



**Deliverable 3.1:**  
**Main barriers to incorporate “Energy efficiency/nZEB” training  
clause into Public Procurement**

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| <b>Report:</b>     | On incorporating “Energy efficiency/nZEB” training clause into Public Procurement |
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## CHANGE RECORDS

| Version           | Date       | Author        | Changes  |
|-------------------|------------|---------------|--|
| Version I         | 15-01-2021 | Marion Jammet | Pre-workshop version – Based on desk research only |
| Version 2 - Draft | 13-09-2021 | Marion Jammet | Post national workshops version                    |
| Version 3         | 30-09-2021 | Jan Cromwijk  | Proof read and finalisation                        |

## DEFINITIONS

**Award Criteria:** Award criteria are the criteria on which the contracting authority will compare offers and base its award. EU procurement rules require contracts to be awarded on the basis of the “most economically advantageous tender”. Relevant environmental criteria can be inserted either as a benchmark to compare green offers with each other (in the case where the technical specifications define the contract as being green) or as a way of introducing an environmental element and giving it a certain weighting.

**Green Public Procurement:** A process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured<sup>1</sup>.

**Public procurement:** represents the process by which contracting authorities (for example, local authorities) acquire goods and services from the market.

**Selection criteria:** Criteria which operators must meet in order to be eligible for tender submission or evaluation.

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<sup>1</sup> [COM \(2008\)400 “Public procurement for a better environment”](#)

## SUMMARY

**Green Public Procurement (GPP) is a strategic instrument for each Member State, as it can significantly influence the market.** By using GPP, public authorities can provide industry with real incentives for upskilling, and other stakeholders with the confidence they need to upgrade their buildings. Yet, public procurement is currently not widely used to support energy efficiency upskilling.

This document summarises the **main challenges faced by public bodies who want to use public procurement to better incentivise energy efficiency upskilling.** It was developed based on desk research, one-to-one meetings and six national workshops organised in Austria, Bulgaria, France, Ireland, the Netherlands and Spain between February and July 2021<sup>2</sup>. The content of this report will inform the project partners' work in relation to the development of useful and usable energy efficiency/nZEB training clauses. These clauses will in 2021 and 2022 be piloted in these six member states in 2021-2022. The results and lessons learned will be published in a final report 'D3.3 Final Best Practice Procurement Policy with energy efficiency clause in the spring of 2023'.

