

Regional guidebook on circular procurement



ESTONIA

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Introduction

This guidebook aims to raise the awareness of the regional stakeholders on the emerging needs of circular procurement application, recent trends and developments. It will do so by analysing the obstacles that procurers face while implementing the actual circular procurement in their entities and providing tools and suggestions on implementing the circular procurement effectively and efficiently in the future.

This guidebook is developed within the frame of the CircPro project. The project CircPro (Smart Circular Procurement)¹ aims to promote the transition to a circular economy related to national and regional decision-making by increasing the implementation of 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 circular procurement are general lack of knowledge and expertise, procedural and legal barriers, and procurers' preconceptions about using and lack of recycled materials. CircPro tackles the challenge of analysing whether circular economy (CE) principles and circular procurement (CP) criteria could be included in the regional policy instruments as a general principle or an award criterion to encourage applicants to implement CPs systematically.

The project also focuses on exchanging experiences within and between regions by allowing interaction of the key stakeholders (procurers, suppliers, academia, decision-makers and other valid parties) in regional stakeholders groups and organising international stakeholder meetings to foster interregional learning.

One of the main project outputs of the project is the development of 10 Regional Guidebooks, including region-specific overviews and supporting material for the regional decision-makers, procurers and suppliers on circular procurement procedures and practices. These 10 Regional Guidebooks are provided in the national languages to create the basis for its further CircPro activities implementation and incorporate the strategic level to establish practice and policies of municipalities and towns' procurement processes.

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

1. Circular Procurement as an Emerging Concept in EU

1.1. Circular Economy concept and political framework in EU

We see that the current linear "take-make-dispose" economic system, based on limitless economic growth and requiring large quantities of natural resources, fails both people and our environment. As a result of the current system, we have been depleting our planet's natural resources which will only increase with the growth of global population if we continue business as usual. In 2011 the EU Commission², acknowledged that the pressures on resources were increasing and that continuing with the usual patterns of resource use was not an option. As a result, the EU Commission started emphasising the need to develop new products and services and find new ways to reduce inputs, minimise waste, improve management of resource stocks, change consumption patterns, optimise production processes, management, and business methods and improve logistics.

Circular economy represents a transformative trajectory that follows three principles: design out waste and pollution, keep products and materials in use and regenerate natural systems³. Transition from linear to circular economy requires full systematic change throughout value chains and innovation in technologies and organisation, society, finance trends, and policies.

In the Seventh Environment Action Program (7th EAP)⁴ it was acknowledged that whereas economies have developed a take-make-consume and dispose pattern of growth - that is a linear model based on the assumption that resources are abundant, available, easy to source and cheap to dispose of - moving towards a more circular economy was deemed essential to deliver the resource efficiency agenda established under the Europe 2020 Strategy for smart, sustainable and inclusive growth. This vision was consolidated in 2015⁵ with the aim to set the conditions for closing the loop and make residuals not discharged into the environment but reused in the economy or used to produce secondary raw materials.

² COM(2011)21 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, A resource-efficient Europe – Flagship initiative under the Europe 2020 Strategy, 26 January 2011.

³ For further details see <https://www.ellenmacarthurfoundation.org/circular-economy/concept>

⁴ Decision No. 1386/2013/EU of the European Parliament and of the Council of November 2013 on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet".

⁵ COM(2015)614 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Closing the loop – An EU action plan for the Circular Economy 2 December 2015.

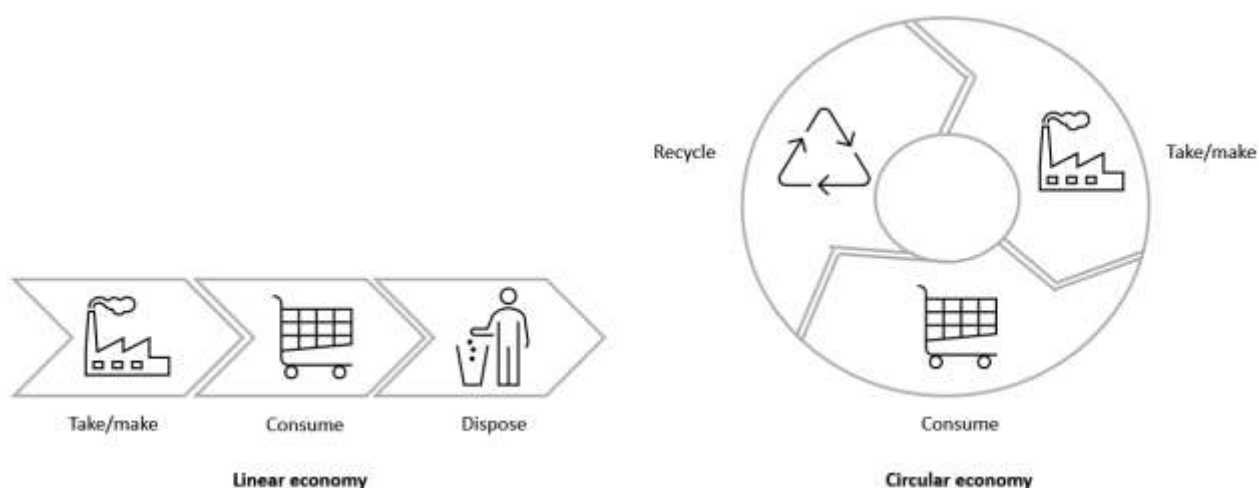


Figure 1. Linear and circular economy.

In December 2019 the EU Commission presented the European Green Deal⁶, a roadmap for making the EU's economy sustainable by turning climate and environmental challenges into opportunities across all policy areas and making the transition just and inclusive for all. The European Green Deal covers all sectors of the economy, notably transport, energy, agriculture, buildings, and industries such as steel, cement, ICT, textiles and chemicals. The European Green Deal provides a roadmap with actions to boost the efficient use of resources by moving to a clean, circular economy, stopping climate change, revert biodiversity loss, and cut pollution. It outlines investments needed and financing tools available and explains how to ensure a just and inclusive transition.

In March 2020 the European Commission released a new Circular Economic Action Plan⁷, one of the main blocks of the European Green Deal⁷. According to the new Action Plan as of 2021 the European Commission plans to propose minimum mandatory green public procurement (GPP) criteria and phase in compulsory reporting to monitor the uptake of GPP.

