

ecovadis

**Toward  
Sustainable  
Public Procurement**

A Best Practice Guide | January 2019





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The background of the page is a close-up, vertical view of a wood grain. The grain is light-colored, ranging from pale yellow to light brown, with distinct, wavy lines that curve from the top left towards the bottom right. The texture is natural and organic, with some darker spots and variations in tone that give it a sense of depth and history.

## Executive Summary

Public spending represents as much as 14 percent of the GDP in the European Union. This level of expenditure presents a great opportunity for cities, states and agencies: Through their procurement practices, they can deliver a major impact on sustainability performance across the world, helping drive innovation and accelerating the transition toward a green economy.

Unfortunately, it is not so easy for public buyers to embrace their duty of exemplarity and enact change, despite increased flexibility introduced by EU public procurement directives in 2014. They often go a long way to include social and environmental criteria in public contracts – but typically only those related to product functionality, rather than the practices of the suppliers behind those products.

But this is not enough. To make a real change, it is crucial to recognize the impact of the entire production cycle, not just product functionality, and look deeper into the supply chain to consider environmental, ethical and fair business practices. Moreover, they must have the ability to verify that contract provisions are respected, an impossible feat via contract clauses or supplier codes of conduct alone.

A “check the box” approach is insufficient and it is time to go beyond the status quo to adopt the innovative solutions to sustainable supply chain that are quickly becoming the norm in the private sector. To ensure that public funds are not financing environmental, social and ethical damages across the world, a robust verification system is needed.

A handful of public organizations across Europe have implemented such an approach and included CSR assessments in public procurement. This guide describes some of those stories, outlining practices that have been highly effective and entirely legal.

After 11 years of supporting sustainable procurement at the world’s largest organizations, EcoVadis has developed an expertise and CSR ratings solution – and it is also available to public procurement professionals. These guidelines synthesize our expertise and illustrate how sustainable procurement principles can be incorporated in the public sector.



# Introduction

## Contract Subject Matter: A Legal Challenge

The main obstacle that prevents public buyers from asking suppliers for a CSR assessment is the “link to the subject matter” principle, whereby all criteria in a tender must be related to the subject matter of the contract. Derived from the fundamental objective of maximizing value from public funds, the aim is to judge the offer that could best satisfy the collective need, and not any one preferred company. In particular, it obliges public buyers to prepare their tender case by case, rather than copying the same requirements and expectations from contract to contract.

Due to the obligation to stick to the subject matter of a contract, public buyers are constrained to limit their environmental and social requirements. The most common practice is to focus on a single topic, e.g., local economic benefits, gender discrimination, recruitment of the long-term unemployed, or to consider a broad scope of CSR issues but without asking for strong guarantees.

This approach has two limitations. Firstly, it is a matter of credibility. The practices of a supplier cannot be reduced to or verified by any one element. It would be shortsighted to ask a company to hire a certain number of long-term unemployed persons for a specific contract without paying attention to the way all employees at the organization are treated. Examining the general policies of a company, then, is the only way to attain credibility and consistency in the approach, and evade motivation by any one special topic or interest. Secondly, assessing the CSR management system at a higher level is the most efficient way to verify that the contract – at a lower level – will be performed in a sustainable way. Moreover, as a supplier’s own responsible procurement practices are assessed and verified, transparency and sustainability throughout the supply chain is enhanced and reputational risk is decreased.

Given the situation, it is ironic that strategic public procurement is actually at the top of the European Commission’s priorities. One goal of the 2014 directives was to facilitate the use of social and environmental criteria, and the references to sustainability in these directives are numerous. Notably, the link to subject matter will now be interpreted regarding the entire life-cycle of the product supplied, However, the selection of suppliers based on their CSR policies is still impossible.

“ On the current objectives of the European Commission, there is what is called “strategic public procurement.” The idea is that the best value for public funds is actually to be used strategically to defend the environment, encourage innovation, improve social conditions and ensure business ethics.

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**Enrico Degiorgis**, European Commission, DG Environment

## Incorporating CSR in a Challenging Landscape: Three Approaches

Nevertheless, a handful of public organizations across Europe have been innovative and proven that including CSR assessments in public procurement is possible and can be accomplished within the confines of the law.

To encourage this further, this guide outlines the approaches that have been highly effective and entirely legal. It describes possible inclusion of CSR assessments at three stages: During RFP/RFI/tender preparation (Level 1), within the contract and during contract execution (Level 2) and within the tender, as an award criteria guiding offer selection (Level 3). These three levels of CSR assessment are complementary but are staged based on sustainability/CSR maturity necessary for their implementation and do not correspond to the order of a tender process.

When introducing CSR assessment, we recommend starting with RFP/RFI/tender preparation (Level 1), in order to prepare candidates for a request for an assessment at contract stage (Level 2). Once your network and marketplace are sufficiently mature, you can include CSR as part of the offer selection process (Level 3).

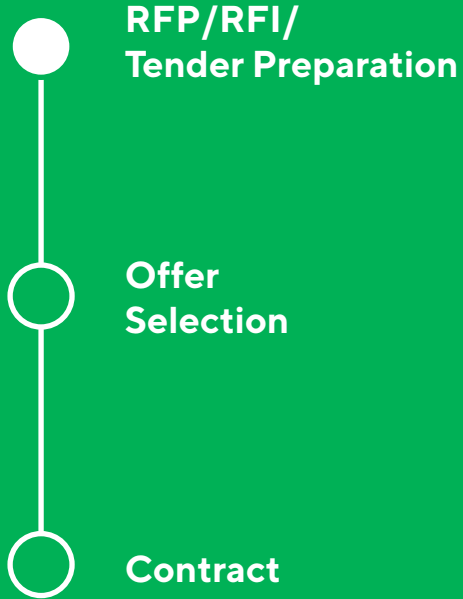






**Level 1**

# Sustainability Assessment During Tender Preparation



# Level 1: Sustainability Assessment During Tender Preparation

## Legal Framework

Articles 40 & 41 - 2014 EU Directives

### Transparency

According to the transparency principle, all useful information exchanged during preliminary discussions with one or more candidates must be communicated to all candidates.

### Preventing discrimination

Discussions with one or more candidates cannot put them at an advantage over any other candidates (e.g., by giving one or more candidates more time to prepare a tender over others).

## Opportunity

Engaging suppliers in CSR is a process. Taking time to conduct market research – or “sourcing” – increases the chances of a sustainable procurement initiative’s long-term success. The benefits are both for suppliers, in getting more time to prepare and satisfy needs, and for buyers, who can fine-tune their expectations to the realities of the market.

At the pre-tender stage, convincing suppliers to undergo a CSR assessment is a communication exercise: The buyers must be prepared to inform suppliers about their approach and be open to discussions with potential candidates. Suppliers that are already assessed or certified can willingly share their performance indicators to be used as a benchmark for next tenders.

“*At first, potential suppliers were a bit reluctant toward the inclusion of CSR assessments in public tender procedures. So we started a dialogue with suppliers to show them the value of CSR transparency in supply chains in terms of brand reputation efficiency, due diligence and value impact. Sure, it requires a real change of mindset. But at the end of the co-creation process, they were all in the game!*”

