforeseeable by the contracting authority concerned that are not attributable to that contracting authority makes it impossible to conduct a regular procedure even with shortened time limits), contracting authorities should have the possibility to award contracts by **negotiated procedure without prior publication** (EU Directive 2014/24, Art. 32; See also EU Directive 2014/25, Art. 47 and 50).

In addition, **framework agreements** can be awarded by open procedure - this has been a widely used practice and is considered an efficient award technique (rather than an award procedure) throughout Europe. Its use can foster innovation and access to relevant markets (EU Directive 2014/24 / EU, Art. 33; See also EU Directive 2014/25, Art. 51). Framework agreements can be concluded on five different models. With one or more economic operators by establishing all the conditions of the agreement to be signed, or vice versa, without establishing all the conditions ensuring the resumption of competition (so-called "mini-competition"), so that contracting authorities be able to adapt the re-search to their needs in the purchase phase. Directive 2014/24 provides for a mixed or hybrid model "closed but with the possibility to resume competition" (EU Directive 2014/24 / EU, Art. 33 (4b)). The hybrid model allows public entities to purchase directly through the framework agreement (as in the "closed" model) or to reopen competition among economic operators party to the framework agreement (this is only possible if allowed by the terms and conditions set out in in the public procurement documentation). It is for the contracting authority to use a framework agreement which decides whether it may be convenient to resume competition among economic operators within the main contract.

## Phase 5 - Selection criteria and exclusion grounds



### *Legal background*

*EU Directive 2014/24, Art. 56—64*

*Directive 2014/25, Articles 76-80*

The main purpose of the selection phase is to identify those candidates who are qualified to perform the contract. At a minimum, this means those who can provide the service or products satisfactorily, but it is also a valid goal to identify satisfactory contractual partners in a broader sense.

The contracting authority must not only determine the subject-matter of the contract and decide which procedure and criteria to use for the award, but must also examine which companies should be invited to tender or to participate in the tendering procedure. Whichever type of procurement procedure is chosen, the authorities are required to carefully consider the selection criteria.

The exclusion of tenderers with "**unsustainable**" **behavior** can be a way to, with increased attention, open up opportunities for integrating environmental and social considerations into the procurement process.

The selection of tenderers shall consist of their evaluation on the basis of the grounds for exclusion and the selection criteria set out in the procurement documents. These rules aim to ensure a minimum level of compliance with environmental law by contractors and subcontractors (see also EU Directive 2014/24, Articles 59, 60, 61 - 62 - 63 - 64 on the European Single Document for public procurement, Means of proof, Online source of information (e-Certis), Reliance on the capacity of other entities, quality assurance standards and environmental management standards, Official lists of approved economic operators and certification by authorities, established under public or private law).

Techniques such as life-cycle costs, the specification of sustainable production processes, and the use of environmental criteria are available to help contracting authorities determine the choice of the most sustainable offer.

It is possible to exclude companies that have violated environmental law or have other serious defects in their environmental performance, although they should also be given the opportunity to "rehabilitate" and cannot be excluded for more than three years on the same basis.

The grounds for exclusion are provided by EU directives. Some of them are mandatory for all other Member States, others are applied voluntarily at national level. Contracting authorities are obliged to use them in accordance with national legislation in this field.

The selection criteria may be used by the contracting authority to determine whether an economic operator is qualified to perform a particular contract:

- ✓ personal situation of the economic operator (obligatory grounds for exclusion / optional grounds for exclusion);
- ✓ suitability for professional activity;
- ✓ economic and financial condition;
- ✓ technical and / or professional ability.

These criteria provide assurance that a particular supplier would be able to deliver the requested product and / or services.