1.2. The role of public procurement in EU circular economy transition

Public procurement is no longer recognised as a mere administrative procedure to purchase goods, services or work, but rather as a tool for achieving

⁶ COM(2019) 640 final, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, 11 December 2019.

⁷ On December 2019 the EU Commission presented the European Green Deal - a roadmap for making the EU's economy sustainable and boost the efficient use of resources by moving to a clean, circular economy: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

strategic goals. Every year public authorities spend around 14% of GDP on the purchase of services, works and goods and in many sectors public authorities are the principal purchasers. As such public procurers can truly be a role model and drive transition to circular economy. Therefore, procurement could be a powerful tool for spending public money efficiently, sustainably, and strategically and serve as a catalyst for developing a more circular economic system. Moreover, the Public Procurement Directives provide for strategic procurement possibilities, that nonetheless, despite their potential benefits, are not sufficiently used at the moment.

The objective of Circular Public Procurement is to greening public procurement in accordance with the principles of circular economy through the role of public authorities by promoting the purchase of goods, works and services that:

- Have a reduced environmental impact;
- Contribute to create closed material and energy loops within supply chains;
- Minimise or avoid negative environmental impacts and waste creation throughout the whole life-cycle;
- Promoting the replacement of products by services⁸.

Starting from systematic implementation of minimum mandatory GPP/CPP green procurement criteria, the application of circular approaches to public procurement could really lead to considerable results not only in terms of reduced environmental impacts by increasing demand for more resource efficient services and products, but also in terms of effectiveness and efficiency of public spending.

So far, the relevance of circular economy and the strategic use of public procurement was resumed in 2017 EU Public Procurement Strategy⁹. To implement the circular economy action plan, in January 2018 was adopted the latest set of measures at European level, including: a Europe-wide EU strategy for plastics in the circular economy and annex to transform the way plastics and plastics products are designed, produced, used and recycled¹⁰; a Communication on options to address the interface between chemical, product and waste legislation that assesses how the rules on waste, products and chemicals relate to each other¹¹; a monitoring framework on progress towards

⁸<https://www.circular-europe-network.eu/library/thematic-guidance-material/roadmap-circular-public-procurement/#1524821004181-d984db0a-b554>

⁹ EU Commission, Making Public Procurement work in and for Europe, 3rd October 2017.

¹⁰ COM(2018) 28 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy.

¹¹ COM(2018) 32, Communication on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation.

a circular economy¹²; a report on critical raw materials and the circular economy. In addition to that, the European Commission adopted: a proposal for a Directive on the reduction of the impact of certain plastic products on the environment¹³; a proposal for a regulation setting minimum requirement to boost the efficient, safe and cost-effective reuse of water for irrigation¹⁴.

Considering that, the EU Commission strongly encourages demand-driven strategies and has already prepared specific guidance tools for procurers on circular procurement¹⁵. The vision is that, starting from systematic implementation of green procurement criteria, the application of circular approaches to public procurement could lead to considerable results in terms of reduced environmental impacts and effectiveness and efficiency of public spending.

2. Circular procurement

2.1. 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 public procurement, innovation procurement and circular 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.

Sustainable public procurement (SPP) is the broadest concept. It is a procurement "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 project¹⁶. Economic aspect (especially saving financial resources) is an important goal of all public procurement, but sustainable procurement also takes into account both environmental and social aspects. For example, the procurement of catering services aims to reduce the

¹² COM(2018) 29 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a monitoring framework for a circular economy.

¹³ COM(2018) 340 final, Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment.

¹⁴ COM(2018) 337 final, Proposal for a Regulation of the European Parliament and of the Council on minimum requirements for water reuse.

¹⁵ European Commission, Public Procurement for a Circular Economy – Good Practice and Guidance, 2017.

¹⁶ DG Environment (2020) Green and Sustainable Public Procurement https://ec.europa.eu/environment/gpp/versus_en.htm

environmental impact by asking for organic food and requiring waste (both packaging and food waste) prevention measures. In addition, the social criterion requires both fair trade food and the involvement of disabled and / or unemployed people.

Green public procurement (GPP) means that "public authorities seek to purchase goods, services and works with a reduced environmental impact throughout their life-cycle compared to goods, services and works with the same primary function which would otherwise be procured"¹⁷. GPP is part of sustainable procurement, which only covers environmental aspects, but not social and / or societal aspects and criteria.

Circular procurement (CP) can be defined as the process by which public authorities purchase works, goods or services that seek to contribute to closed energy and material loops within supply chains, whilst minimising, and in the best case avoiding, negative environmental impacts and waste creation across their entire life-cycle (Source: European Commission: Public Procurement for a Circular Economy, October 2017).

Circular public procurement initiatives can be seen as part of the green public procurement and/or sustainable procurement although having a clear focus on a procurement of goods, services and systems that lead to extended lifespans, value retention and/or remarkably improved and non-risky cycling of biological and technical materials, compared to other solutions for a similar purpose in the market¹⁸ (CIPRON, 2017: Circular Public Procurement in the Nordic Countries, Project Report, TemaNord 2017:512). As circular procurement is aimed at reducing environmental impact, all circular procurement is also green procurement, but not all green procurement is circular procurement. For example, those GPP which criteria are aimed at reducing noise or increasing biodiversity, are not directly circular. At the same time, it is difficult to draw a specific line, as different environmental criteria are often used in procurement. There is no clear definition of a circular procurement - whether one criterion is enough or whether a broader circular approach is needed in the procurement process. However, as circular procurement is often not only for purchasing products, but may affect the whole product/service system or supply chain, it can be aimed at procuring innovative solutions, making such processes innovation procurements.

Circular public procurement 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, the circular procurement can be seen as a strategic instrument that plays important role in the transition towards circular economy.

¹⁷ Ibid.

¹⁸ Alhola, K. and Salmenperä, H. 2019. Summary report work package 2.1 State-of-the-art on Circular Procurement Policy in the Baltic Sea region. CircularPP project; CIPRON, 2017: Circular Public Procurement in the Nordic Countries, Project Report, TemaNord 2017:512

Innovation procurement (IP) allows the purchase of innovative, new and emerging products (or sometimes services), especially in areas such as information technology, drones, medical products or military equipment. Innovation procurement can involve buying the process of innovation or buying the outcomes of innovation. Innovation procurement thus contributes to the design of new products. Innovation procurement may, but not always, overlap with circular, sustainable and green procurement. If the innovation achieved in the procurement helps reduce the environmental impact or is aimed at procuring circular products or services, it is also an (green)circular procurement. If additional social aspects have been taken into account in the procurement, then the procurement is already sustainable.