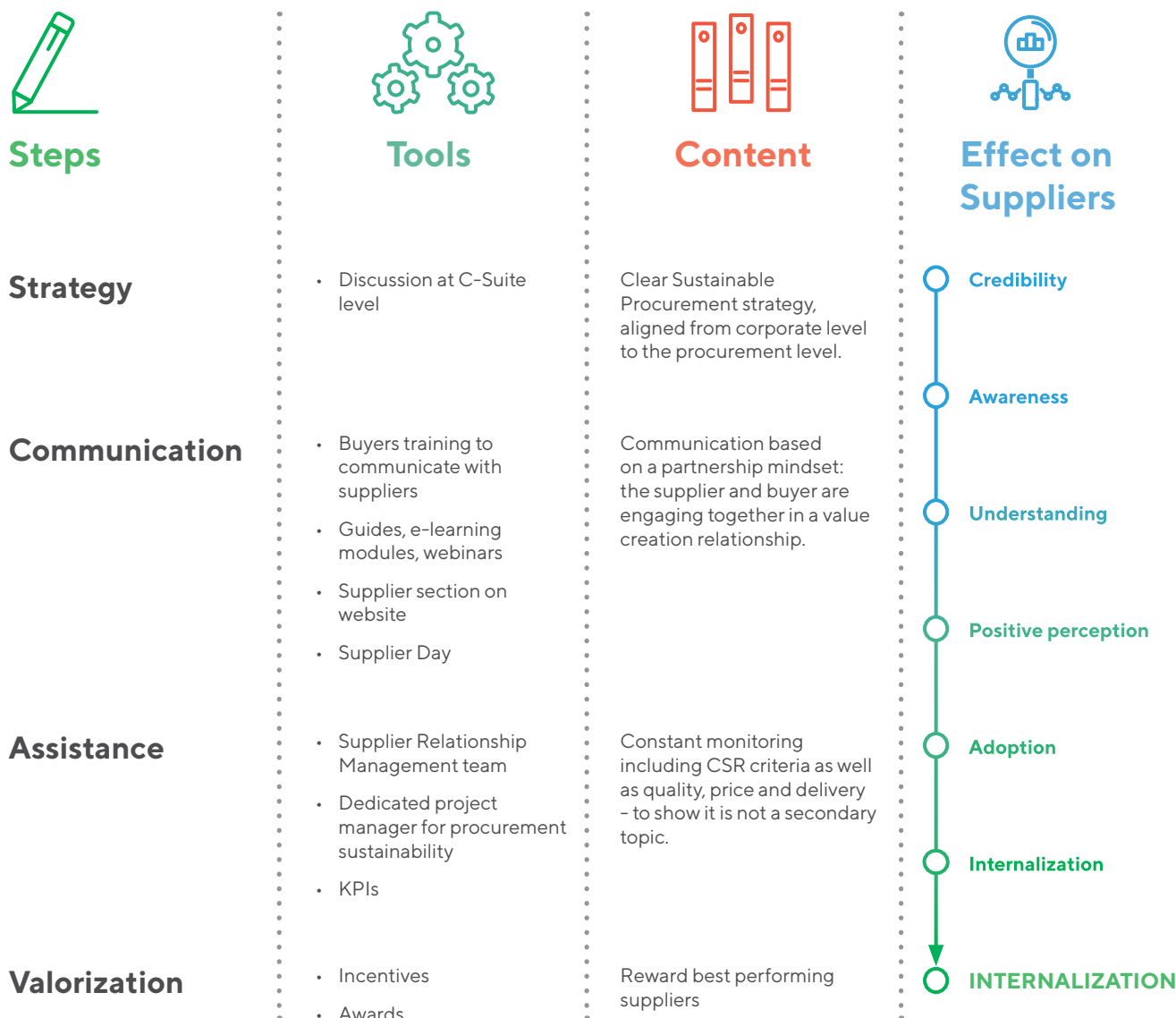
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**Mieke Peters**, Sustainable Procurement Consultant, The Global Pictures

## EcoVadis Testimony: Negotiating CSR Assessment With No Contractual Provisions

When most EcoVadis customers start assessing their suppliers, they do so without any contractual provisions. A major challenge they face is to convince suppliers to agree to

an assessment, despite the cost and time required. The biggest lesson they have learnt from this is to treat their suppliers like partners, and the CSR assessment as part of that partnership, rather than a burden or a constraint.



The first prerequisite is to have a clearly defined strategy, aligned from the top of the company down to the buyers. This clear strategy should be communicated to suppliers through as many means as possible. It is the responsibility of buyers to explain to suppliers the benefits of improving CSR performance. A CSR assessment should be seen as a win-win situation: The customer gets to identify the risks of its supply chain and the supplier can demonstrate its efforts or correct its weaknesses.

Once a supplier has accepted to engage, a regular dialogue is necessary to assist and stay engaged. Support is key to ensure the success of any initiative.

The final step in the supplier engagement phase is recognition, or rewarding suppliers for their CSR performance achievements. In the public sector, it is not possible to have a list of preferred suppliers, but bonuses are allowed. Ultimately, the best incentive for suppliers remains communication: Symbolic awards or press releases are differentiators that support their position with new and existing customers.



## Level 2

# Sustainability Assessment and Clauses at Contract Stage





## Level 2: Sustainability Assessment and Clauses at Contract Stage

### Legal Framework

Article 70 - 2014 Directives

#### **Link to the subject matter of a contract**

Contract performance conditions must relate to the product, work or services being supplied - or the subject matter of a contract. In other words, contract provisions can only cover the production or service methods applied for the specific contract. A strict interpretation of this principle would hold that a waste recycling policy requirement should only apply to waste caused from the specific products purchased, and not from other products of the supplier.

#### **Indication in the market documents**

Contract terms and conditions must be available from the beginning of a tender, for the sake of anticipation.

NB: The directive expressly mentions the possibility to take into account considerations related to economy, innovation, environment, social standards and employment.

### Opportunity

The performance stage of a contract offers more legal flexibility than a tender, since it is not about restricting access to a public contract but only about organizing its modalities. Just as one can define a time of delivery or ask for a quality test, one can also require that a contract be performed in a sustainable way. This means, for instance, that the environmental impact of production should be minimum and that it should contribute to improved social conditions – or at minimum not include any human rights violations in the supply chain (e.g., forced labor, child labor). To this end, requirements relating to the procurement process for goods associated with the subject matter production are indeed very important. Having obligations around subcontracting and the supply conditions of a supplier is the only way to address risks down the supply chain – where it is inevitably higher.

However, a contract clause alone is just empty words if it is not accompanied by an efficient verification scheme to check if its provisions are met. Aware of this need, the European Court of Justice has accepted the use of labels in its famous decision “Commission vs Netherlands” of May 10, 2012, on the condition that the label requirements are precisely defined. Following this decision, the 2014 directives have considerably facilitated the use of labels – especially eco-labels. Fair trade and ecological labels are proliferating, and they present the double advantage of saving time for public buyers and being reusable by suppliers.



“ Legally, any proof can be asked to demonstrate the respect of social and environmental criteria: labels, technical dossiers... as long as it is related to the subject-matter of the contract. Most of the time, buyers are content with self-declaration, but they need to truly know which demands are satisfied. With our label, they can obtain from a third-party the guarantee that the candidate has implemented a sustainable procurement process with a sustainability market study, CSR criteria in public tenders and follow-up of supplier’ CSR performance, which contributes to its due diligence.

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**Françoise Odolant**, Business Mediation, Supplier Relations & Responsible Purchasing Label

Nevertheless, a certification does not fully leverage the relationship that exists between buyers and suppliers. This commercial relationship offers a major opportunity to drive suppliers’ CSR performance improvement. Performance clauses are important tools that can drive a constructive approach. This is why the most evolved contract performance clauses are designed to include regular follow-ups, with corrective action plans, reassessments, and progress reporting. Alongside the execution of the contract, the supplier pursues an objective of progress, accompanied by a dialog with the public procurement client.

We have to note, however, that a CSR program takes a long time to implement and that progress takes time. This is why objectives should be set realistically, depending on the length of the contract. Indeed, long-term contracts offer the best opportunity for a constructive CSR approach.

## **FOCUS: Write a CSR Performance Clause**

CSR clauses, or clauses imposing social, environmental and ethical standards, have been used more and more often over the past years. CSR practices are diverse, depending on a company’s CSR vision, but the main components stay the same. Typically, a CSR clause is divided into four elements:

- ✓ Minimum standards that should be met during the execution of a contract;

Example: “Supplier is in compliance with all applicable state, national, and international laws, rules, and regulations relating to ethical and responsible standards of behavior, including, without limitation, those dealing with human rights, environmental protection, sustainable development, and bribery and corruption.”

- ✓ Obligation to transmit these standards to all involved subcontractors in the supply chain;

Example: “Supplier agrees to subscribe to principles consistent with the Supplier Code of Conduct attached to this Agreement and to seek comparable consistency within its own supply chain.”

- 
- ✓ Compliance checks that the supplier will have to undergo:

Level 1: Reports to provide regularly

Level 2: Evaluation by a third party

Level 3: Implement corrective action plans

Level 4: Regular assessments and defined obligation of progress

Example: “For the duration of the Agreement, the Supplier accepts an assessment of its CSR practices. If the result of the CSR assessment doesn’t reach requirements, the Supplier undertakes to implement measures, within a reasonable time and to be reassessed until it reaches the threshold mentioned above.”

