



Terms of Reference for the Legal Review Expert

Objective of Work

UNEP provides support to countries to develop and implement Sustainable Public Procurement (SPP) policies by increasing awareness and building the capacities of policy makers and procurement managers.

The methodology applied at country-level is the “UNEP SPP Approach” which is conceived as a series of steps that must be followed by governments to first design and then implement an action plan (see below graph).

The SPP Approach stresses the need for SPP implementation plans to take into account the legal and regulatory frameworks of each country. The **integration of sustainability in the legislation and regulations dedicated to public procurement** is a major step towards the development of an SPP National Action plan in the target countries and the implementation of SPP.

The SPP Approach also highlights the need to combine the two approaches of voluntary labelling and SPP which play important complementary roles, in promoting sustainable consumption and production (SCP). Used in concert, they can help establish a dynamic framework conducive to higher performance of products throughout their lifecycle, stimulating demand for and supply of more sustainable products, and helping consumers to make better choices. As such, in countries with no established national ecolabelling scheme, the project will also focus on the development and implementation of SPP policies, together with awareness-raising activities about the opportunities that ecolabels represent for the strengthening of the national SPP programme.

In countries with established national ecolabelling scheme (hereby referred to as “core countries”) the project focuses on the implementation of UNEP’s SPP Approach combined with a proactive use of the national ecolabeling scheme and reinforcement of the national scheme.



Steps of the UNEP SPP Approach

Tasks & Expected Output

Specific objectives

- Undertake an **analysis** of the country's public procurement legal framework;
- Identify the opportunities and barriers which, from a legal perspective, might support or hinder the incorporation of social and environmental concerns in public procurement;
- **Draft recommended amendments** to existing articles in the legislation aiming at mainstreaming sustainability in the public procurement legal framework.

The findings and recommendations resulting from the legal review will be incorporated at a later stage in the National SPP Action Plan, with the ultimate aim of implementing them.

Required tasks

The expert will conduct a Legal Review covering the aspects highlighted below. The report produced shall be in line with the following structure:

A. Introduction

- Background
- Objectives of the study
- Methodology

B. International Framework

- Describe and list international agreements which have been formerly signed by your country, which could relate to SPP and have an impact on its incorporation into national legislation.

C. Public procurement and sustainability regulations and goals

- Provide an **overview of finance and budgetary regulation** – as far as relevant.
- Identify the **legal process** pertaining to public procurement: Who decides on the legislation? Who proposes changes to the current legislation?
- Provide an overview of the **general regulation on public procurement**, stressing what are the primary goals the regulation seeks to reach (e.g. “best value for money”, “transparency”, “equal treatment of bidders”, or else).
- Describe what appears to be the national understanding of sustainability in the country (according to the national constitution or national development plans) and identify **sustainable development policy priorities**.
- Identify the **national priorities** which have been set for the **productive sector, e.g.** in national development plans and other national policy documents (e.g. promoting local production, productive diversification, exports growth, etc.).
- Identify and describe the key **environmental regulations/social and labour regulations**, relevant for SPP highlighting in particular the opportunities for SPP implementation. *In core countries, this part shall also include a description of ecolabelling-relevant regulatory aspects.*
- Investigate the **existing public procurement mechanisms** (public bidding, direct purchasing, etc.) which might be relevant for the implementation of SPP.
- **Assess whether the legal framework is conducive to the implementation of SPP throughout the public procurement cycle** (technical specifications, conditions for participation in tendering, selection criteria, award criteria, conditions for performance of contracts etc.).
- List expressly-defined **sustainable / green criteria for public procurement**, which have been developed or are currently being developed in the respective national legislation

- **Describe the key challenges** to be considered in the existing legislation for the best possible implementation of SPP, taking account international best practices and former national experience in that matter.
- **Identify the barriers and opportunities to integrate the eco-labelling** schemes or other certifications (as mean of verification) in the country's public procurement legal framework. *In core countries, identify the steps from a legal perspective to integrate the national eco-label in the public procurement legal framework. Further in these countries, evaluate how mutual recognition agreement (MRA) among different ecolabelling schemes could be adopted with other countries, and identify the legal barriers for this, if any.*

D. Proposed changes in the legal frameworks

- **Clarify the necessary steps needed to propose changes** to the current public procurement legislation in order to integrate SPP in the country legislation, specifying the responsible entities which can propose these changes. Also, propose recommendations for the development of specific SPP legal instruments which might facilitate the implementation of SPP on the ground, i.e.:
 - in the form of an SPP policy, and/or;
 - as a new pillar under an existing policy targeting Sustainable Consumption and Production or Public Procurement, or;
 - as a new SPP technical document attached to a norm, etc.
- Identify the legal texts, decrees and/or decisions to be modified and **draft proposed amendments** to be made in the relevant legislation. This might also include the recommended use of ecolabelling schemes or more ambitious standards as a means of verification for meeting legal requirements.
- **Propose standard clauses** (in the form of examples) **on sustainable procurement** to be incorporated in standard bidding documents and criteria to use, e.g. provide specific examples of clauses for each type of public procurement modality, with different goods, services and construction works, in key parts of the public procurement tender document.

Deliverables

- **A summary of contents of the future report, submitted to UNEP** for initial review.
- **A detailed report** as per the above structure (approx. **25 to 30 pages** including appendices). The report must be sent to UNEP in English;
- All material prepared must be in line with the graphic identity of the SPPEL project (logos will be provided by UNEP).

Documents to be reviewed

The expert should review the following documents:

- International agreements signed by the country (commercial and others) which have an impact on sustainable procurement;
- The existing international framework with regard to the assessment of public procurement practices from an environmental perspective (OECD / Development Assistance Committee);
- The legal systems of developed and emerging countries which are currently implementing sustainable public procurement policies;
- The expert may also rely on internationally-recognized "good practices" or "innovative practices" to propose innovative approaches from a legal/procurement perspective;
- The code of the current government procurement and the proposed new laws;
- National jurisprudence (focusing on public procurement, environmental, social/labor, commercial/trade aspects).



Expert's skills

- Thorough knowledge of country's legal and regulatory framework, particularly concerning public administrative law, public procurement, sustainable development, sustainable business practice, and environmental standards. The expert should be able to establish a comparative analysis of international and local legislation;
- Knowledge of international practices vis-à-vis sustainable procurement;
- Proven track record of published articles, reports or other documents relating to public procurement or sustainable development would be an asset. Participation in similar projects/assignments would also serve as a proof of the expert's experience;
- A precise legal style of writing.

Recruitment Qualifications

Education:	Degree in law or public administration or related field. Post graduate degree is an asset.
Experience:	Legal expert with at least 5 years of relevant experience, in procurement law and environmental law
Language Requirements:	Official language of the project country. Good knowledge of English is an asset.