Figure 2 shows the links between sustainable, green, circular and innovative procurement. In conclusion, it can be argued that green procurement is often also defined as sustainable, but sustainable procurement is a slightly broader concept, including social aspects. However, circular procurement is again a slightly narrower concept than green procurement, focusing mainly on material and energy efficiency and waste prevention and reduction. If the product or service procured is clearly innovative, it is an innovation procurement that may or may not be sustainable, green and / or circular at the same time.

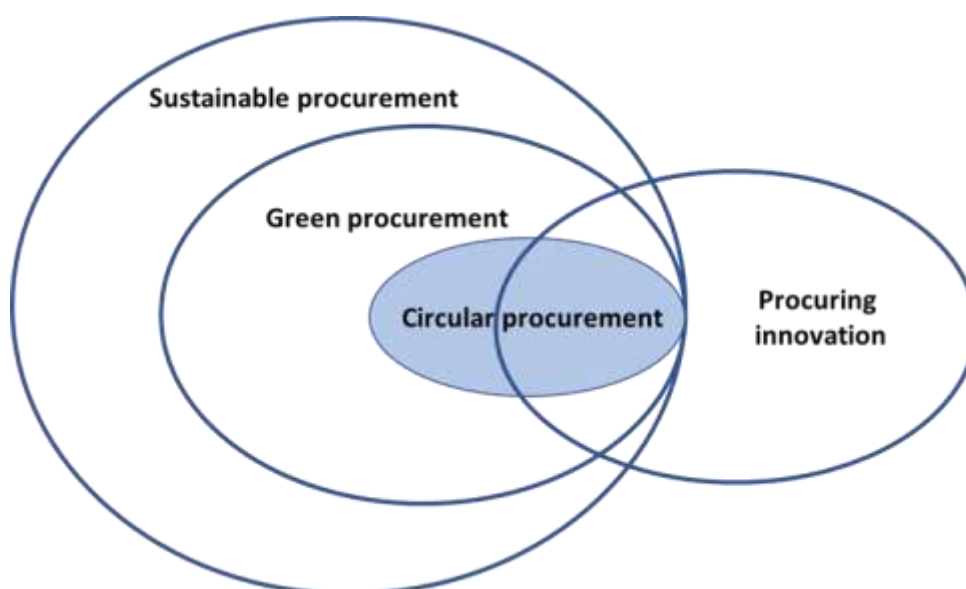


Figure 2. Linkages between different procurement concepts.

2.2. Approaches/categories of circular procurement

- Procurement of improved products by adding GPP based circular criteria (product level)
- Procurement of new circular products (supplier level)
- Procurement promoting circular systems (system level)

Circular public procurement has been realised in different forms and different sectors (e.g. construction, waste management, food and catering as well as certain product groups such as furniture textiles). 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 to the creation of circular ecosystems. The choice of the focus in the circular procurement depends on the procurement strategy, ambitions and priorities of the authority or public organisation. Therefore, it is important that public organisation has defined its strategic view and ambition concerning the circularity and how it can be integrated into existing procurement practices before it starts with circular procurements. The procurers should also understand the critical points within the procurement process and what influence the public authority would like to have on bidders. This helps define the procurement's scope and choice of the procurement approach they would like to follow (see also chapter 3).

The approaches to circular public procurement can be grouped/categorised as follows (based on CIPRON, 2017) (see also Table 1):

1. Procurement of improved products and services by adding GPP-based "circular criteria" (product level)

Circular procurement can be promoted by adding "circular criteria" (e.g., recyclability, use of recycled materials, reuse, etc.). This means buying circular 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 circular purchase.

2. Procurement of new and innovative products promoting circular economy-based business (supplier level)

Public procurement could provide conditions that stimulate innovative solutions/products and create new business models and markets for new products and services. This 'supplier level' approach gives the suppliers (producers/service providers) incentive to build circularity into their product development process to ensure the products and services they offer meet circular procurement criteria. Such products are usually remarkably better in terms of recyclability, recycled materials, disassembly, long lifespan, etc. 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, new business concepts and circular ecosystems (system level)*

This approach contributes to a more systemic change in order to obtain circular solutions and business models that replace existing ones or offer new market opportunities. It usually involves more performance-based procurement and procurement of services instead of products. Such procurements allow the producers/service providers to retain greater control over the items they produce/offer and the embodied energy and materials, thus enabling maintenance, reconditioning, and recovery. The procurers usually benefit from this type of procurements, as they only pay for the service they require and use, and often receive a better service as the producer/service provider has a greater interest in providing a product that lasts. Examples of such new business models are product-service systems, leasing concept, shared use, buy-per-use 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.

This approach could address also a wider change in the system focusing on the investments and creation of specific circular cooperation networks, industrial symbiosis schemes and other circular 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 or excess energy from one actor would be used as a raw material/input for another. Examples include buses using locally produced bioenergy, or construction sites that utilise waste material from other processes.

Table 1. Three approaches to circular public procurement

Procurement including GPP based "circular" criteria	Procurement of new "circular" products	Procurement of services, new business concepts and circular ecosystems
Better quality/circularity products	New products	Product service systems and circular ecosystems
Improved products and services are procured by adding GPP and circular criteria to the tender competition: <ul style="list-style-type: none"> • Prevention of waste • Recyclability 	New products are procured and/ or developed by innovative public procurement: <ul style="list-style-type: none"> • Products that are significantly better in terms of recyclability, share 	Product-service systems are procured, new business models and collaborative networks are developed that promote circular aspects or systems: <ul style="list-style-type: none"> • Combined product service business models • Leasing concepts