- ✓ Possibility of sanctions: penalties, suspension, termination, etc.

“If the result of the CSR assessment doesn’t reach requirements, the Supplier undertakes to implement a corrective action plan. The Client reserves the right to terminate the Agreement in the event of a non-performance or a bad performance of the CAP, within the agreed deadlines.”

More information on CSR clauses check available in our study entitled [\*Sustainability Clauses in Commercial Contracts: The Key to Corporate Responsibility\*](#)

## A Case Study: Organization of Cities and Municipalities of Flanders

The Organization of Cities and Municipalities of Flanders has launched a pilot-project for textile purchasing. They include an evaluation requirement in their contract terms and conditions:

“By subscribing to this contract, the tenderer declares on the honor that he will ensure compliance with the following standards throughout the entire execution of the contract and throughout the entire supply chain:

**A. The five basic standards of the International Labour Organization (ILO): the ban on forced labor; the right to freedom of trade union; the right of organization and collective consultation; the prohibition on discrimination in employment and pay; respecting the minimum age for child labor, and the ban on the worst forms of child labor.**

**B. The fundamental human rights from the Universal Declaration of Human Rights (UDHR).**

**C. The International Convention of 20 November 1989 on the Rights of the Child, and in particular Article 32 on protection against child labor.**

**D. National legislation (in case of imposing higher or equivalent standards than the international standards described above).**

The contractor, its subcontractors and the suppliers must respect the laws of the countries in which their respective production facilities are located throughout the supply chain.

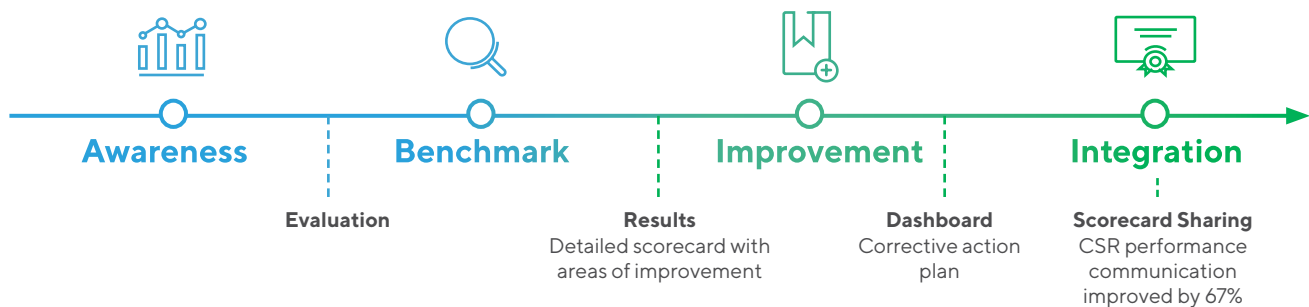




This concerns in particular the legislation on prevention and safety, legislation on working conditions, labor legislation, social legislation, legislation on social security and any national legislation regarding minimum wages.”

See the full case study on the Organization of Cities and Municipalities of Flanders in the Annex.

## EcoVadis Testimony: Progression of Suppliers



We have learnt over the years that the simple act of being assessed has a positive impact on supplier performance. An assessment raises awareness and forces one to consider: “If my customer asks for this, is it important?” Assessment results allow companies to understand their position in the market and, via corrective action plans, to improve their performance. From all suppliers evaluated by EcoVadis across the world, a majority of them understand the benefits of having a CSR program and become proactive, promoting their vision and, in turn, assessing their own suppliers.

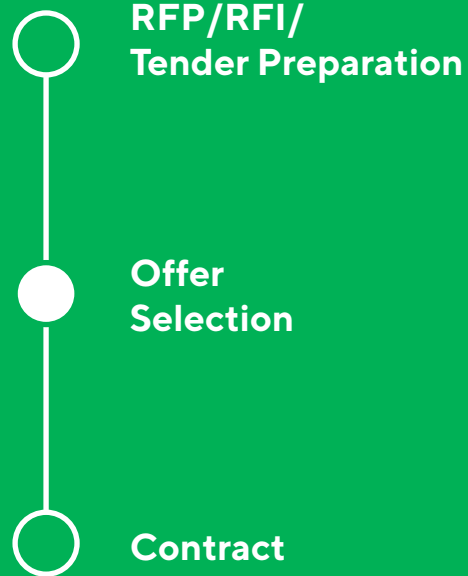
“EcoVadis harmonizes and simplifies the process of a holistic assessment. It takes into consideration the individual requirements of the industry and provides a realistic image regarding the sustainability management of the sectors’ suppliers. As a large enterprise, we regularly complete different questionnaires for each client and supplier individually. EcoVadis engages at this point and provides standards for all the important areas.

**Riccarda Körner**, EY, Corporate Sustainability & Responsibility Coordinator Germany



## Level 3

# Sustainability During Offer Selection



# Level 3: Sustainability During Offer Selection

## Legal Framework

Article 67 - 2014 Directives

### **Link to the subject matter of a contract**

Since 2014, the link to the subject matter can be interpreted broadly, since it can refer to the entire life-cycle of a product and not only the product itself. According to Article 2, "life-cycle" means all consecutive and/or interlinked stages, including research and development, production, trading, transport, use and maintenance, throughout the existence of the product or works or the provision of the service, from raw material acquisition or generation of resources to the disposal, clearance, and end of service or utilization.

### **Transparency**

Criteria must be sufficiently detailed so that candidates know concretely what information will be taken into account and to what extent.

### **Preventing discrimination**

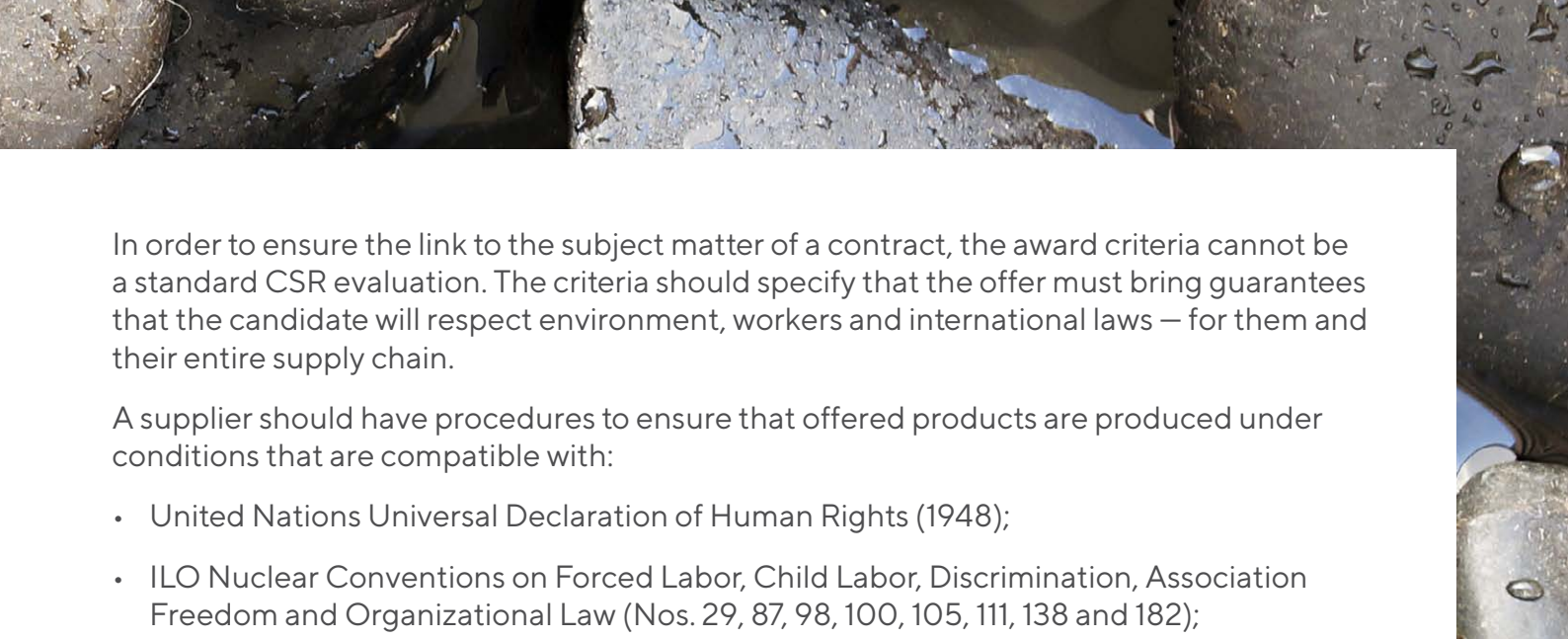
Criteria cannot have the effect of unreasonably restricting access to a public contract. All contracts are different, and this question must be answered on a case-by-case basis, taking into account the justification of criteria and their deterring effect on potential candidates.