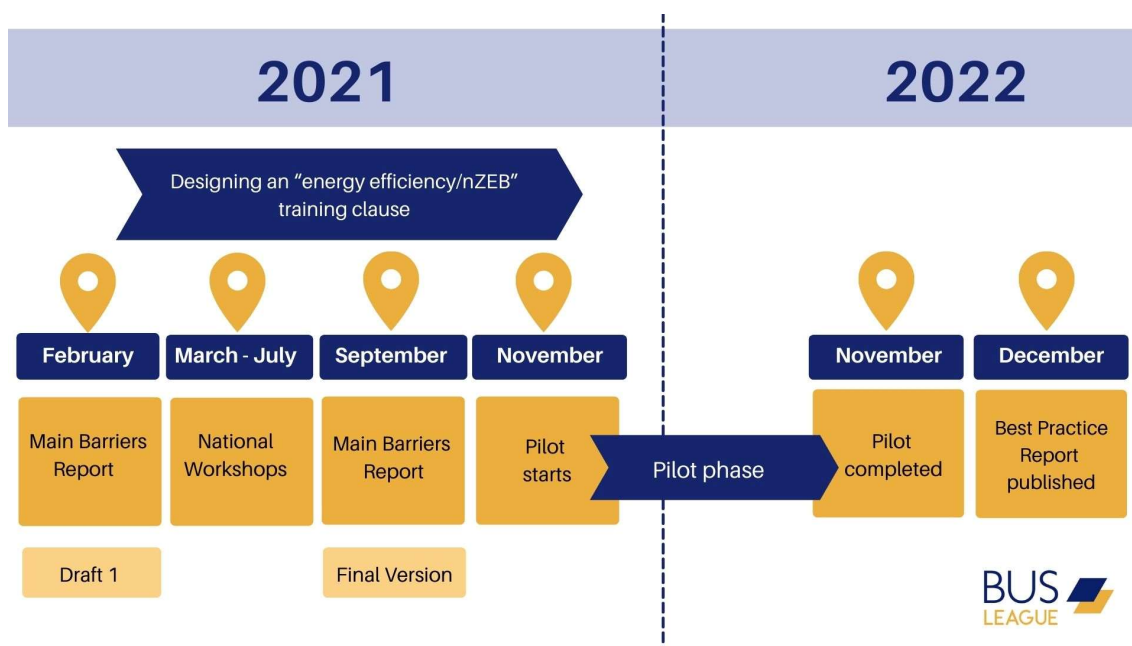


Figure 1: Piloting energy efficiency/nZEB training clauses - Timetable

### About competency-based clause and training clause

#### Competency-based clause

Specific training or education may be requested as part of a tender, but they can only be requested as selection or award criteria and must specifically relate to the subject matter of the contract. How competency-based clauses may be used is further explained in the introduction section.

<sup>2</sup> A full list of organisations which took part in these workshops is available in [Appendix I](#).

### Training clause

A training clause may be included whereby the company who won a tender commit to train all staff working on the project on a specific topic. Training clauses are for instance used in the Hauts-de-France region in France. This is further explained in the introduction section.

### Key barriers to using energy efficiency/nZEB training clauses

The main barriers to energy efficiency/nZEB training clauses and competency-based clauses identified through the consultation process are the lack of awareness of GPP and of nZEB – as well as the importance of strong quality assurance in relation to it. The lack of knowledge and skills within public administration was also perceived as a real barrier. Furthermore, in some countries, participants highlighted that the lowest price remain the main (if not only) award criterion. These findings are broadly in line with the main barriers identified during the desk research:

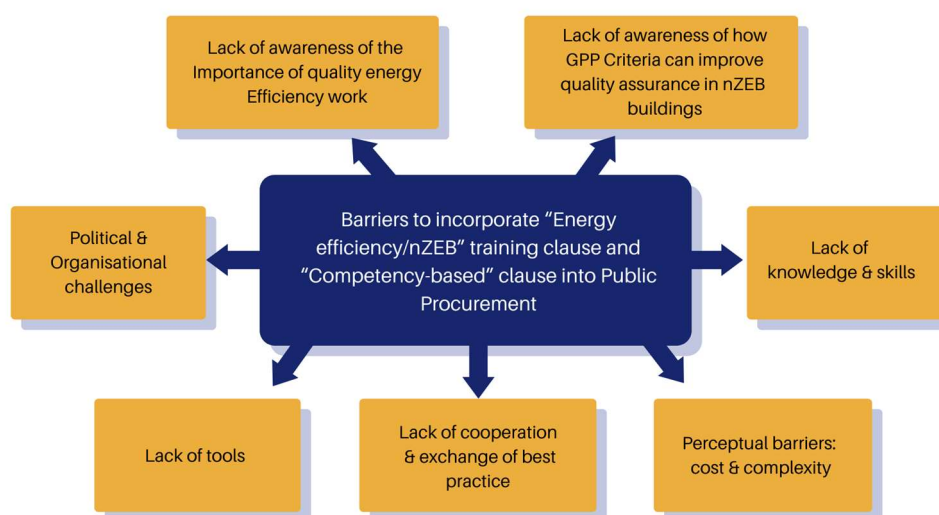


Figure 2: Barriers to incorporating nZEB/energy efficiency training clauses or competency-based clauses into Public Procurement identified as part of the desk research

Consequently, raising awareness about GPP, nZEB and the importance of strong quality assurance in relation to it was seen as a priority in all countries involved. More specifically, the workshop participants said that awareness raising activities should primarily target senior management within public bodies and specialised departments within these bodies (e.g., building procurement offices and architecture offices).