***Infringements of environmental law may also be used as grounds for refusing to award a contract to an economic operator, rejecting an abnormally low tender or requiring a change of subcontractor.***

## Phase 6 Functional/Technical specifications and labels



### Legal background

*EU Directive 2014/24, Art. 42-44*

*EU Directive 2014/25, Art. 60-62*

If an existing product is described in detail under the procurement documents (i.e. purchasing products), potential suppliers will try to provide a same product. Contracting authorities simply purchase the products they describe, even if they are obsolete, which means that there may already be a better alternative on the market that the public authority does not know about. Of course, such a feature of the product will not lead to a new product (i.e. innovation). And when evaluating such product orders, price will be the dominant criterion in deciding who to buy from. (Bergnam and Lundberg, 2013). In other words, in ordinary public procurement, the contracting authority defines in the technical specification of the public procurement, **technical characteristics** that have two main functions:

- ✓ they describe the subject of the contract so suppliers can decide whether it is of interest to them. In this way, they help to determine the competition level;
- ✓ they provide measurable requirements against which tenders can be evaluated / minimum eligibility criteria /.

Of course, the assignor wants to buy products and use them for a specific purpose. In other words, with the help of the product, public organizations usually want to achieve a goal or mission, to solve a social problem, to meet human needs, to be able to cope and therefore to meet (global) challenges or to perform a function. And this is done in the interest of the citizens. An alternative to purchasing products is for the contracting authority to describe these problems, missions or functions in the procurement documents.

Where such a description exists, the term "functional characteristic" is used. **Functional characteristics** are criteria used in the technical specification that the public organization sets to solve a problem. They are suitable for the implementation of public procurement for innovation, such for R&D, as well as circular, as they fulfill goals related to the circular economy.



When using functional characteristics, the contracting authority determines what should be achieved, not how (i.e. with the help of which product, method, technology, language processing, program code, etc. should be done)<sup>61</sup>. Functional characteristics can lead to new products (innovations) developed in the procurement process and therefore open up to innovation (Edler and Georghiou, 2007; Georghiou et al., 2014). However, circular public procurement does not necessarily require the development of innovations. The result may be a new product that did not exist at the beginning of the order. Of course, existing products could also outpace newly developed innovations and eventually be selected by the contracting authority if they better meet the purpose of the contract. Thus, the product as such is not the goal of the contract, but rather a means to achieve the goals, whether they include solving social problems, meeting human needs or meeting challenges.

#### Examples for functional specifications:

- ✚ “a healthy working environment for 500 employees”, instead of “an office of 2,500 m2 with measures X, Y and Z”);
- ✚ “environmentally-friendly packaging”, instead of „packaging made from X , Y, Z materials”

Each organization must assess its capabilities in terms of sustainability and what criteria it must apply in the technical specification - functional or technical. The more mature a sector is in terms of circular models, the more functional criteria can be set and vice versa - when the sector is deprived of expertise, contracting authorities are forced to use mainly technical criteria. Mature sectors have more knowledge of working with functional requirements, they can use them to create an optimal circular offer. The complexity of the product is also important - the more complex a product is, the greater the difference in the knowledge of the contracting authority and the supplier. For complex products, the supplier is the expert. In this case, a more functional specification will give the provider more freedom to innovate. For example, a simple product, such as a cup of disposable coffee, includes fewer aspects to which innovative methods can be applied. The table below is based on the complexity of the product and the maturity of the sector in terms of innovation and circular procurement

<sup>61</sup> In the words of Edler and Georghiou (2007: 960), "in order for the tender process to provoke innovation in the market, it needs to be based on an indication of functionality, not design."



**Table 3. Technical specifications versus functional specifications<sup>62</sup>**

|                 |        | COMPLEXITY     |        |      |
|-----------------|--------|----------------|--------|------|
|                 |        | LOW            | MEDIUM | HIGH |
| MATURITY        | LOW    |                |        |      |
|                 | MEDIUM |                |        |      |
|                 | HIGH   |                |        |      |
| MORE FUNCTIONAL |        | MORE TECHNICAL |        |      |

Source: *CirCular Procurement in 8 steps (2018)*

**The EU Ecolabel** aims to help buyers identify sustainable products or services. Products bearing the European Eco-label - certify that they are not harmful to the environment, like their other substitutes, during operation. They cover and take into account the environmental impacts during all stages of operation of the product, including production, use and disposal of the product. The ecological criteria are approved after consultation with all stakeholders - incl. representatives of industry, consumers, environmental organizations, retailers and public organizations. The most valuable marking, in terms of circular public procurement, is that which is based on objective and transparent criteria and which is awarded by an independent third party. This marking can play a special role in the development of technical specifications and award criteria, as well as in the verification of conformity.