NB: The directive expressly allows to include social and/or environmental criteria.

## Opportunity

Award criteria allow buyers to give credit to suppliers who are high CSR performers in a way that is proportionate to the object of the contract. Given that suppliers are already making efforts in the private sector, it is important that they are recognized for that. For buyers, selecting out of CSR-related criteria presents advantages in term of risk mitigation: The reputational and economic risks of a purchase are reduced if the social, environmental and responsible procurement practices of a supplier are verified.

It is recommended to articulate any CSR-related award criteria within the contract performance clauses whenever possible. Indeed, when performance conditions include social and environmental obligations, it supports the presence of CSR criteria at the award phase, since fulfillment of such criteria would demonstrate a capacity to meet performance requirements.



In order to ensure the link to the subject matter of a contract, the award criteria cannot be a standard CSR evaluation. The criteria should specify that the offer must bring guarantees that the candidate will respect environment, workers and international laws – for them and their entire supply chain.

A supplier should have procedures to ensure that offered products are produced under conditions that are compatible with:

- United Nations Universal Declaration of Human Rights (1948);
- ILO Nuclear Conventions on Forced Labor, Child Labor, Discrimination, Association Freedom and Organizational Law (Nos. 29, 87, 98, 100, 105, 111, 138 and 182);
- UN Convention on the Rights of the Child (Article 32);
- The occupational safety and occupational health and safety legislation in the country of manufacture labor law, including minimum wage legislation, and social security protection in the country of production environmental protection legislation in the country of manufacture;
- United Nations Declaration Against Corruption.

### **What kind of proof, then, should be required to establish a grade on such criteria?**

The advantage of a CSR rating is that it reliably indicates and benchmarks the CSR performance of a supplier via an independent third-party. Nevertheless, to ensure equal access to public tenders, candidates should have an option of proving via other means that they will execute a contract in a sustainable way, such as via the submission of a technical dossier.



	Technical Dossier and Internal Analysis	CSR Assessment by Independent Third-Party
<b>Reliability</b>	Lack of expertise	Acknowledged expertise and experience
<b>Cost</b>	Time and resources dedicated to analyze answers to a questionnaire or lengthy technical dossiers is often excessive regarding the price of the contract, and the result cannot be reused for other contracts.	The supplier, once evaluated, can share the results to all its customers, regardless of the contract. Thanks to this approach, based on resource-sharing, the cost of evaluation is reduced, for the buyer and the supplier.
<b>Proportionality</b>	CSR expectations can be too high compared to the resources and sector of the supplier.	Evaluations are most of the time adapted to sector and size of the supplier.
<b>Confidentiality</b>	Verification requires sometimes to ask confidential information (as the names of the suppliers) even if the outcome of the tender is still unknown.	Confidentiality of the documents provided by the candidate allow preservation of business confidentiality.
<b>Pedagogy</b>	The candidate does not receive any feedback on its CSR practices.	The candidate receives a result and a report which is the basis for improvement.
<b>Supply chain risk visibility</b>	The only solution is to demand in advance the list of subcontractors (which is complicated) or to require to transmit CSR obligations.	Allows to evaluate sustainable procurement management system practices and estimate the level of supply chain risk.

“ For the German Council for Sustainable Development and in its office’s daily business sustainable procurement is a question of credibility. We look for contractors not only with economic capacities, but who also perform sustainably with regards to their employees in terms of good working conditions, ecologic awareness and a clear commitment to sustainability. Therefore, we ask in our tenders whether and how an agent is committed to sustainability and accept references to sustainability reports, declarations of conformity to the Sustainability Code, membership in corresponding initiatives like Global Compact or equivalent. We consider this technically as criterion of acceptability of an agent and reward it with extra points. This is our hands-on contribution to evolve the competition recognizing sustainability efforts in public procurement.

Yvonne Zwick, Head of Sustainability Code Office, German Council for Sustainable Development

“ As regards the premium criterion relating to CSR ratings, it is necessary to read the information on the website [www.gare.rfi.it](http://www.gare.rfi.it), transparency and documentation channel, “RFI – Corporate Social Responsibility Assessment,” which also indicates the registration modalities for the EcoVadis platform. In this regard, it should be noted that the evaluation process will have a minimum duration of twenty-three days from the time of registration on the platform in question, so it is suggested that the registration procedure be activated in good time. In case of participation of multiple-subject competitors, the aforesaid assessment element must be owned by all the grouped entities and the Mandator’s rating will be used for the purpose of scoring the score.

Excerpt from Rete Ferroviaria Italiana tender documents

See the full case study on Rete Ferroviaria Italiana (an Italian public rail group) in the Annex.

## EcoVadis Testimony: A reliable and Transparent Methodology

 ENVIRONMENT	 SOCIAL	 ETHICS	 SUSTAINABLE PROCUREMENT
<p><b>Operations</b></p> <ul style="list-style-type: none"> <li>• Energy &amp; GHGs</li> <li>• Water</li> <li>• Biodiversity</li> <li>• Pollution</li> <li>• Materials &amp; Waste</li> </ul> <p><b>Products</b></p> <ul style="list-style-type: none"> <li>• Product Use</li> <li>• Product End of Life</li> <li>• Customer Safety</li> <li>• Advocacy</li> </ul>	<p><b>Human Resources</b></p> <ul style="list-style-type: none"> <li>• Employee Health &amp; Safety</li> <li>• Working Conditions</li> <li>• Social Dialogue</li> <li>• Career Management &amp; Training</li> </ul> <p><b>Human Rights</b></p> <ul style="list-style-type: none"> <li>• Child &amp; Forced Labor</li> <li>• Discrimination &amp; Harassment</li> <li>• External human rights issues</li> </ul>	<ul style="list-style-type: none"> <li>• Corruption &amp; Bribery</li> <li>• Anti-competitive Practices</li> <li>• Data Security</li> </ul>	<ul style="list-style-type: none"> <li>• Supplier Environmental Performance</li> <li>• Supplier Social Performance</li> </ul>

The EcoVadis assessment considers a range of CSR issues which are grouped into four themes. The methodology is based on international standards such as the Ten Principles of the UN Global Compact, the International Labour Organization (ILO) conventions, the Global Reporting Initiative (GRI)'s standards, the ISO 26000 standard, the CERES Roadmap, and the UN Guiding Principles on Business and Human Rights, also known as the Ruggie Framework.

Note that the environmental themes cover impacts on the whole life cycle of products: Impacts from production processes, product use and end-of-life. CSR issues in the supply chain are also integrated into the Reference Model to take into account issues that are not only generated by direct suppliers, but that can occur through Tier 2 or Tier 3 suppliers. The issues covered in each assessment are based on the relevance of the 21 CSR issues to the supplier context, such as industry, size and geography.

“ The new Italian Law on Public Procurement places Corporate Social Responsibility as important requirements to be asked in order to award a tender. Concretely, there are practical difficulties: How to analyse the CSR practices of a company and give a legitimate rating without having any expertise? How to conduct this analysis in a timely manner to meet the needs of an RFP?

*We decided to use EcoVadis monitoring platform because, thanks to their methodology, scores are comparable for large and small companies and across industry sectors. We worked hand-in-hand with EcoVadis to obtain ratings compatible with the time-period of our tenders, and now we fully manage the process.*

✓  
**Edgardo Greco**, Chief Governance Officer, Italian State Railways

## How Should CSR Award Criteria be Weighted?

How should CSR award criteria be weighted? This is an important and delicate question, which has to be addressed on a case-by-case basis and is about finding a balance between the link to the subject matter of the contract and the scope of the message addressed to candidates. A weighting that is too low (under 5 percent) gives the impression that these criteria are not strategic for the contracting authority and therefore candidates will not be encouraged to invest resources in this field. On the contrary, a weighting too high can be disproportionate regarding the subject matter of the contract. This question must be addressed case-by-case. For instance, for a supply of buses, the ECJ<sup>1</sup> ruled that a 45 percent criterion on the production of renewable energies made sense considering the object of the contract.