# INTRODUCTION

A substantial part of public investment in our economy is spent through public procurement. Public procurement constitutes approx. 14 % of the EU Gross Domestic Product<sup>3</sup> – and thus has the potential to provide significant leverage in seeking to influence the market and to achieve environmental improvements in the public sector.

## 1.1 Legal framework

The legal framework for public procurement is defined by the provisions of the EU **Procurement Directives** - [2014/24/EU](#) and [2014/25/EU](#). These establish rules and principles which must be observed in the award of public contracts.

To facilitate the strategic use of public contracts to achieve broader societal goals, the 2014 Directives created a more supportive legal framework, enabling public buyers to include environmental and social considerations in their purchasing decisions. Under the Directives, all contracts must be awarded on the basis of “most economically advantageous tender” (MEAT). This allows a combination of cost (including life-cycle cost) and qualitative criteria to be set by the contracting authority. Procurement criteria and decisions must be appropriate to achieve the objectives they pursue; and not go beyond what is needed to attain those objectives.

In addition to the Procurement Directives, **the fundamental principles of the Treaty on the Functioning of the European Union** affect how Public Procurement should be implemented. As such the principles of equal treatment, non-discrimination, transparency, proportionality and mutual recognition are applicable in the field of procurement. These principles are of broader application than the Procurement Directives. Procedures which are excluded from or fall below the thresholds for application of the Directives **must still be awarded in accordance with the principles**. Public authorities need to observe these principles when implementing Green Public Procurement or any additional clauses, as in all areas of procurement.

## 1.2 Policy Framework

**The role of public procurement in supporting the EU’s objective to become a more resource-efficient economy is highlighted in several policies.** For instance, the European Green Deal ([COM/2019/640 final](#)) states that “public authorities, including the EU institutions, should lead by example and ensure that their procurement is green”.

To date **Green Public Procurement has been a voluntary instrument**. This means that Member States and public authorities can determine the extent to which they implement it. The below table summarise Green Public Procurement Policies and legislation in the six countries involved in this part of the [BusLeague](#) project.

| COUNTRY | EXISTING POLICIES  |
|---------|--|
| Austria | Sustainable public procurement criteria exist for a total of 16 product groups. This includes the construction sector, with essential criteria for building construction relating to minimum energy efficiency standards (at least the |

<sup>3</sup> [COM\(2017\) 572 final “Making Public Procurement work in and for Europe”](#)