The Ecolabel can be used in two different ways in the context of technical specifications:

- ✓ To help you compile your technical specifications to define the characteristics of the goods or services you buy;
- ✓ To verify compliance with these requirements, accepting the label as a means of proving compliance with the technical specifications<sup>63</sup>;

<sup>62</sup> CirCular ProCurement in 8 steps; 2018, Cécile van Oppen, Godard Croon, Dirk Bijl de Vroe

<sup>63</sup> Ecolabel, European Commission, [https://ec.europa.eu/environment/gpp/eco\\_labels.htm](https://ec.europa.eu/environment/gpp/eco_labels.htm)

## According to art. 48 Bulgarian PPA

The technical specifications could be formulated by reference to:

- ✓ national standards transposing European standards;
- ✓ European Technical Assessments;
- ✓ Common technical specifications;
- ✓ International standards;
- ✓ Other standardization documents established by European standardization bodies, or when there are none - through Bulgarian standards, Bulgarian technical approvals or Bulgarian technical specifications, related to the design, the method of calculation and execution of the construction, as well as to the use of goods.

Ecolabels may be used by contracting authorities wishing to purchase works, supplies or services with specific environmental, social or other characteristics, provided that the labelling requirements are related to the subject of the contract, such as the description of the product and its presentation, including packaging requirements.

### Standards for the environment

Standards establish consistent rules that can be universally understood and adopted. They help to ensure, for example, product functionality, compatibility and interoperability. Standards also define terminologies and methodologies so that products, processes and services can be more easily understood, characterised and compared. For example, when measurement methods are not universally implemented, the alignment of measurement performance must be proven for each test parameter. This requires additional costs and effort. Standards avoid this by helping us speak a common language ensuring the same method is used by all providing a common accepted scale. While standardization often focuses mainly on technical and economic aspects, requirements concerning consumer and environmental protection are becoming more and more important. For instance, standards on environmental management systems such as the EN ISO 14000 series provide practical tools for companies and organisations looking to manage their environmental responsibilities. These standards have proved to have a farreaching impact all over the world. Therefore, standards are of high relevance for public stakeholders and civil society actors<sup>64</sup>.

<sup>64</sup> STANDARDS FOR THE ENVIRONMENT, Updated edition 2021 CEN - European Committee for Standardization, p.3 <https://www.cenelec.eu/media/CEN-CENELEC/Areas%20of%20Work/CENELEC%20sectors/Accumulators,%20Primary%20cells%20and%20Primary%20Batteries/Documents/standardsfortheenvironment.pdf>

Standardization can be used as a valuable tool in public procurement because it ensures the purchase of products compatible with the concept of the circular economy. There are already various standards in place that foster circular products and management systems. For example, several standards provide details on how to collect, transport, sort and treat waste of electrical and electronic equipment (WEEE) (EN 50625 series, EN 50614). These standards contain detailed requirements on how to depollute WEEE, making sure that workers and the environment are not exposed to toxic chemicals, as well as facilitate recycling and preparation for reuse. Other standards characterise plastic recyclates in order to enable end-of-life plastics to re-enter the production cycles, fostering development towards a more circular economy. Standards for the European Ecodesign Directive are being developed with the aim of more sustainable use of resources within product lifecycles. Moreover, standards to support ecodesign requirements STANDARDS FOR THE ENVIRONMENT 8 CEN – European Committee for Standardization I CENELEC – European Committee for Electrotechnical Standardization on material efficiency aspects for energy-related products are already available (e.g. EN 45555, EN 45556, etc). These standards cover aspects such as extending product lifetime, ability to reuse components or recycle materials from products at end-of-life, use of reused components and/or recycled materials in products<sup>65</sup>.

#### **According to Art. 64, para. 4 of the Public Procurement Act**

Where the contracting entity requires the submission of certificates attesting the applicant's or tenderer's compliance with certain environmental protection systems or standards, he shall indicate the European Union environmental and audit scheme (EMAS) or environmental standards through the relevant European or international standards. The assignor has the right to refer to other environmental management systems, recognized in accordance with Art. 45 of Regulation (EC) № 1221/2009 of the European Parliament and of the Council of 25 November 2009 on voluntary participation by organizations in a Community eco-management and audit scheme (EMAS) and repealing Regulation (EC) № 761/2001 and Commission Decisions 2001/681 / EC and 2006/193 / EC (OB, L 342/1 of 22 December 2009) or other environmental management standards based on the relevant European or international standards of accredited bodies.