In order to ensure a reasonable weighting scheme, a good practice can be to divide the CSR criterion into several sub-criteria and to allocate weighting depending on the sector of the supplier. For instance, the environmental dimension should have more weight for a supply of fruit by a farmer than for consulting services.

<sup>1</sup> ECJ, Wienstrom case, 2003



# Levels of CSR Requirements Within Public Procurement

	<b>LEVEL 1 Preliminary Dialog</b>	<b>LEVEL 2 Performance Clauses</b>	<b>LEVEL 3 Award Criteria</b>
<b>Risk Prevention</b>	 <p>Communicating interest in CSR to the market should send a signal that improves performance and slightly decreases risk.</p>	 <p>Even if a contract is already awarded, assessment results can be used for corrective action plans to mitigate risks or – in case of a serious breach – to terminate a contract.</p>	 <p>Intervening before awarding a contract is the best way to prevent the reputational and economic risks linked to a supplier.</p>
<b>Supplier Support</b>	 <p>Discussions with suppliers help them understand the importance of CSR.</p>	 <p>Throughout the duration of the contract, the public entity can support the supplier, follow-up on corrective action plans, and set incentives to encourage good performance.</p>	 <p>If it is not completed by a contract performance clause, a CSR assessment at this stage will only be an analysis at instant T.</p>
<b>Legal Flexibility</b>	 <p>Discussions are carried out provided they do not put any suppliers at an advantage</p>	 <p>Since CSR assessment is not restricting access to the public tender, the legal flexibility is moderate.</p>	 <p>To ensure the link to the subject matter is retained, the CSR assessment cannot be a requirement in itself, but only a means of proof that the contract will be performed in a sustainable way.</p>

As this table shows, none of the three approaches alone has all the advantages. The optimal way to proceed would be to combine all of them. It is precisely this combination that will give consistency and legitimacy to a request for evaluation.





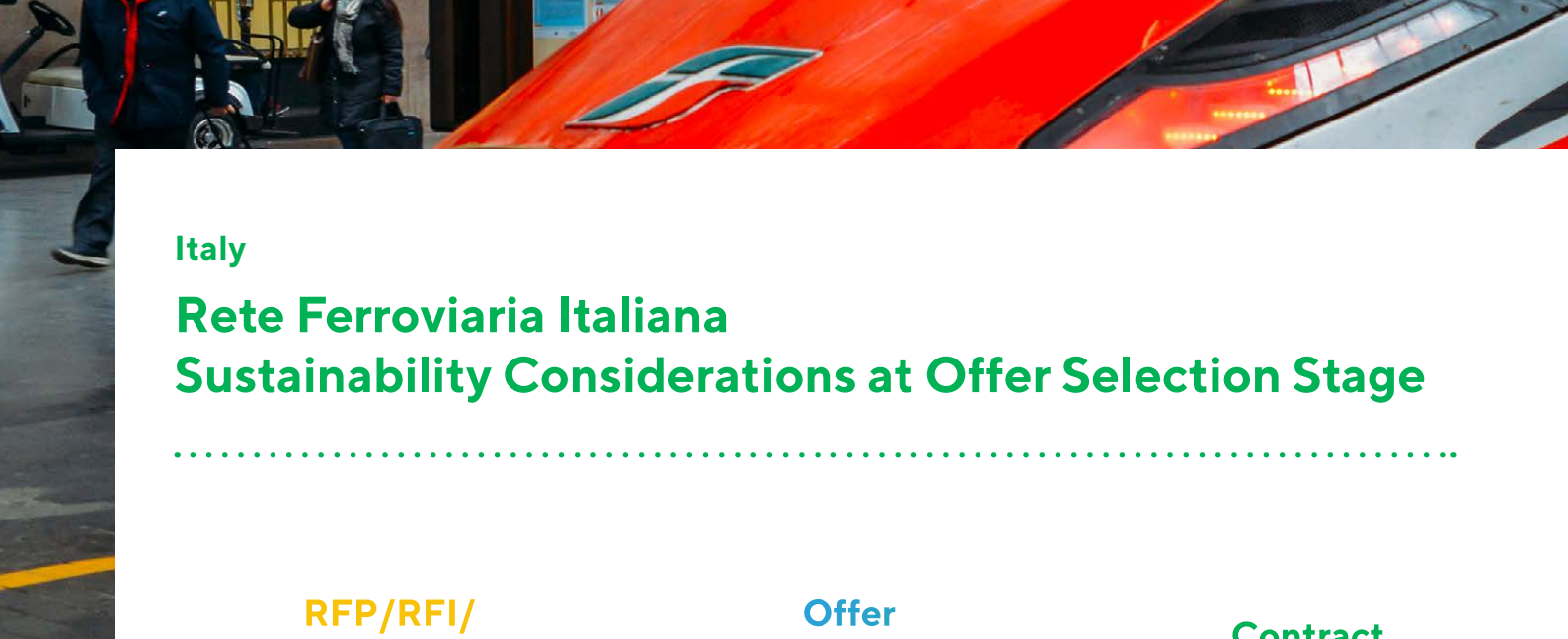
# Responsible Public Procurement Success Stories: An Annexe

Italy - **Rete Ferroviaria Italiana**  
Sustainability Considerations at Offer Selection  
Stage

Sweden - **The National Agency for Public  
Procurement**  
A Coordinated Follow-Up System

Belgium - **Organization of Cities and  
Municipalities of Flanders**  
Sustainability Consideration at Contract Stage

France - **Yvelines Department**  
Monitoring of the social integration criterion  
by a specialized agency



## Italy

# Rete Ferroviaria Italiana Sustainability Considerations at Offer Selection Stage

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## Background Information

Rete Ferroviaria Italiana (RFI) is the Infrastructure Management company of the Ferrovie dello Stato Italiane Group, Italian public rail. RFI is responsible for the management and safety of the rail traffic on the whole national network.

### Key Figures

- ✓ 16 788 km of railway lines
- ✓ 2 403 stations
- ✓ 30 000 employees

### Procurement Scope

- ✓ €8.4 billion total managed value
- ✓ 594 contracts / 331 public tenders
- ✓ 5.9% average savings

The RFI, like all public purchasers, particularly in Europe, has a dual challenge: It has an immense opportunity to make a huge impact and drive innovation and sustainability performance wherever they source – locally and across the globe. Yet, at the same time, it must manage compliance with European law, which has very specific constraints on how suppliers engage in tenders.

A new Italian Law on Public Procurement places sustainability as an important requirement in tender processes. This presents practical difficulties in how to measure CSR performance.

To meet the challenge of formalizing this process and complying with the new Italian law, the RFI adopted an external CSR reference into its tender process to monitor supplier compliance to CSR principles: Companies are invited to complete a CSR assessment through EcoVadis as part of the bidding process. As a result, all new tenders and engagements have CSR criteria via an EcoVadis assessment, included at the appropriate level.



## The Initiative

The FS Italiane Group has been involved for years in improving environmental and social performance in the management of its business.

Group companies have since 2013 been requested to integrate a clause into all new supplier contracts that addresses the group's Environmental Policy.

As the new Italian Law on Public Procurement came into effect, making sustainability an important requirement to be requested in order to award a tender, it presented challenges: How to analyze the CSR practices of a company and give a legitimate rating, but without having any internal expertise in the organization? How to conduct this analysis in a timely manner to meet the needs of an RFP?

RFI adapted bidding process by requiring that any supplier or contractors complete an EcoVadis assessment. The cost of the assessment is divided between the RFI and the companies.

Additionally, RFI has joined Railsponsible, an industry initiative focused on sustainable procurement and improving environmental and social practices among companies in the railways sector and supply chain.

## Sustainable Procurement Strategy

The RFI makes purchases according to EU directives, they select their suppliers based on the price, quality and other requirements needed by the group. In agreement with the EU directives, the location and nationality of the suppliers are not part of the selection criteria.