|          |  |
|----------|--|
|          | <p>klimaaktiv standard silver) and low-emission building materials. The klimaaktiv criteria is stricter than the requirements in building regulations. Sustainable public procurement criteria were updated in July 2021.</p> <p>The Energy Performance of Buildings Directive was transposed in Austria (through OIB-guidelines) within regional construction laws and is embedded in seven out of nine regions. The requirements for nZEB 2020 (for new construction and major renovation, for residential and non-residential buildings) is set in the “National Plan” document (updated in Feb. 2018). This requirement is not implemented in regional building regulations yet.</p>   |
| Bulgaria | <p>In Bulgaria, Green Public Procurement (GPP) rules are essentially transposed EU acts, stipulated in Bulgarian legislation through the Public Procurement Act (PPA) and the Regulations for Implementation of the PPA. The PPA contains specific provisions for contracting authorities willing to set environmental requirements - when setting up selection criteria, when formulating technical specifications, as an indicator in the evaluation of the tenders, etc.</p> <p>One of the first GPPs in Bulgaria was commissioned by the Ministry of Environment and Water in 2010 (subject - 8000 packages of 100% recycled copy paper). The procedure is published as an example of good practice in the electronic bulletin for green public procurement (GPP News Alert), issued by DG Environment of the European Commission. Bulgaria is bound by a number of specific global strategic documents which favors the promotion of environmentally friendly procurement. However, there is no strategic document to stimulate the usage of GPP. In 2019, the Public Procurement Agency published a Guide for assignment of Green Public Procurement orders. The use of GPP remains voluntary.</p> <p>Source: <a href="#">advocatite</a>; <a href="#">AOP</a></p>  |
| France   | <p>Since 2004, several texts introduce the need to take into account the protection of the environment as part of public procurement. These include:</p> <ul style="list-style-type: none"> <li>- The Public Procurement Code of 2006, but also other texts relating to public procurement that enshrined the consideration of sustainable development from the definition of the need (Article 5 of the Public Procurement Code of 2006).</li> <li>- Decree n°2011-1000 of August 25, 2011, which introduced the possibility of concluding global performance contracts requiring the contractor to commit to energy efficiency or ecological impact.</li> <li>- The National Action Plan for Sustainable Public Procurement for the period 2014-2020, which had set a target of 30% of public contracts incorporating an environmental clause. Unfortunately, only 13.6% of public contracts identified in 2018 contained this type of clause.</li> <li>- Publication of the law on the fight against waste and the circular economy: This law was adopted in February 2020 and includes four articles dedicated to sustainable public procurement.</li> <li>- Publication of the circular on the State's commitments for eco-responsible public services: Put in place in 2020, this new mandatory mechanism for the central authorities brings together 20 commitments including one that relates to sustainable public procurement.</li> <li>- Public procurement proposals resulting from the citizens' convention for the climate (CCC<sup>4</sup>): The CCC is a democratic experiment that aims to give citizens a voice so that they can propose measures to accelerate the fight</li> </ul> |

<sup>4</sup> The CCC is a democratic experiment that aims to give citizens a voice so that they can propose measures to accelerate the fight against global warming. The CCC worked for 6 months and produced 149 proposals.

|                 |   |
|-----------------|---|
|                 | <p>against global warming. The CCC worked during 6 months and produced 149 proposals. The implementation of these proposals is currently under examination by central government. Among the CCC proposals, 2 relate to sustainable public procurement.</p> <p><a href="#">More information -p. 12 of this document</a></p> <p>In addition to the general environmental clause, and since mid-2021, new environmental clauses have been introduced to set out obligations related to transportation, packaging and waste management (articles 16.2 CCAG-PI, 16.2 CCAG-TIC, 20.2 CCAG-Travaux, 18.2 CCAG-MOE, 16.2 CCAG-FCS, 29 CCAG-MI). The principle of penalties is provided in case of failure by the contractor to comply with these obligations, or with any other obligation laid down in the specific documents of the contract.</p> <p><a href="#">More information</a></p>   |
| Ireland         | <p>Action 148 of the <a href="#">Climate Action Plan</a> (2019) mandates the inclusion of green criteria in all procurements using public funds, introducing requirements on a phased basis and provide support to procurers as required.</p> <p>The <a href="#">Programme for Government</a> (2020) also mandate the inclusion of green criteria in all procurements using public funds - to be completed within 36 months. It also highlights that procurement policy for social housing must have strong social clauses.</p>   |
| Spain           | <p>The Directive of the European Parliament and of the Council 2014/24/EU of 26 February 2014 on public procurement was transposed in Spain in Law 9/2017 of 8 November on Public Sector Contracts (from now on LCSP).</p> <p>The Council of Ministers of 7 December 2018 approved the "Green Public Procurement Plan for the General State Administration, its autonomous bodies and Social Security management entities (2018-2025)". Its objectives include promoting the procurement of goods, works and services with the lowest possible environmental impact, promoting the Spanish Circular Economy Strategy, supporting smart, sustainable and inclusive growth with concrete measures, guaranteeing and incorporating environmental clauses in public procurement.</p> <p>Regional level: In the region of Valencia, the regional government (Generalitat Valenciana) approved on 9 March 2018 a "Practical guide for the inclusion of social responsibility clauses in the procurement of the Generalitat and its public sector" (adapted to the LCSP), with the aim of systematising existing regulations. The document includes examples of possible social responsibility clauses to be inserted in procurement procedures.</p> <p>In 2020, the regional government (Generalitat Valenciana) launched the so-called "Guía Verde de medidas medioambientales en la contratación pública en el ámbito de la edificación de la Generalitat" (from now on "Guide for GPP").</p> <p>The "Guide for GPP" has a high exemplary value, and will influence the market, encouraging the private sector towards new forms of production and more responsible consumption where circularity and the efficient use of resources prevail.</p> |
| The Netherlands | <p>In the Netherlands, GPP is part of the Sustainable Public Procurement (SPP) system. This system has no legal status, except the applicable EU-regulations. Its aim is to give public procurers the role of fore runners in sustainable (including GPP) procurement. Policies for SPP are made at organizational level</p>  |