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<sup>65</sup> Ibidem, p. 6

## Phase 7 – Award criteria



### Legal background

***EU Directive 2014/24, Art. 26-33***

***EU Directive 2014/25, Art. 43-51***

The evaluation of tenders should be carried out by an evaluation committee according to:

- ✓ lowest price, in which only price is evaluated;
- ✓ most economically and advantageous (MEAT) in which is evaluated the price (using a cost-effectiveness approach, such as life-cycle costing) and technical performance indicated in the contract notice with their relative weighting (EU Directive 2014/24, Art. 67; EU Directive 2014/25, Art. 82).

Art. 70 of PPA clarifies that public procurement is awarded on the basis of the most economically advantageous tender which shall be determined on the basis of one of the following award criteria:

1. Lowest price;
2. Level of costs, reading the initial efficiency, including the costs for the whole life cycle;
3. Optimal quality / price ratio, which is assessed on the basis of the price or the level of costs, as well as the indicators, including qualitative, ecological and / or social aspects, contact the objects of the public procurement.

The award framework for the circular aspects could include the following elements:<sup>66</sup>

- ✓ the circularity of the offer;
- ✓ the planned way for the development of the offer: the proposed improvement points to which the supplier is ready to commit, in relation to the circular economy, as well as the approach that is necessary to achieve these goals;

<sup>66</sup> CirCular ProCurement in 8 steps; 2018, Cécile van Oppen, Godard Croon, Dirk Bijl de Vroe

- ✓ the organizational and financial agreements that guarantee the circularity of the tender.

Different product groups require different award frameworks. For the procurement of existing and products with a relatively short functional lifecycle such as furniture, clothing or IT products, you will want to know the current level of product circularity, how the supplier plans to develop in order to further improve the circularity of the products during the contract period and how the supplier plans to guarantee circular use.

For one-off products with a fairly long technical lifecycle, such as buildings, bridges or roads, more weight should be given to the circular objectives that the supplier is willing to commit to, and the means by which these objectives can be realized. Again, circular procurement requires customization.

Within the circular tenders, the criteria focus largely on the circularity of the bids and perhaps on other project objectives. However, it is important that the way in which price proposals are evaluated also reflects the respective circular ambitions. In many cases, the investment costs may be higher than usual, especially if the “circular” product in question is purchased to replace a non-circular product. However, long-term costs may be lower and that should be taken into consideration.

The contracting authority may select also the most economically advantageous tender in accordance optimal quality / price ratio in which case the evaluation shall take into account certain indicators. The indicators included in the criterion may include: a measure of quality, including technical parameters, aesthetic and functional characteristics, accessibility, purpose for all users, social, environmental and innovative characteristics and innovative commercial techniques and conditions; organization and professional competence of the staff assigned to the execution of the contract, when the quality of engagement with the execution of a staff order may have a significant impact on the execution of the order, or service and maintenance, technical assistance and conditions such as: execution data , manner and term of execution or term of completion (art. 70, para 4 PPA).

### Life Cycle Costing

When focusing on resource efficiency, products tools like **Total Cost of Ownership (TCO)** or **Life Cycle Costing (LCC)** (EU Directive 2014/24, Art. 68; EU Directive 2014/25, Art. 83) becomes relevant.

Many different backgrounds and disciplines have been interested in calculating the optimal allocation of budget by estimating the costs that incur during the whole life cycle of a product, service, project, investment, etc<sup>67</sup>.

The main cost categories that can be included in an LCC analysis are those related to the following five different life cycle stages:

- ✓ Research, Development and de-sign;

<sup>67</sup> Based on Fabrycky J. and Blanchard BS. Life cycle costs. Technology Management Handbook. CRC Press (1998)

- ✓ Primary production;
- ✓ Manufacturing;
- ✓ Use;
- ✓ Disposal.