The group takes sustainable procurement very seriously and to strengthen its ability to identify and manage the impact linked to suppliers, the group has put together an assessment process for the supply chain using the EcoVadis platform: Any supplier or contractor is asked in the bidding process to complete an EcoVadis assessment. They must observe the following:

- The labor and social security laws with the application of collective employment contracts;
- The requirements on workplace safety and hygiene;
- The regulations contained in the "Group's Ethical Code."

## Benefits

- Purchases now meet regulatory and stakeholder demands;
- RFI has managed its risks, with 317 key suppliers evaluated so far, with 82% demonstrating engaged CSR performance management levels;
- Public perception surveys: 92 percent of customers are satisfied;
- The group continues to grow, and achieved a record net profit of Euro 772 million (up by 66.4%) in 2016.

“ The new Italian Law on Public Procurement places Corporate Social Responsibility as important requirements to be asked in order to award a tender. Concretely, there are practical difficulties: How to analyse the CSR practices of a company and give a legitimate rating without having any expertise? How to conduct this analysis in a timely manner to meet the needs of an RFP?

We decided to use EcoVadis monitoring platform because, thanks to their methodology, scores are comparable for large and small companies and across industry sectors. We worked hand-in-hand with EcoVadis to obtain ratings compatible with the time-period of our tenders, and now we fully manage the process.

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**Edgardo Greco**, Chief Governance Officer, Italian State Railways

## Additional Documents

[Ferrovie Dello Stato Italiane Sustainability Report 2017](#)



## Sweden

# The National Agency for Public Procurement A Coordinated Follow-Up System

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## Background Information

Sweden has for a long time boasted advanced sustainable procurement practices: Since 2008, country councils, regions and municipalities have been working through a procurement network to develop sustainable policies and have used a shared supplier code of conduct since 2010.

The National Agency for Public Procurement was created in 2015, while the 2017 procurement law stipulates that ILO core conventions must be included in public contracts whenever there is violation risk the supply chain.

The Swedish government has enacted a National Public Procurement Strategy for using tax assets in the best possible way.

## Monitoring Mechanism

### A Network of Public Authorities

The strength of the Swedish monitoring mechanism is guaranteed by its collaborative construction. It was built as part of a framework agreement with the SKL Kommentus, a procurement consultancy. All SKL members share the cost for the follow-up of social and environmental criteria.

The SKL adopts a global approach: two or three priority products are fixed per year, this focus allowing to go in-depth in the supply chain for few specific products.

The follow-up of the SKL includes three steps: a self-assessment, an office audit and a factory audit. First, a questionnaire must be completed by all suppliers. This questionnaire was designed by the CSR Kompassen. Depending on the results of the assessments and the risk analysis of the product, the supplier might be audited at its headquarters. Then, the final step would take place in the factory of the supplier, which is often located in foreign countries such as China, Thailand or India.

## Introducing a Sustainability Clause

The supplier shall have procedures to ensure that offered products are produced under conditions that are compatible with:

- The United Nations Universal Declaration of Human Rights (1948);
- ILO Nuclear Conventions on Forced Labor, Child Labor, Discrimination, Association Freedom and Organizational Law (Nos. 29, 87, 98, 100, 105, 111, 138 and 182);
- The United Nations Convention on the Rights of the Child (Article 32);
- The occupational safety and occupational health and safety legislation in the country of manufacture;
- Labor law, including minimum wage legislation, and social security protection in the country of production;
- Environmental protection legislation in the country of manufacture;
- United Nations Declaration Against Corruption.

In cases where there is a difference between national and international regulations, the highest standard applies.

The supplier is obliged to report upon request from the customer how these requirements are met by reporting according to the attached response form. The supplier is obliged to allow the buyer to carry out on-site inspections or on-site inspections by the supplier and / or any supplier's subcontractors to ensure that the requirements are met.

## More Information

[https://www.upphandlingsmyndigheten.se/globalassets/english/procurement/national\\_public\\_procurement\\_strategy\\_english\\_web.pdf](https://www.upphandlingsmyndigheten.se/globalassets/english/procurement/national_public_procurement_strategy_english_web.pdf)

<https://www.upphandlingsmyndigheten.se/hallbarhet/socialt-ansvarsfull-upphandling/arbetstagares-rattigheter/Socialt-ansvar-i-leverantorskedjan/>

<https://www.skllkommentus.se/om-oss/vi-tar-ansvar-for-hallbarhet/hallbarhetskollen>

<http://www.hallbarupphandling.se/>



## Belgium

# Organization of Cities and Municipalities of Flanders Sustainability Consideration at Contract Stage

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## Background Information

The Organization of Cities and Municipalities of Flanders' pilot project focuses on the textile sector, as part of the national strategy to ensure that ILO conventions are respected in supply chains. The textile sector has been identified as high risk with regard to human rights violation. A study of several contracting authorities showed that buyers tend to use self-declarations to check there are no such violations among their trading partners. Following discussions with key suppliers, a market study highlighted the general lack of transparency of supply chains in the textile sector. Social aspects have been neglected compared to environmental ones and very few buyers have procedures in place that address procurement in countries at risk.

## Monitoring Mechanism

### The Four-Level Toolbox

Two sustainable procurement agencies, Susteneto and the Global Pictures, had been given the task to write guidelines for public buyers who wish to increase transparency in their supply chains. They designed a "tool box" comprising criteria to insert in public contracts, organized into four maturity levels, from the most flexible to the most restrictive approach.

	<b>Objective</b>	<b>Means</b>
<b>Step 1 Engagement</b>	To raise awareness among tenderers and make them commit to respect standards during the contract.	<ul style="list-style-type: none"> <li>• Code of Conduct (based on international standards and ILO conventions)</li> <li>• Questionnaire on socially responsible chain management The answers to this questionnaire serve as a foundation for the discussions that will take place with the party carrying out the contract.</li> </ul>
<b>Step 2 Transparency</b>	Transparency in the suppliers' chain management.	Independent, third-party risk report or audit six months from the start of the contract.
<b>Step 3 Action</b>	Address the social risks that do not comply with the principles set out in the signed code of conduct by means of a corrective action plan (mandatory) and the continuous improvement of the social risks in the chain (desirable).	The purchaser must receive an annual action plan focused on non-compliance and/or continuous improvement of the social risks in the chain. This plan has to be drawn up based on the recommendations outlined in the risk and/or audit report verified by the independent third party. If the supplier must take corrective actions to comply with the contractual requirements, the action plan must be approved by the purchasing authority.
<b>Step 4 Leadership</b>	Award an incentive or otherwise demonstrate appreciation and recognition to suppliers who show a strong commitment and can be considered leading in their sector in terms of social sustainability in the chain.	After a reasonable period of time for the actions and within 12 months of the submission of the first risk report, the supplier must annually submit a risk report that has been verified by a new third party. This gives the purchaser insight into the proper implementation of corrective actions and compliance with the principles of the code of conduct. If a positive trend has been demonstrated, we can call it leadership in socially responsible chain management.

## The City of Ghent's Pilot Project

The above methodology was tested by the city of Ghent – one of the co-promoters of this project – when the authorities set out to purchase work uniforms and linen.

For this pilot, the subject-matter of the contract was the “supply of workwear and equipment produced in a socially responsible manner and delivered in a CO2-efficient way”. In order to push the experiment, the tender was divided into parts, one of which was selected to be the “sustainable part” as an experiment of the higher level of the toolbox “leadership.”

During the selection stage, all tenderers had to sign the code of conduct of the city of Ghent, derived from international labor and human rights standards. One of the city's objectives was to ensure workers are paid living wages. The candidates commit to be transparent on their management practices and to allow third-party assessments in case they are selected to perform the contract.

Following concerns expressed in the market survey, the city of Ghent decided to resort to a two-stage tender procedure. With the two-stage procedure, tenderers did not have to submit samples during the first stage, which was perceived as a deterrent. Only tenderers who had already demonstrated their commitment to social sustainability and sustainable transport were asked to submit samples, avoiding a waste of time and money.