<ul style="list-style-type: none"> • Share of recycled materials • Reusability • Avoidance of certain hazardous chemicals 	<p>of recycled materials, long lifespan, disassembly, etc.</p>	<ul style="list-style-type: none"> • Renting • Shared use • Buy-per-use • Industrial symbiosis based collaborative networks
<p>Examples:</p> <ul style="list-style-type: none"> • Paper products (e.g. copying paper made from 100% recycled paper fibres) • Office IT equipment and other ICT devices (e.g. avoidance of hazardous substances, product life-time extensions) • Furniture (e.g. providing easy-to-disassemble, repairable and recyclable furniture) • Cleaning products and services (e.g. avoidance of hazardous substances) • Packaging (e.g. decrease the quantity of packaging) 	<p>Examples:</p> <ul style="list-style-type: none"> • Building components of recycled materials • Textile products made of recycled materials • Furniture (e.g. redesigned, reused, refurbished furniture and related services to prolong the life-time) • Building and construction (e.g. use of recycled asphalt, circular reconstruction of buildings) 	<p>Examples:</p> <ul style="list-style-type: none"> • Leasing furniture instead of buying it • Leasing football stadiums (artificial turf) instead of building and owning them • Additional services that enable the prolonged life-time of used products and services (take-back, maintenance, refurbishing, etc) • Construction projects with closed material loops • Locally managed and produced biomass based renewable energy production systems

3. Circular procurement system in EU and Estonia

The scope of this chapter is to set out the policy and regulatory framework for circular procurement in EU. As there is no specific act regulating circular procurement as such, circular procurement is regarded as part of green public procurement (GPP) as explained in the previous chapter. Therefore, the chapter covers the EU legal framework for GPP. In this sense, the chapter will provide a preliminary overview of the recent policy and regulatory developments for GPP to identify the existing instruments for implementing circular procurement, at first at the European level, then at the national and regional levels. This chapter will also give an overview of the GPP system in Estonia.

3.1. The EU legal framework

The main priorities of European Commission Communication "Making Public Procurement work in and for Europe" (COM (2017) 572, published on 3 Oct 2017) are among others are wider uptake of innovative, green and social procurement and professionalising public buyers. The Communication presents, the new rules that seek to ensure greater inclusion of common societal goals in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations.

The legislative framework for green public procurement is governed by two directives (Directive 2014/24/EU¹⁹ and Directive 2014/25/EU²⁰). Directive 2014/24/EU allows setting technical specification in public procurement with respect to life cycle of the requested works, supplies or services. Furthermore, it allows entities to award of the contract based on the most economically advantageous tender (on the basis of the price or cost, using a cost-effectiveness approach, e.g. life-cycle costing). It is clear that the lowest price is not necessary and the only criterion for awarding the contract (as is often the case in public administration). Environmental characteristics are legally anchored as one of the several options which are legally binding. Second mentioned directive (Directive 2014/25/EU) on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC is specific, focusing on selected entities. This directive also allows using technical specification with environmental specification, using labels and awarding public contracts on the basis of the most economically advantageous tender.

The EU green public procurement criteria for certain product groups have been created to help public procurers purchase goods, services, and works with reduced environmental impact. The criteria are formulated in such a way that they can, if deemed appropriate by the individual authority, be (partially or fully) integrated into the authority's tender documents with minimal editing. Before publishing a contract notice, contracting authorities are advised to check the available offer of the goods, services and works they plan to purchase on the market where they are operating. The criteria are split into exclusion grounds, selection criteria, technical specifications and labels, award criteria and contract performance terms and conditions.

There are two types of criteria:

- (i) core criteria — 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;

¹⁹ 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.

²⁰ 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 service sectors and repealing Directive 2004/17/EC.

- (ii) (ii) comprehensive criteria — which take into account more aspects or higher levels of environmental performance. Comprehensive criteria are meant for authorities that want to go further in supporting environmental and innovation goals²¹.

In addition to legal and regulatory acts, there are several supporting instruments, such as the new edition of the Buying Green! Handbook that has been specifically designed to explain how best to integrate environmental considerations into public procurement procedures²².

3.2. The Estonian green procurement system

Estonia is one of the few countries in EU that does not have any strategic document or national action plan for green public procurement. A Plan to Enhance Environmental Management for 2012-2020 was prepared in 2011 but was never officially adopted. That is why it was not fully implemented and the measures foreseen in this action plan were only partly executed. Currently a strategic document to promote circular economy in Estonia is under development. It is intended that circular procurement would be addressed in this strategic document as an important measure to achieve circular economy. The circular economy strategy for Estonia is planned to be adopted by 2021.

The legal basis for taking environmental aspects into account in public procurement is provided in the Public Procurement Act (hereinafter RHS). § 2 (2) of the RHS stipulates that green solutions are taken into account in the planning and organisation of public procurement. In addition, the RHS specifically mentions the possibility to take into account environmental aspects in the documents of public procurement, evaluation criteria and technical specifications. At present, the RHS does not introduce mandatory application of green criteria in procurement procedures. The exception is § 77 (6) of the RHS, which stipulates that if the subject of the procurement contract is a road vehicle, the procurement documents must contain conditions that take into account the energy and environmental impacts of the road vehicle. This stems from the requirements of the EU Directive 2009/33/EC (Directive on the Promotion of Clean and Energy Efficient Road Transport Vehicles). Green conditions can be used in all stages of public procurement - they can

²¹ 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.

²² The third edition of Buying Green! – A Handbook on green public procurement is available at the following link: http://ec.europa.eu/environment/gpp/buying_handbook_en.htm. The handbook includes: guidance on how environmental considerations can be included at each stage of the procurement process in the current EU legal framework; practical examples drawn from contracting authorities across EU Member States; sector specific GPP approaches for buildings, food and catering services, road transport vehicles and energy-using products.

be included in the qualification conditions, compliance conditions (incl. technical description of the subject of the contract), evaluation criteria and contract conditions.

There is no legal definition of GPP in the RHS regulation. The law does not define what constitutes green public procurement and there are no clear criteria for assessing the environmental aspects included in the procurement conditions. The contracting authority defines what it considers to be a green criterion and decides for itself whether to define the procurement as GPP. If a procurement includes green criteria, a procurer will make a corresponding entry in the public procurement register.

There is a plan to set mandatory green criteria for 4 product groups (office paper, cleaning products and services, furniture and office IT equipment). Currently the regulation to make GPP mandatory for these product group is under development. It has not been decided whether the GPP criteria will be set mandatory for all public sectors or only state authorities. In the future, there is a plan to widen the product categories with mandatory criteria beyond the initial four groups.