Analyzing the whole life-cycle costs of a product or service can be useful at different stages (Adell et al., 2011):

- ✓ At the preparatory stage: to assess the LCC of the current situation;
- ✓ Before tendering: to roughly assess different proposals to help guide market engagement activities before tendering, or to narrow down the different technological solutions to be considered;
- ✓ During tendering: to compare the LCC and the anticipated CO2 emissions of different offers, during the evaluation phase;
- ✓ After tendering: to evaluate and communicate the improvements of the purchased product in comparison to the current situation and/or other products and to communicate results.

***One of the recommendations of the European Commission working group on Life Cycle Costs in Construction is to carry out LCC at early design stage, where the opportunities for modifying the costs of a project are greatest.***

There are many external factors that can affect enormously the outcomes of an LCC analysis:

- ✓ market price variability of products and services;
- ✓ electricity, water and gas prices;
- ✓ taxes, subsidies and incentives;
- ✓ inflation, discount rate and other economic elements;
- ✓ waste disposal regulations.

Thus, the final result of an LCC can be highly dependent on these external factors, which usually are not related at all with the environmental quality of the product or service analyzed. The conclusions highlighted that the final costs (and thus the LCC results) depends highly on the tax policy of the different Member States.

LCC analysis would be then just one piece of a wider number of elements to take into account when preparing and evaluating a public procurement process. Environmental impacts, as well as social conditions or innovation could be other additional issues to take into account in the procurement process.

### Variants

Public buyers may allow tenders with variants: one or more alternative solutions usually based on alternative technologies or processes, can accompany the offer that closely matches the technical specifications. Suppliers can propose, alongside a traditional “safe” solution, a more innovative solution (EU Directive 2014/24, Art. 45; EU Directive 2014/25, Art. 64). This may attract the attention of public buyers because of the potential for better-than-expected results in terms of cost, quality or flexibility. Public buyers may even require the submission of variants only (complying with the minimum requirements).

The use of variants is most efficient when combined with functional requirements and award criteria that enable to compare various solutions in terms of their performance, efficiency, cost effectiveness, versatility or durability. Without these parameters, it is difficult to compare the variants.

Only variants that meet the minimum requirements set by the contracting authorities are accepted for consideration (art. 53, para 4 PPA).

## Phase 8 Contract performance terms and conditions



### Legal background

***EU Directive 2014/24, Art. 70-73***

***EU Directive 2014/25, Art. 87-90***

Contract performance clauses are used to specify how a contract must be carried out. Environmental considerations can be included in contract performance clauses (EU Directive 2014/24, Art. 70; EU Directive 2014/25, Art. 87).

Compliance with contract clauses should be carefully monitored during the execution phase, with responsibility for compliance and reporting clearly indicated in the contract. In case of modification of the contract during its execution EU limits should be respected (EU Directive 2014/24, Art. 72; EU Directive 2014/25, Art. 89). In order to discourage breaches of environmental commitments, adequate sanctions should be provided under the contract (EU Directive 2014/24, Art. 73; EU Directive 2014/25, Art. 90).

In the performance of public contracts, contractors and their subcontractors shall comply with all applicable rules and requirements relating to environmental protection, social and labor law, applicable collective agreements and / or provisions of international environmental, social and labor law (art. 115 PPA). The following table shows sample texts for contract clauses related to environmental requirements.

**Table 4. Sample texts for contract clauses<sup>68</sup>**

| TYPE OF CONTRACT CLAUSE                     | SAMPLE TEXTS   |
|---|--|
| CLAUSES RELATED TO ENVIRONMENTAL PROTECTION | <ul style="list-style-type: none"> <li>• The Contractor shall undertake to monitor and control the level of emissions, surface discharges and runoffs from their activities in such a way that the values specified in the Contracting Authority's requirements or in the applicable legislation are not exceeded.</li> <li>• The Contractor should ensure the irrigation of all construction sites and proper cleaning of the additive material sites.</li> <li>• The Contractor shall be obliged not to allow the emissions, surface discharges and runoffs from their activities to exceed the values specified in the Contracting</li> </ul> |

