

Ecological Aspects under Swiss Public Procurement Law

Dr. Martin Beyeler, Attorney-at-law

Institute for Swiss and International Construction Law,
University of Fribourg / Switzerland

Schumacher Baur Hürlimann Attorneys, Zurich / Baden

Overview

1. Introduction

2. Legal Framework

3. Product Specifications

4. Conditions of Admission / Qualification Criteria

5. Award Criteria

6. Conclusions



Introduction

- Swiss Army Knives: Pragmatism
- Quite a long tradition of ecological policies
- The State as an Ethical Actor
- The Vietnamese Cobblestone Case



Legal Framework I

- Switzerland is not an EC memberstate
- Few Court Cases
- Transport distance and Exhaust Classes
- EC Case Law „à la carte“



Legal Framework II

- GPA III (National Treatment / Non-discrimination)
- GPA IV (Rules of Origin)
- GPA VI (Technical Specifications)
- GPA VIII (Qualification of Suppliers)
- GPA XIII (Awarding of Contracts)
- FPPA 21 (Award Criteria)



Product Specifications I

- GPA III, IV, VI
- Ecology of Products
- Ecology of Production Processes
- Ecology of the Supplier? → Qualification



Product Specifications II

- Ecology can be a Quality Characteristic of the Product
- Freedom of Definition vs. Non-discrimination:
 - a.) as long as there is enough (international) competition ...
 - b.) justified by public interests (public concerns)
 - c.) more market restriction requires more necessity
 - d.) equivalents must be admitted



Product Specifications III

- Examples
 - Procurement of Recycled Paper
 - Procurement of a „Minergie“-Standard building
 - Construction with FSC Certified Wood
 - Instructions about Utilisation of Demolition Waste
 - Transport Distance of Stones?
 - Architects Visiting the Construction Site by Public Transports?



Conditions of Admission and Qualification Criteria I

- GPA VIII: Non-discrimination and Essentiality
- No General Optimisation of Bidders, but
 - bidders must obey applicable law when performing
 - ecological qualification can be required if necessary (essential)
- Currently No Possibility to Sanction Past Environmental Law Infringements



Conditions of Admission and Qualification Criteria II

- Underwater Concrete Works:
requirement of similar reference objects that prove
necessary ecological skills allowed
- Ecology Certificates:
If essential for Good Performance
e.g. waste management on construction site



Award Criteria I

- GPA XIII / FPPA 21
- (Economically) Most Advantageous Tender:
pure cost efficiency or quality in a wide sense?

Step I: Life Cycle Costs / Durability

Step II: Measuring the Impact of the Product

Step III: Measuring the Production Process



Award Criteria II

- What is Allowed in Terms of Product Specifications is Even More Allowed Under Award Criteria
- No Measuring of Bidder's General Behaviour



Award Criteria III

- Criterion Pertinence and Weighing Relevancy
- Transport Type / Transport Distance
- Ecological Impacts of the Product
- Recyclability of Products
- „Grey Energy“ of Products



Conclusions

- Focus on Product and Performance
- General Rules Apply Perfectly on Ecological Issues
- Swiss Public Procurement Law is Not Limited to the Mere Economic Effectiveness, But Allows Quality Criteria in a Large Sense



The End

Thank you very much
for your attention!

martin.beyeler@sbh-law.ch