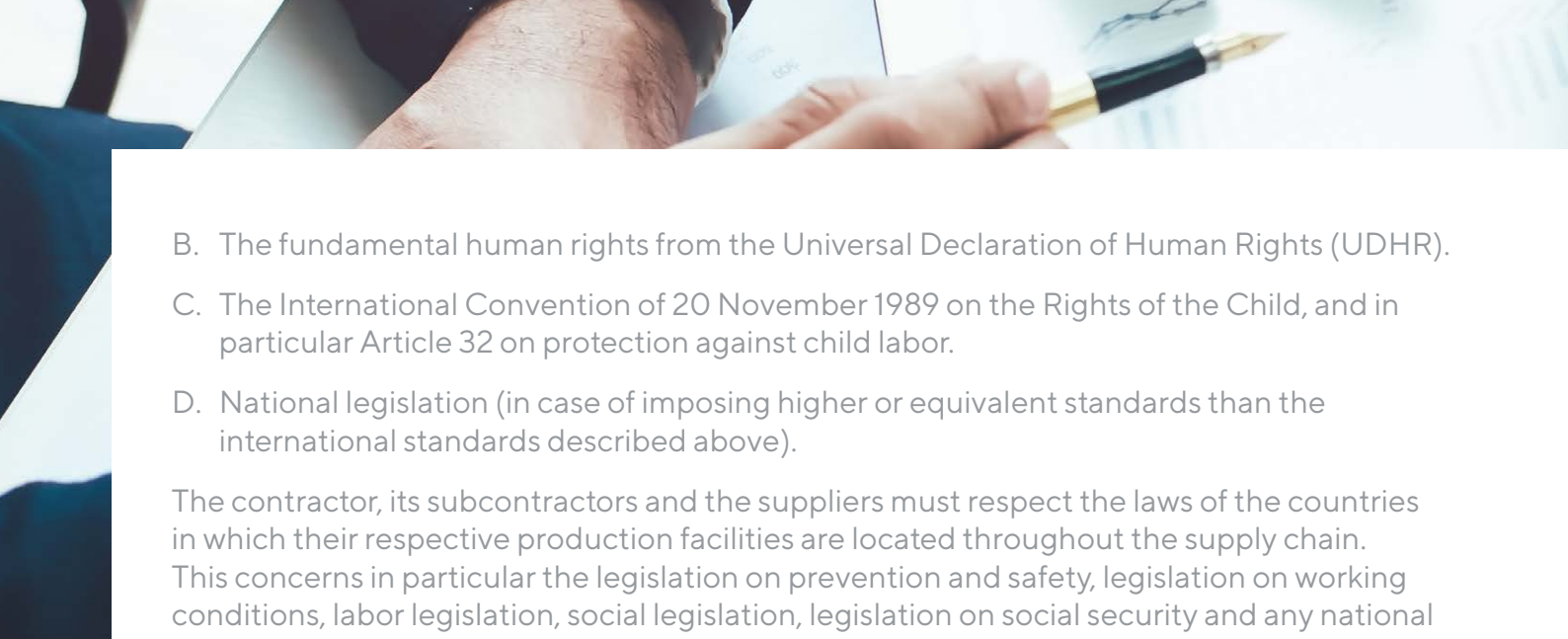
Once the contract was awarded, the selected supplier was obliged to submit proof of compliance with the City of Ghent's code of conduct in the form a third-party risk assessment, for instance EcoVadis Rating. There were no penalties resulting from the assessment; at that stage it was only used to identify improvement areas.

The second step defined in the contract performance clauses is the elaboration of a corrective action plan to remediate the risks identified through the evaluation. At this point, the supplier has an obligation of commitment, rather than an obligation of result: it has to take all the steps defined with the client in the corrective action plan, even if the results expected are not fulfilled. In case of breach of this obligation, the supplier can be sanctioned by the payment of penalties or even by the termination of the contract.

## Introducing a Sustainability Clause

“By subscribing to this contract, the tenderer declares on the honor that they will ensure compliance with the following standards throughout the entire execution of the contract and throughout the entire supply chain:

- A. The five basic standards of the International Labor Organization (ILO): the ban on forced labor (Convention No. 29 on forced or compulsory labor, 1930, and No. 105 on the abolition of forced labor, 1957); the right to freedom of trade union (Convention No 87 on freedom of establishment of trade unions and the protection of trade union law, 1948); the right of organization and collective consultation (convention no. 98 on the right of organization and collective bargaining, 1949); the prohibition on discrimination in employment and pay (Convention No. 100 on equal pay, 1951, and No. 111 on discrimination (occupation and occupation), 1958); respecting the minimum age for child labor (Convention No 138 on the minimum age, 1973), and the ban on the worst forms of child labor (Convention No 182 on the worst forms of child labor, 1999).

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- B. The fundamental human rights from the Universal Declaration of Human Rights (UDHR).
  - C. The International Convention of 20 November 1989 on the Rights of the Child, and in particular Article 32 on protection against child labor.
  - D. National legislation (in case of imposing higher or equivalent standards than the international standards described above).

The contractor, its subcontractors and the suppliers must respect the laws of the countries in which their respective production facilities are located throughout the supply chain. This concerns in particular the legislation on prevention and safety, legislation on working conditions, labor legislation, social legislation, legislation on social security and any national legislation regarding minimum wages.”

[\\*https://overheid.vlaanderen.be/ethische-clausule-iao-basisnormen](https://overheid.vlaanderen.be/ethische-clausule-iao-basisnormen)

## Success Factors

### ✓ Collaborate with suppliers

The City of Ghent has built its partnership with suppliers on discussions and collaboration, which are vital elements to ensure effective cooperation.

### ✓ A two-stage negotiation procedure

With the two-stage procedure, tenderers did not have to submit samples during the first stage of negotiations and, as a result, were more willing to participate in the tender.

### ✓ Start gradually

The varying maturity levels listed in the toolbox allow for more of a staged cooperation with suppliers. The contracting authority can start with the engagement step for a first trial and then progressively raise the level for the following tenders.

## Additional Information

Website: <https://gidsvoorduurzameaankopen.be/fr/etudes-projets/responsabilite-societale-2017> (French)

## France

# Yvelines Department Monitoring of the social integration criterion by a specialized agency

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## Background Information

In accordance with the law on the social and solidarity economy, the Yvelines Department (an administrative division in France) has adopted a scheme to promote responsible purchasing. One of the three objectives of the scheme is to involve those lacking who lack employment opportunities.

The objective of opting for a strategy focused on social inclusion was to promote the professional integration of those on state benefits, the long-term unemployed and young people. To this end, the Yvelines Council aims to make it compulsory for these people to be employed in half of its public contracts, thus making it possible bring many people back into the labor market.

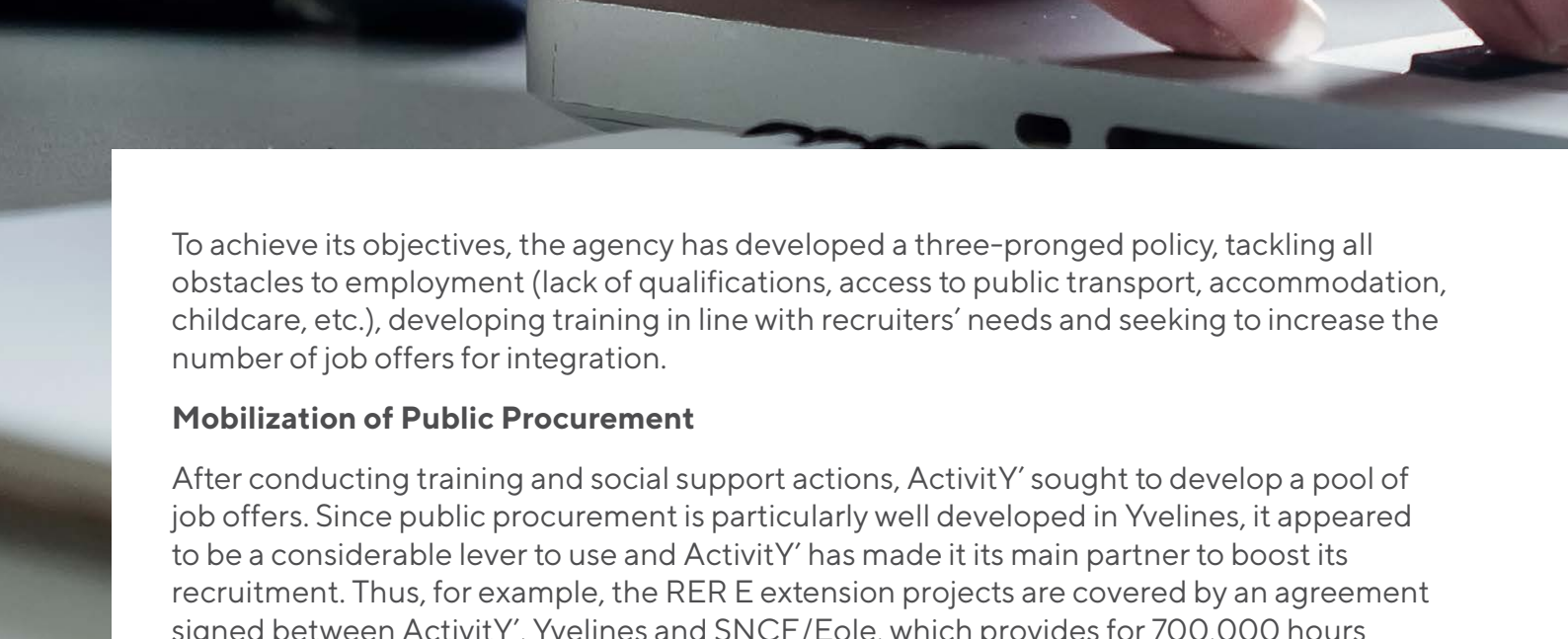
This strategy, beyond its social benefits, has economic advantages since in the long term it will allow a portion of the aid budget to be reinvested in other projects. This project therefore carries huge benefits for the department, from both an economic and a social point of view.