<sup>68</sup> Practical handbook for awarding "green" public procurement, PPA; <https://www2.aop.bg/politiki-i-strategicheski-dokumenti/%D0%BF%D0%BE%D0%BB%D0%B8%D1%82%D0%B8%D0%BA%D0%B8-%D0%BD%D0%B0-%D0%B5%D1%81/zeleni-obshtestveni-porychki/>



|  |  |
|--|--|
|  | <p>Authority's requirements or in the applicable legislation.</p> <ul style="list-style-type: none"> <li>• The Contractor shall be obliged, at their own expense, to recultivate and/or restore in their original form all temporary roads and terrains used in the execution of the contract.</li> <li>• The Contractor shall be obliged to comply with the applicable legal provisions, including all prescriptions relating to the protection of the environment at the construction site and its adjacent sites.</li> </ul>  |
| CLAUSES RELATED TO WASTE GENERATION AND MANAGEMENT   | <ul style="list-style-type: none"> <li>• The Contractor shall be obliged to ensure the separate collection, storage, transportation and preparation for the utilization of the construction and other waste resulting from the activities carried out in accordance with the Construction Waste Management Plan and the requirements of the Bulgarian legislation, by coordinating their actions with the Contracting Authority.</li> <li>• The contractor is obliged, in agreement with the municipal authorities, to provide for his own account the environmentally sound disposal of such construction waste that cannot be reused, recycled or otherwise utilized. The disposal of construction waste shall be organized to a landfill designated for this purpose, which shall be specified by the Contracting Authority, in agreement with the municipal authorities</li> </ul> |
| CLAUSES RELATED TO RULES ON ENVIRONMENTAL PROTECTION | <p>The Contractor shall undertake to:</p> <ul style="list-style-type: none"> <li>• implement an internal waste management rules of procedure to regulate waste generation prevention measures and separate waste collection; or</li> <li>• present a waste management plan, which shall be an integral part of the contract. The plan shall contain information on what actions will be taken to reduce waste and how each of the categories of waste will be collected and managed. This shall include at least:</li> </ul>   |

|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>• The allocation of obligations;</li> <li>• The collection frequency; and</li> <li>• The method of landfilling/utilization/recycling/reuse of the waste.</li> </ul>   |
| CLAUSES RELATED TO TRANSPORT                      | The Contractor shall undertake, upon performing the public procurement contract, whenever the transported raw materials and/or waste allow that, to use transport vehicles which meet at least the EURO5 requirements for exhaust gas emissions.   |
| CLAUSES RELATED TO RESOURCE AND ENERGY EFFICIENCY | <ul style="list-style-type: none"> <li>• During the execution of the contract, the Contractor shall undertake to reduce the negative impact on the environment by making efforts to optimize water and energy consumption, as well as to minimize waste.</li> <li>• During the implementation of the activities, the Contractor shall undertake to take measures for: <ul style="list-style-type: none"> <li>• Energy efficiency;</li> <li>• Rational use of the raw materials, materials, natural resources and electricity.</li> </ul> </li> </ul> |

**Source: Practical handbook for awarding “green” public procurement, PPA**

## Chapter IV. CONCLUSIONS

The role of public procurement has already been recognized as an important aspect in the promotion of circular economy. Circularity principles can play a key role in procurement practices to help public sector buyers choose a more holistic approach to sustainability. A holistic approach would consider the whole life cycle of a product, from the early stages of the procurement process to the end of product life, while achieving potential savings.

Circular procurement can therefore be the instrument to leverage many of the pressing resource challenges facing growing cities today, including waste reduction and resource depletion, while simultaneously securing sustainable growth. City officials and policy makers have an important role to play in the transition to a circular economy. The public sector is uniquely placed in taking the required long-term perspective when setting ambitious goals and driving positive change, with city officials and policy makers positioned as key actors.

The main prescriptions to the public sector regarding the proper execution of circular public procurements can be structured as follows:

- ✓ market engagement to ensure transparency and the confidence of suppliers, and to understand the potential challenges of certain solutions;
- ✓ identification of priorities and principles to be clarified at the beginning of the procurement;
- ✓ engagement of technical and environmental experts for identifying the right approach and choosing the right solutions;
- ✓ subdivision of the tender into the lots to promote accessibility to small and medium-sized enterprises sometimes can be tricky and have an opposite result;
- ✓ structuring the public procurement based on the needs and maturity of the sector;