|  |   |
|--|---|
|  | <p>and can therefore differ from contracting authority to contracting authority. The SPP system provides the base for these policies.</p> <p>To stimulate SPP and to hold the ambitions high, five ministries have made a new plan for 2021-2025 to set goals in SPP and to commit to these goals as well. This plan should be adopted by all public authorities on all levels. The goals in the actual plan are higher than in the plan for 2016-2020 and have the aim to affect the whole procurement of public bodies. An example of the new ambitions: where in the former plan SPP was a possibility in the new plan SPP is the standard procedure for procurement. By implementing the current plan, “all procurement should be SPP” in the near future.</p> <p>The system of SPP is supported by PIANOo, the knowledge centre of public procurement. They have on their website a lot of information to support SPP: <a href="#">Sustainable Public Procurement (SPP)   PIANOo - Dutch Public Procurement Expertise Centre</a> The criteria for SPP can be found on <a href="http://www.mvicriteria.nl/en">www.mvicriteria.nl/en</a>. To do the job of SPP well, the advice is to use ISO20400 (<a href="http://Home   ISO20400.org">Home   ISO20400.org</a>).</p> |
|--|---|

**To achieve GPP full potential, the European Commission will propose minimum mandatory green criteria and targets for public procurements in sectorial legislation as of 2021<sup>5</sup>.**

The importance of the buildings sector to delivering the objectives of the Paris Agreement, UN SDGs and EU climate, circular economy and environment policy is unparalleled. In the EU the sector accounts for 36% of all emissions; 50% of energy consumption; 50% of all raw material extraction and one third of all waste and water usage.

The construction and refurbishment of buildings in an energy and resource efficient way is hence an important policy objective for the EU. **Both the [Energy Efficiency Directive](#) and the [Energy Performance of Buildings Directive](#) (EPBD) require public authorities to lead by example by becoming early adopters of energy efficiency improvements.** More specifically, **under the [Renovation Wave](#), the Commission will develop comprehensive guidance on sustainable public investments through procurement.** By June 2022, the Commission will also look into the possibility to develop green public procurement criteria for public buildings such as office buildings and schools related to life-cycle and climate resilience and based on [Level\(s\)](#)<sup>6</sup>.

### 1.3 Competency-based and training clauses

To drive demand for upskilling, the project partners can explore two options: competency-based clauses and training clauses.

#### Competency-based clauses

Art. 66 of Directive 2014/24/EU explicitly states that the organisation, qualification and experience of staff assigned to performing a contract (where the quality of the staff assigned can have a significant impact on the level of performance of the contract) can be a criterion for awarding a contract. For complex contracts such as building contracts it can usually be expected

<sup>5</sup> [COM/2020/21](#) final and [COM/2020/98](#) final

<sup>6</sup> Level(s) is the European framework for sustainable buildings. It tracks performance across the various stages of a building project, to give a complete picture throughout the full lifecycle.

that the quality of the project managers, design team, specialist consultants and contractors can have a significant impact on the performance of a project.