In Estonia, all procurements are 100% electronic and carried out via a procurement register operated by the Ministry of Finance.

3.2.1. Key stakeholders and their role in circular procurement

Ministry of Finance, the Public Procurement and State Aid Department is the main responsible body for public procurement in Estonia. Its main tasks are to:

- the develop the public procurement policy and legislation; and to collect, process and organise procurement related statistical data and exchange information with the European Commission;
- advise and train contracting authorities and tenderers on the interpretation of public procurement law and on public procurement and to publish up-to-date information on public procurement on its website;
- maintain a public procurement register as an electronic database, which also provides helpdesk services regarding procurement in general;
- systematically exercise public and administrative supervision over contracting authorities.

The Ministry of Finance also has a Public Procurement Appeals Committee (VAKO), which is organizationally and functionally independent out-of-court dispute resolution body. VAKO is responsible for reviewing the disputes and claims for damages related to procurement matters.

The Ministry of the Environment is responsible for developing and implementing the green public procurement policy in Estonia. The GPP policy also

covers circular procurement. Ministry of the Environment's task is also to create a support system for implementing GPP in Estonia. Ministry of Environment cooperates with the Ministry of the Finance to make changes in the procurement register that support the wider uptake of GPP.

3.2.2. Support measures for circular procurement

GPP is not a new concept among procurers anymore. Several projects have been carried out during the past 10 years to improve the understanding of the concept and the necessity of GPP. There have been several handbooks written during the projects in Estonia to build the capacity of procurers on how to carry out GPP. Important part of such capacity building is also to provide the guidance on how to carry out GPP in specific product groups. For that GPP criteria that can be used in the procurement documents are needed. Estonia has not developed its own GPP criteria but it uses the EU GPP criteria that are translated to Estonian and criteria for some product groups are further adapted to better fit to Estonian conditions. For four product groups the green criteria are built in the procurement register, where the criteria can be selected by from the drop-down list the procurer. If needed self-defined criteria can be inserted in the register during the procurement procedure.

The Ministry of the Finance carries out general procurement related training multiple times every year. These training sessions sometimes but not always include additional session on GPP. There has been also several GPP related trainings that have been organised within various projects over the years. According to the recent study on challenges and obstacles of GPP in Estonia, procurement officers no longer feel that they lack basic understanding of GPP. There have been enough training opportunities about GPP in general. However, there are lack of specific training where procurement officers get practical knowledge and guidance on how to carry out GPP in specific product groups.

There is no GPP platform or competence centre that would be responsible for systematic capacity building and providing necessary information related to GPP to the procurement officers in Estonia. On the webpage of the Ministry of the Environment there is a GPP information portal that was created more than ten years ago during a GPP related project. After that the portal has been amended with some minor updates but in general needs some major changes. It is also important that the portal be regularly updated with new information regarding GPP criteria, training, seminars, changes in legislation, and best practices. Estonia also lacks a helpdesk related to GPP. The procurement register has a helpdesk that gives advice on general procurement related questions but not specifically on GPP. Currently the questions related to GPP are directed to the Ministry of the Environment.

4. Guidance for systematic use of circular procurement

The following chapter will give a step-by-step guidance for the public buyers on how to carry out circular procurement. The guidance is based on Dutch Circular Procurement Guide (<https://wegwijzer.gdci.nl/en>), EU Directive 2014/24 and EU Directive 2014/25, and Public Procurement For A Circular Economy. Good practice and Guidance (https://ec.europa.eu/environment/gpp/pdf/CP_European_Commission_Brochure_webversion_small.pdf)

4.1. Strategic level (for organisation executives)

4.1.1. Identify ambitions and develop procurement policies for your organisation

Clear ambitions and well-defined policies of your organisation is an important precondition to make circular procurement successful. The ambitions can be set down in, for example, a sustainability policy/environmental policy, an action plan for socially responsible procurement/green public procurement or a strategy for circular procurement. Make sure that the ambitions are converted into organisational policy once they have been determined. Such strategic ambitions would provide the strategic direction and operational targets for incorporating circular economy into procurement. It is important to determine dedicated resources that are needed for the implementation of these ambitions. It is furthermore essential that the ambition of the strategy is adjusted to reflect available resources. In order to evaluate the progress of the implementation of the strategy or action plan, the regular monitoring is needed. This allows also making necessary readjustments.

Also ensure that your ambitions are in tune with your definition for circular economy. Substantiate this with national policies related to circular procurement and circular economy. This will also help you identify ambitions of your procurement project and select appropriate procurement approach (this depends on what do you intend to achieve with the procurement). That may also be a way to get started with circular procurement.

Determine the circular procurement ambitions of your organisation, in line with your definition of circular economy, and have them approved at executive level.

Circular economy and circularity are often used interchangeably but refer to a different level. Circular economy is focussed on the economic system as a whole: it involves high-value reuse of products, components, and materials,

it ensures that new products are non-toxic and makes use of renewable energy. In this way, products, components, and materials retain their value in closed cycles. Depending on the definition, circular economy may also include social aspects, such as employment. Circularity primarily concerns the high-value technical use and reuse of products, components and (raw) materials.

One of the first practical steps in this stage is to consider how CP can be integrated into the organisation's existing procurement practices and systems. Creating a circular procurement policy or incorporating circular economy principles into existing GPP or SPP policy can be an effective first step to ensuring it is visible as a priority, but it is not mandatory.

4.1.2. Develop/update procurement procedure

Circular procurement is more complicated procedure than a regular GPP. Therefore, it is important to develop a clear procurement procedure or integrated procedures to ensure the purchase of circular products and services. This document should determine the following information:

- How the circular procurement process should be carried out?
- Who are responsible for which action during the procurement?
- Who should be involved inside and outside of the organisation?
- Which product groups should be covered with circular procurement?
- Principles to select CP approaches in each procurement project (product, service, system and level).

The circular procurement procedure in the procedures should be in line with the strategy.

4.2. Operational level (for procurers) – procurement steps

4.2.1. Preparatory stage – defining the needs and getting to know the market

At the start of the procurement project, determine your organisation's deeper needs instead of the derived product request. The starting point is a clear definition of your own ambition for the procurement project. This also includes an assessment of your specific needs: what are you really hoping to achieve? For example, do you need new office chairs or good office chairs (that need not necessarily be new)? Or, do you need lamps or do you need lighting? Thinking in terms of the deeper needs of an organisation reveals more opportunities for circular solutions. The needs analysis also has to take into account what are the legal and administrative requirements.

