Ethical Issues Within Public Sector Procurement

In 2009/10 a research project was carried out examining the barriers to ethical procurement within a public sector procurement environment.

The starting point of the research was to ascertain a definition for the concept of ethical procurement. For the purposes of the research, ethical issues were taken to be a subset of the social element of sustainable development.

The definition was developed through a research method known as a Delphi study, whereby a group of experts in this field were provided with alternative concepts of ethical procurement and in turn they provided feedback including additions, changes, etc on the concepts provided. The method requires that the group members are anonymous to the other members so as to remove bias or professional influence.

The group comprised of procurement experts in the UK and Europe; the latter were included European procurement experts as they also obviously have to work within the EU procurement directives.

The definition of ethical procurement achieved by this method is as follows:

Ethical procurement is procurement which ensures that suppliers, and the organisations in their supply chains, are monitored on a regular basis to assess whether workers’ rights and labour conditions conform to the International Labour Organisation core conventions, and taking remedial action to improve ethical working practices, where necessary. Ethical procurement should ensure that there is no disadvantage to those working, or living, on or near a supply (or production) site, and that the price paid for the product reflects a fair and equitable market value. In addition, and where appropriate, the principles of fair trade should be taken into account.

As can be seen, it is a comprehensive definition and includes key elements such as monitoring supplying chains, workers’ rights and conditions (evidenced by compliance with the ILO core conventions), remedial action, not disadvantaging those living near supply and/or production sites, and paying a fair price. The definition is not a final and definitive definition of ethical procurement, but provides a starting point for further discussion and refinement.

The main areas of ethical procurement relate to working and labour conditions (covered by the ILO core conventions), fair trade, and links to sustainable development. By reference to not disadvantaging those who live near supply or production sites it also acknowledges schemes such as FSC for timber products.

The EU procurement directive is explicit in allowing environmental considerations to be taken into account during the procurement process, and more importantly, allowing contractors to be selected against environmental criteria, within the technical specification (Recital 29), although environmental issues have to relate to the subject matter of the contract. However, social considerations are not afforded the same status. Recital 33 only allows for these to be taken into account in contract performance conditions, with the result that contractors cannot be selected against social criteria. In addition, if a public sector body is to rely on these performance conditions, then they must be referred to in the contract notice or in the specification. However, Recital 33 does explicitly allow compliance with the ILO conventions (core) within performance conditions.
**Barriers**

Having ascertained the definition for ethical procurement, the second part of the research was to examine the barriers to implementing ethical procurement, across a range of procurement professionals. Similar to ascertaining the definition, the procurers questioned were from both the UK and wider EU.

The key barrier for holding back including ethical issues within procurement is still cited as being the EU procurement directives. However, it is increasingly being felt that this is becoming more of an excuse, rather than a justifiable reason. It is felt that the risk of challenge is now greater due to the remedies directive which came into force at the end of 2009.

However, the increasing prevalence and demand for fair trade products within public sector procurement has possibly increased the visibility of ethical issues, with whole contracts for fair trade products being let, and/or individual lots for fair trade products within a wider contract.

It was also noted that where ethical requirements are included in contracts, in some instances the market cannot meet that requirement, and, accordingly an understanding of the supply market, and subsequent market management, is crucial in this regard.

A number of authorities include compliance with ILO core conventions within the contract performance clauses of their contracts (as allowed by recital 33 of the directives). However, it was stressed that unless compliance is monitored and remedial action taken, then it is unlikely that contractors will monitor their supply chains, and take the requisite action to remedy any breach. In addition, it was felt that the smaller suppliers try harder in this respect than the bigger organisations.

A significant barrier to including ethical issues is an understanding of what the issues are, why they should be included and their wider links to sustainable development. Procurement professionals, as expert as they are in assessing need, letting contract and managing contracts, do not always understand the contribution that procurement spend can have on a public body’s corporate, and wider sustainability, objectives. In addition, it is only very recently that training bodies, such as CIPS, have included sustainable procurement in their syllabus. In authorities with limited procurement resource it is often only because an procurement officer has a passion for ethical issues (and wider sustainability) that it becomes part of the process; it has not been previously identified as a key component of good procurement.

Increasingly the drive for cost savings and efficiency gains is impacting on the progress of ethical issues, as they are often perceived to be more expensive, and in some instances this is a real concern. For example Fairtrade cotton can have a price premium between 20-100% over conventional garments. However, there should be no price differential when requiring contractors to ensure that they, and their supply chain, comply with ILO core conventions.

The key area, currently, for examining ethical issues is workwear and uniforms, followed by catering (including vending services). However, there is greater scope for ethical issues to be considered in other contracts, particularly ICT ones both in manufacturing and supply, and recycling of obsolete equipment.

Like any other area of procurement, it was stressed by those authorities who successfully include ethical issues, that forward planning and allowing sufficient time
to assess what, and how, ethical issues should be included in a procurement is critical to the success of those contracts.

It is clear from EU/EC guidance that procurement should contribute to sustainable development priorities, but this guidance often conflicts with the EU procurement directive.

**Ethical procurement -v- socially responsible public procurement**

In October 2010, the European Commission finally brought out its guidance on social considerations in public sector procurement. The EC’s definition of socially responsible public procurement is wider than the issues covered by the research paper on ethical procurement, but they do form part of overall social responsibility concept.

This EC guidance also tackles the issue of environmental and social labels such as Fairtrade. The European Fair Trade Association has published their guide on specifically including Fair Trade within contracts.

Another European project that has tackled these issues is the RESPIRO project which was run by ICLEI and EUROCITIES in 2007 focusing on the textile and construction industries. The guidance can be found by following the link in the ‘useful links’ section.

**Useful links**

European Commission, 2009, Contribution to Sustainable Development: The Role of Fair Trade and non-governmental trade-related sustainability assurance schemes


ICLEI, EUROCITIES, 2007, RESPIRO guide on socially responsible procurement of textiles and clothing

OGC, 2010, Social Issues in Procurement

OGC, Guidance on Fair Trade and Public Procurement


European Fair Trade Association, Buying Fair Trade - European Model on Fair Trade Public Procurement

ILO core (fundamental) conventions