However, the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff may only be evaluated once in a tender procedure, either at selection stage or as an award criterion (Annex XII, Part 2 f of Directive 2014/24/EU).

The terms on which these selection criteria can be applied, and the means of proof which can be requested, are specified in Article 58 and Annex XII of the Procurement Directive 2014/24/EU. At selection stage, bidders must be allowed to prove their technical and professional capacity through various means. Evidence of professional qualifications, labels and certificates from other member states must be taken into consideration. Technical specifications which refer to particular standards must be accompanied by the words 'or equivalent'. Furthermore, selection must be proportionate. E.g., there is a limit on the number of previous contracts which bidders can be asked to provide to demonstrate technical ability.

To reduce the environmental impact of public purchasing, the EU highlighted the need to identify and develop green public procurement (GPP) criteria for products, services and works which account for a high share of public purchasing combined with a significant improvement potential for environmental performance. In 2016, the Joint-Research Centre published "[Green Public Procurement Criteria for Office Building Design, Construction and Management](#)".



The Guidance document was developed to provide procurers with orientation on how to effectively integrate GPP criteria for office buildings into the procurement process. It addresses the procurement process for office buildings, including their design, site preparation, construction, servicing and ongoing management.

Project team competencies (design team and contractors) is a key criteria of the EU's GPP, which can for instance be used as a selection criteria. The proposed GPP criteria relating to the ability of the tenderer for office building is summarised in the table below.

| GPP criterion   | Brief Description   |
|---|---|
| <b>Criteria related to the ability of the tenderer</b>                              |   |
| Competencies of the project manager   | <i>Experience and expertise in the management of:</i> <ul style="list-style-type: none"> <li>- Contracts with environmental performance requirements</li> <li>- Implementation of environmental technologies and design innovations</li> <li>- Financial appraisal of environmental technologies and design innovations</li> </ul>  |
| Competencies of the design team   | <i>Experience and expertise in:</i> <ul style="list-style-type: none"> <li>- Energy efficient building fabric and services design and commissioning</li> <li>- Specification of resource efficient construction materials.</li> <li>- Use of multi-criteria building assessment and certification schemes,</li> </ul>   |
| Competencies of the lead construction contractor and specialist contractors         | <i>Experience and expertise in:</i> <ul style="list-style-type: none"> <li>- Energy efficient building fabric and services design and commissioning</li> <li>- Procurement of resource efficient construction materials.</li> <li>- Implementation of demolition site waste management plans</li> </ul>   |
| Competencies of design, build and operate (DBO) contractors and property developers | <i>Experience and expertise in the selection and management of:</i> <ul style="list-style-type: none"> <li>- Design teams to achieve environmental performance requirements</li> <li>- Main contractors who have delivered buildings with environmentally improved performance</li> <li>- Ongoing facilities management in order to optimise the performance of office buildings</li> </ul> |

Figure 3: GPP Criteria related to the ability of the tenderer for Office buildings - Source: JRC, 2016

The guidance document includes core criteria to assess the ability of the tenderer. These were developed to be used by any contracting authority across the Member States with minimum additional verification effort or cost increases.

### Training clauses

Training clauses allow public procurers to require companies winning nZEB projects to train their staff in energy efficiency. This type of clause is currently in-use in the Hauts-de-France region (France), where the companies winning these projects must train staff working on a project (construction workers and site supervisors) in energy efficiency. The training takes place on-site. The clause template is available in [appendix 2](#).

**Public procurement is a strategic instrument for each Member State, as it can significantly influence the market.** By using GPP, public authorities can provide industry with real incentives for upskilling, and other stakeholders with the confidence they need to upgrade their buildings. Yet, **challenges remain in relation to the use of these clauses.**

## II. BARRIERS TO USING GPP TO INCENTIVISE UPSKILING – DESK RESEARCH

Based on the desk research completed in early 2021, the following barriers to the incorporation of nZEB/energy efficiency training clauses and/or competency-based clauses into public procurement were identified.