The preparatory stage involves also considering the budget for the procurement. Challenges include extending circular thinking beyond a "financing option". It must be considered that the purchase price could be higher for circular options (products and services) compared to the alternative linear products and services but the life cycle costs (e.g. operational costs, end-of-life costs, etc.) are often lower. In addition, socio-economic gains from procurement decisions are often not sufficiently. Therefore, it is beneficial to take Life-Cycle Costing approach as part of your CP (see further in Step 6 Defining green/circular criteria).

During the needs analysis, procurers need to get to know the market (products, suppliers, manufacturers, service providers, price levels, etc.) to help them develop a greater understanding of what is already available and what is possible. This should follow the ambitions of the organisation.

This stage can help to:

- Gather information on how the particular market is structured and how it operates.
- Find out, which solutions are available.
- Increase your trust and credibility with suppliers and improving relationships with them.
- Create the market conditions needed to deliver the potential products and services.
- Help procurers to identify opportunities for sustainability and innovation.

In addition, this helps also to clarify your needs and circularity definition to market players. In this way, there can be no dispute about what is understood by 'circular'.

The needs analysis can also include a Life-Cycle Impact Mapping exercise to identify potential focus areas with regards to environmental and socio-economic risks and opportunities. A useful way to prioritise potential actions is by means of the 'Procurement Hierarchy', which is based on the European Waste Hierarchy: reduce, reuse, recycle and recover.

All this information is needed to identify the circular approach (product, supplier or system level, see more details of each level given in chapter 2).

Defining the appropriate circular approach will determine what procurement steps should be taken and where the CP criteria or considerations should be applied (Figure 3).

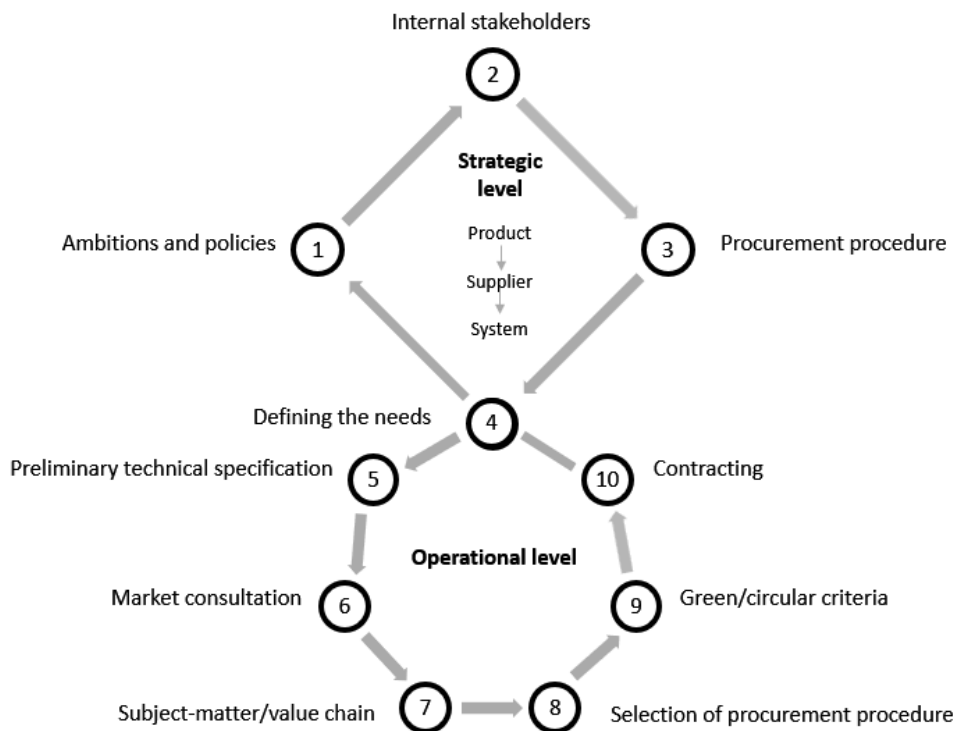


Figure 3. Step by step process of circular procurement of different CP approaches

Regardless of the chosen CP approach the procurement should start with the strategic decisions, that means an organisation needs to identify the strategic ambitions and develop organisational procurement policy. This should follow by development of the procurement procedure and common rules that is followed with each purchase. When the CP is done at the product level, the procedure starts with defining the subject matter and then follows the steps after that. In case of procuring at the supply or system level, all procurement steps should be taken, starting from the preparatory stage and finishing with the contracting.

4.2.2. Preliminary technical specification

The next step involves formulating preliminary technical specification of the procurement subject, which includes the general requirements for the procured product or service.

The organisations should identify whether a technical or a "functional" approach would be more appropriate for achieving a circular result. A lot of calls for proposal are mainly based on technical specifications with the client dictating the required product specifications. If you want to make your specifications more functional, you must begin by thoroughly exploring the deeper needs of your organisation. The use of functional specifications opens up opportunities to reach innovative and often more circular solutions. These

innovative solutions were not prescribed but they do better fit the client's needs. Functional specifications better fulfil the needs and at the same time allow you to take advantage of the market's knowledge and innovative potential.

For example, in your search for a healthy office environment you can either opt for a technical specification ("an office of 2,500 m² with measures X, Y and Z") or use a functional specification ("a healthy working environment for 500 employees"). Functional specifications allow contractors to include the most recent developments and use their own creativity to fulfil the client's needs. Functional (or 'output/ performance-based') criteria will describe the desired result and which outputs (for example, in terms of quality, quantity, and reliability) are expected.

Functional specifications are not always the best choice. When dealing with an immature market or a simple product, technical specifications with due regard for circularity may provide the necessary guidance for market players.

4.2.3. Market consultation and dialogue

In order to validate the ambitions, and preliminary specifications/requirements market consultation is crucial, especially if new and innovative circular products and services are procured. To keep the stakeholders involved in circular procurement transparency has a vital role. The success of any procurement exercise will ultimately be determined by how the market responds to the request.