## Evaluation and Monitoring Mechanism

### ActivitY' Integration Agency

Between 2009 and 2015, the number of recipients of state benefits in Yvelines went up by 40 percent. This sudden increase prompted the council to search for solutions to fight the employment crisis. As a result, the ActivitY' agency was created, headed by Philippe Pascal.

ActivitY' is a public interest group that brings together a number of other agencies as well as the Yvelines Department. To introduce young people to the labor market and bring back those who have been unemployed for a long time, the agency mobilizes stakeholders in employment, training, solidarity and integration through economic activity as well as the entire economic fabric of Yvelines.



To achieve its objectives, the agency has developed a three-pronged policy, tackling all obstacles to employment (lack of qualifications, access to public transport, accommodation, childcare, etc.), developing training in line with recruiters' needs and seeking to increase the number of job offers for integration.

### **Mobilization of Public Procurement**

After conducting training and social support actions, ActivitY' sought to develop a pool of job offers. Since public procurement is particularly well developed in Yvelines, it appeared to be a considerable lever to use and ActivitY' has made it its main partner to boost its recruitment. Thus, for example, the RER E extension projects are covered by an agreement signed between ActivitY', Yvelines and SNCF/Eole, which provides for 700,000 hours worked in integration by 2022.

From a legal point of view, Yvelines uses social integration clauses, which set a number of working hours for the duration of the contract that must be worked by the long-term unemployed. They are systematically included in contracts of more than six months for an amount exceeding Euro 90 000. For greater efficiency, these clauses are supplemented by allocation criteria of 5 percent, which makes it possible to select suppliers who offer better guarantees on their employability. Indeed, it is a question for the supplier to supervise and train the people he employs in order to give them the best chances of sustainable reintegration.

Determining the number of contractual hours requires expertise in social integration and knowledge of the local employment situation. It is crucial to be realistic in your requirements to ensure that candidates participate in the call for tenders and that the hours are actually completed. To this end, ActivitY plays a key role in advising Yvelines on how to adapt the objectives according to the duration of the contract, the sector or the profiles of available job seekers. It is easier, for example, to reintegrate people into cleaning services or the food sector than for intellectual service contracts.

### **Supplier Follow-Up**

One of ActivitY's other interests is to develop training courses aligned with recruiters' needs. Developed at the stage of preparing the call for tenders, it is able to effectively train people away from the job, so that they are ready when the time comes. ActivitY then meets the supplier holding the contract and puts him in contact with the people it has trained for him.

Thereafter, for the entire duration of the contract, ActivitY performs the central function of monitoring the contractual conditions. It ensures not only that the hours are worked, but above all that the training received makes sense to the beneficiaries of the process and contributes to their future employability. The idea is to make the experience effective, even if it means showing flexibility in controlling hours: The agency agrees to record the hours worked that do not relate solely to the designated contract. At the end of the contract, ActivitY qualifies the company on its integration performance, which will allow it to use it for its future contracts and other public sector clients.

In the event of failure by suppliers, Yvelines has a standard penalty of Eur 50 per hour for each hour of undelivered service.



## Introducing a Sustainability Clause

“Pursuant to Article 38 of Ordinance No. 2015-899 of 23 July 2015 on public procurement, the conditions for the performance of the contract include elements of a social nature. In order to promote the employment of people in integration and the fight against unemployment, a number of working hours for the execution of benefits is reserved for integration: X hours per year/over the duration of the market.

The contract holder must contact the local facilitator concerned within 15 days of notification of contract X, which will direct him/her to organise the implementation of the social clause.

Every month, the contractor provides all the information relating to the implementation of the action which he sends to the representative of the Contracting Authority in charge of monitoring integration actions (Departmental Integration Agency - Activity; - Local Facilitator contact): employment contract, monthly table for monitoring hours.

These provisions will be monitored during the performance of the contract and evaluated at the end of the performance period.

In the event of economic difficulties, established by a set of indicators, the successful tenderer may ask the contracting authority to suspend or delete the social inclusion clause.

In the event of economic difficulties resulting in the use of partial activity, or the initiation of a dismissal procedure for economic reasons, or the opening of a legal redress procedure, the contracting authority shall cancel the social integration clause. Such cancellation shall be subject to the communication of a copy of the documents relating to these difficulties to the DIRRECT or the judge.”

## Results

The Yvelines Council’s contract rate with an insertion clause increased from 24 to 38 percent between 2016 and 2017, representing 94,000 hours worked in 2017. The objective is to integrate them into 50 percent of the markets by 2020, which translates into 200,000 hours to be completed.

The effects have already been observed, with many unemployed returning to work.

Beyond the social benefits, this strategy has led to real economic benefits. The cost of paying benefits for these autonomous candidates is no longer a burden on the Yvelines’ budget and has resulted in a saving of Eur 2.2 million. Thanks to its partnership policy to combat exclusion, ActivitY’ succeeded in reducing the number of those on social benefits in Yvelines by 10 percent in 2016. The agency successfully negotiated and financed the opening of 8,000 intensive employment support places and 4,508 locals were able to benefit from monitoring and building their integration paths. Of these, 2,047 have found jobs or are currently in training.

The benefits of such a system are undeniable. The example of the Yvelines shows how imposing social standards on its suppliers can have a positive impact on a large scale. Similar effects may result from anti-discrimination policies, training obligations and working conditions guaranteed by employers for obtaining a contract.



## Success Factors

### ✓ External expertise

A specialized agency makes it possible to set a realistic number of hours of integration, to establish the link between job seekers and suppliers, and to monitor the success of the process.

### ✓ Clearly defined long-term objectives

Having a clear vision and a precise program gives credibility to the approach and places suppliers in a position to anticipate the requirements of the public authority.

### ✓ Flexibility and support for suppliers

The contract is monitored with a view to efficiency rather than rigour, which leads suppliers to invest more (90 percent do more than the number of hours set in the contract) rather than being satisfied with strict compliance.

## Additional Information

Program to promote responsible purchasing in the Yvelines Department: <http://www.maximilien.fr/le-gip-maximilien/actualites/187/Le-conseil-departemental-des-Yvelines-adopte-son-schema-de-promotion-des-achats-responsables/>

Information about the ActivitY' agency: <https://www.yvelines.fr/economie-et-emploi/insertion/activity/>





## About EcoVadis

EcoVadis is the world's most trusted provider of business sustainability ratings, intelligence and collaborative performance improvement tools for global supply chains. Backed by a powerful technology platform and a global team of domain experts, EcoVadis' easy-to-use and actionable sustainability scorecards provide detailed insight into environmental, social and ethical risks across 190 purchasing categories and 150 countries. Industry leaders such as Johnson & Johnson, L'Oréal, Nestlé, Schneider Electric, Michelin and BASF are among the more than 50,000 businesses on the EcoVadis network, all working with a single methodology to evaluate, collaborate and improve sustainability performance in order to protect their brands, foster transparency and innovation, and accelerate growth.

**ecovadis**