Make sure you have clear objectives for your market consultation. Clearly communicate these objectives in the invitation. Because of the demands you make on market players, they need to be able to assess to what extent they will be able to contribute. Possible objectives of a market consultation could be:

- acquire information about opportunities in the market;
- evaluate the procurement strategy and ambitions;
- stimulate market players to team up; and,
- create external support for circular procurement.

Set up a market consultation in a way that ensures the information exchange works both ways. First of all, share your own ambitions with market players. This information is of interest to them as well. In addition, you should ask market players for information you need: what are the customary requirements in the market, what circular opportunities can be identified, how would parties like to be challenged? An open attitude allows you to make the most of these discussions. The insights you gain from this process can find their way into your definitive call for proposal.

Depending on your objectives there are various ways to perform a market consultation. Your choice should reflect the efforts that market players have to make, i.e. the consultation should be in proportion to the size of the contract. Essentially there are three types of market consultation:

- request for Information (RFI) - a digital request for information, for instance by means of a questionnaire via TenderNed;
- 1-on-1 discussions - individual discussions with market players; and,
- group survey - an open meeting where market players share their contributions and are able to engage in debate.

Choose the form that best fits your objectives, i.e. do you just want to gather information or do you also want to stimulate parties to team up?

Approach the market consultation with an open attitude that allows you to get the best possible results. Create a clear report of the market consultation and make this available in the public domain (in case of a public organisation) as an appendix to the tender documentation.

4.2.4. Subject matter/value chain

Based on the results of the previous steps the subject matter to be procured has to be defined or finalised. The 'subject-matter' of a contract is about what product, service or work you want to procure. This process of determination will generally result in a description of the product, service or work, but it can also take the form of a functional or performance-based definition (see section 4.2.2). Choice of subject-matter is particularly important because it determines the permissible scope of specifications and other criteria you may apply as well as circular procurement approach.

4.2.5. Selection of procurement procedure

When you have decided on your subject matter the procurement procedure can be chosen. Select the procedure on the basis of the value of the contract, the number of suppliers in the market and the extent to which you want to stimulate cooperation between parties. Public organisations must comply with regulations relating to public procurement procedures (private organisations have more freedom). However, a private party is free to apply public procurement principles when selecting parties.

There are a number of different tender procedures. Six commonly used procedures are:

1. **Restricted invitation to tender** - a procedure that consists of a single stage. Suitable for smaller contracts for which you can invite three to five parties. This procedure allows you to preselect several parties, for instance based on their previous experience with circular economy.

2. **Open procedure** - a procedure that consists of a single stage: an award stage. Suitable for tenders with either a small number of potential suppliers or a short lead time. Any operator may submit a tender.
3. **Restricted procedure** - a procedure that consists of two stages; first, a selection stage, and next, an award stage. This is suitable for tenders with a lot of potential suppliers. In the selection stage you make a selection based on your organisation's vision. The environmental technical capacity in a prior stage can be assessed and also limit the number of operators invited to tender.
4. **Competitive dialogue** - a restricted procedure with an added dialogue stage after the selection stage and before the award stage. The dialogue stage creates additional opportunities to add more depth to your project or ambitions. Procedure 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. 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 requested. Competitive dialogues may occur in successive stages to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice. Only in exceptional situations (e.g. where extreme urgency caused by unexpected events 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.
5. **Competitive negotiated procedure** - a restricted procedure where negotiations are started with the winning tenderer in order to arrive at an improved proposal. Public authorities can use the procedure for purchases requiring an adaptation of existing solutions, design or innovation, or certain other circumstances.
6. **Innovation partnership** - a procedure for a complex project where only one or a very limited number of parties has the expertise to respond to your request. So if a certain product or service is not currently available on the market the contracting authority could establish an 'innovation partnership'. Innovation partnership is a new type of public procurement procedure provided for in Directive 2014/24/EU. The innovation partnership process takes place in three phases:
 - a. The selection phase occurs at the very beginning of the procedure, when one or more of the most suitable partners are selected on the basis of their skills and abilities. The contracts establishing the innovation partnership are subsequently awarded based on the best price-quality ratio proposed. This phase is similar to a restricted procedure.
 - b. In the next phase, the partner(s) develop the new solution in collaboration with the public buyer. This research and development phase can be further divided into several stages designated for evaluating concepts, developing prototypes and/or testing performance. During each stage the number of partners may be reduced on the basis of predetermined criteria.
 - c. In the commercial phase, the partner(s) provide the final results.

The main feature of the innovative partnership is that the innovation occurs during the performance of the contract. In most other procedures, the public buyer already knows what type of solution it is buying: innovation occurs in the pre-contracting phase and usually ends with the conclusion of the contract when the exact features of the solution are agreed. In an innovation partnership, the public buyer is entering into a contract with the best potential supplier(s) of innovation. The supplier(s) is (are) expected to create the innovative solution and ensure its real-scale implementation for the public buyer. The public buyer's needs should be described with sufficient precision to allow potential tenderers to understand the nature and scope of the challenge and have sufficient information to decide whether or not to participate.

Including a dialogue in a tendering procedure enhances the understanding between client and market players. Dialogue can help the client assess market players' capabilities and may help market players understand the client's deeper needs.

Always try to establish interaction between the client and the market players, even for smaller procurement projects. If dialogue rounds are too burdensome or if it is not possible (in case of an open procedure) you should opt for a market consultation preceding the procurement process or an information session at the start of it. The mutual understanding thus gained will benefit the remainder of the procedure.

Some tips:

- Choose a procedure that is proportional to the size of the contract.
- Always make room for a dialogue with market players in order to get better acquainted with the parties involved and enable them to understand your ambitions.
- Prevent high transaction costs for market players due to a procedure that is needlessly intensive. Consider offering a fee for their efforts in case of large procurement projects.

4.2.6. Define green/circular criteria

Once the subject matter has been formulated and the procedure has been selected, you can formulate your criteria for circularity. However, you must make sure that your criteria have a clear focus: using too many different criteria makes it harder for parties to make a difference. The circular criteria can be formulated as selection criteria, minimum requirements and/or award criteria. Minimum requirements are set in the technical specifications and apply for the product/service, whereas award criteria are used during the evaluation of the bids. Selection criteria, however, are applied at the supplier level.

Determine what makes a particular party the best possible supplier for you (in case there is a selection stage) and what would be the best possible proposal for you. Use the outcomes to define your requirements and criteria for the selection stage (if there is one) and the award stage. Try to measure (quantitative) as well as evaluate (qualitative) circularity. There are several methodologies you can use to measure circularity.

Selection criteria

Selection criteria provide a degree of certainty that a particular supplier would be able to supply the requested product and/or services.

The selection of tenderers consists in assessing the tenderers on the basis of the exclusion grounds 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 sub-contractors. It is possible to exclude companies that have breached environmental law or have other severe defects in their environmental performance. However, they must also be given the opportunity to "self-clean" and cannot be excluded for more than three years on this basis. Violations of environmental law can also be used as grounds to refuse to award a contract to an operator, to reject an abnormally low tender, or to require replacement of a subcontractor.

Selection criteria may be used by a contracting authority to establish whether an economic operator is qualified to perform a specific contract:

- Personal situation of the economic operator (either mandatory or optional grounds for exclusion)
- Suitability to pursue the professional activity
- Economic and financial standing
- Technical and/or professional ability.

Minimum requirements and award criteria

A procurement process can include both minimum requirement in a technical specification and award criteria. A minimum requirement is a lower threshold that parties have to meet ('yes' or 'no'). A criterion allows parties to distinguish themselves (good-better-best) and give additional points to better solutions. Determine a clear evaluation methodology (benchmark) for each criterion.

It is important to define clear minimum requirements and award criteria to select the best supplier and the best proposal. In addition, you should take into account the following principles:

- Only set requirements that are indispensable to the performance of the contract and avoid disproportionate requirements that exclude innovative parties. For example, a requirement to include reference cases can be disproportionate if that would exclude new and innovative parties that do not have reference cases yet. So you need to be critical: is it really necessary to ask for reference cases? And if it is,

which specific aspects should be addressed in these cases? Limit yourself to these aspects.

- Determine the circularity of the proposal in a way that is appropriate for the requested product group. Find out what measuring methods are commonly used within that product group. Consider focusing on a limited number of products in the tender and asking the winning supplier to demonstrate the circularity of the remaining products.
- Make sure to define clearly targeted criteria (in the selection stage as well as the award stage). This will allow market players to distinguish themselves in areas that are important to your organisation. Using too many different criteria makes it harder for parties to make a difference.

The Table 2 below gives an overview of the objectives for the selection and award stages and examples of the corresponding requirements and criteria related to circular economy and circularity.

Table 2. Overview of possible requirements and criteria related to circularity. Source: Copper (2018), Circular Procurement Academy.

	Selection stage	Award stage
Purpose	Select <u>possible suppliers</u> that can carry out the project	Select the <u>best proposal</u> for the client's needs
Requirements (Yes/No)	<ul style="list-style-type: none"> • Technical competence • ... 	<i>Possible requirements are specific to products groups</i>
Criteria (Good-Better-Best)	<ul style="list-style-type: none"> • Vision on circular economy • Achievements regarding circular business operation • Vision on cooperation • ... 	<ul style="list-style-type: none"> • Circularity of a proposal • Action plan for circular achievements • Price (including maintenance and take-back) • ...

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. 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.

Life Cycle Costing

When focusing on resource efficiency, products tools like Total Cost of Ownership (TCO) or Life Cycle Costing become relevant.

Many different backgrounds and disciplines have been interested in calculating the optimal budget allocation by estimating the costs incurred during the

whole life cycle of a product, service, project, investment, etc. 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 design; Primary production; Manufacturing; Use; Disposal.

The awarding phase is not the only relevant moment for using LCC in the procurement. Analysing 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 purchased product's improvements compared 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 analysed. 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 just one piece of a wider number of elements to consider when preparing and evaluating a public procurement process. Environmental impacts and social conditions or innovation could be other additional issues to take into account in the procurement process.

Award criteria and price

An evaluation committee should evaluate tenders according to price (the tender with the lowest price is selected) or price and other criteria (the so-called most economically and advantageous tender (MEAT) is selected). The latter includes evaluating the price (using a cost-effectiveness approach, such as

life-cycle costing) and technical performance indicated in the contract notice with their relative weighting.

In the past, procurement projects often focussed on lowest price. In circular procurement, it is recommended to use MEAT in order to be able to prioritise circular aspects. Make sure you maintain the right price to quality ratio when you define your criteria. You should aim for a ratio of 10-30% price versus 70-90% quality. This allows market players to distinguish themselves in terms of quality, which includes circular ambitions. However, if the weighting shifts towards quality and circularity, there is a risk that the price will increase. It may help to delimit the scope for solutions with clear (financial) conditions to prevent this from happening. This means you could consider setting a ceiling price and maybe a floor price.

A ceiling price will ensure that the offers you receive are not too high. After all, proposals that exceed the ceiling price will be excluded from the award of the contract. A floor price could prevent price cutters from winning the contract: by offering a very low price, they hope to win the contract with a minimum quality score. Using a ceiling price and a floor price would prevent this.

An additional benefit of using ceiling and floor prices is that this allows you to measure the price performance on an absolute scale. A tender with the floor price gets a maximum score, while a tender with the ceiling price gets a minimum score, with the other prices on a linear scale between ceiling and floor. In this way, if price differences between tenderers are small, their price scores will not vary widely. However, setting a ceiling and/or a floor price would require you to conduct good market research prior to putting out the tender.

Some tips:

- Give sufficient weight to quality in the price to quality ratio.
- Use criteria relating to circularity in both the selection stage and the award stage.
- Make sure to define clearly targeted criteria to ensure market players can distinguish themselves.
- Use a measuring method that has been agreed with market players in that sector. Validate this with a market consultation.

4.2.7. Contracting

Once the project has been awarded, the agreements must be converted into a contract. This contract formalises the relationship that was initiated in the procurement project. Contract performance clauses are used to specify how a contract must be carried out. Environmental considerations can be included in contract performance clauses. In this stage, too, you must take mutual confidence and cooperation as your starting point. What do you need to agree on to guarantee the products' functionality and produce circular achievements?

Involve a legal expert early on in your procurement process. Share your ideas and ambitions underlying the procurement with this expert and the principles of cooperation you apply within the procurement project. Next, determine how to describe this concisely in a contract that is based on mutual confidence between parties.

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. In order to discourage breaches of environmental commitments, adequate sanctions should be provided under the contract.