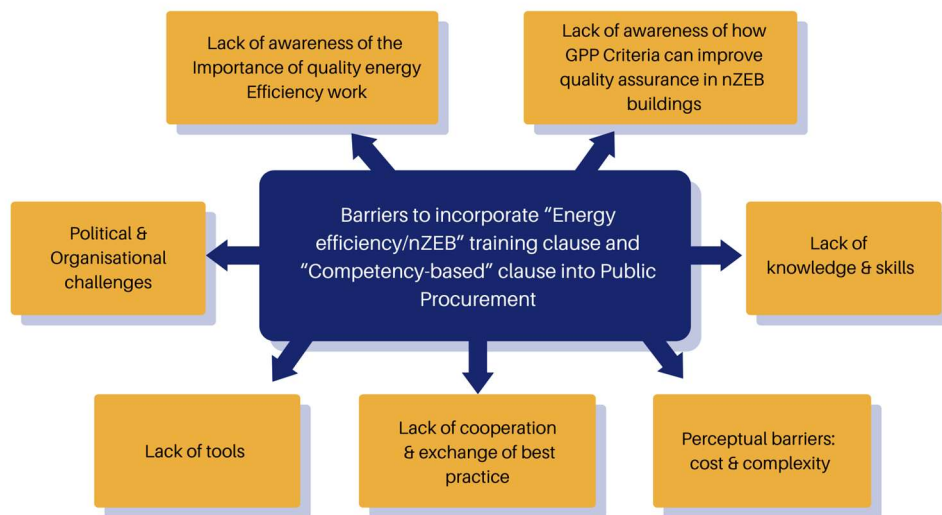


Figure 4: Barriers to incorporating nZEB/energy efficiency training clauses or competency-based clauses into Public Procurement identified as part of the desk research

### 2.1. Lack of awareness

To use GPP to promote energy efficiency upskilling, relevant departments within public bodies must be aware of the importance of quality renovation and skills, and of the role that procurement can play in promoting it. They must also be aware of the overall market conditions.

In fact, GPP criteria are most effective if there is a clear understanding of what they are – and the reasons for their introduction – among staff throughout the organisation and among suppliers<sup>7</sup>.

### 2.2. Political and organisational challenges

According to a 2013's document published by the European Commission<sup>8</sup>, lack of political and management support remains a barrier to broader implementation of GPP criteria. This indicates that senior officials within the public sector across Europe did not have a high awareness of the importance of the GPP agenda.

### 2.3. Lack of knowledge and skills

Besides awareness, public bodies need knowledge and skills for implementing strategic procurement mechanisms. Users must be able to reflect on and identify their true needs.

<sup>7</sup> European Commission, GPP Training toolkit - Module 2: Strategic Aspects of GPP

<sup>8</sup> [European Commission \(2013\), EU Green Public Procurement Policy](#)

Procurers must have a good understanding of legal and technical aspects of GPP implementation. The lack of knowledge on how to verify green criteria remains a barrier<sup>9</sup>. For instance, the evaluation of consultants, design teams and contractors as part of a competency-based tender requires an experienced evaluation panel. The lack of legal expertise also remains a barrier to the use of Green Public Procurement criteria in several member states<sup>10</sup>.

## **2.4. Lack of tools**

The lack of clear and verifiable criteria which allow public bodies to easily incorporate environmental considerations into their tendering while complying with the requirements of the Procurement Directives and other sources of procurement law is another barrier.

## **2.5. Lack of cooperation & exchange of best practice**

There is still little in terms of systematic implementation of GPP criteria across Europe, with the majority of public authorities acting alone, often on their own initiative. The lack of coordinated exchange of best practice and networking between authorities has been identified as an obstacle to greater GPP implementation<sup>11</sup>.

## **2.6. Perceptual barriers: Complexity & Cost**

Member States are not using to their full extent the possibilities of public procurement as a strategic tool to support sustainable social policy objectives and innovation. Public procurement is still considered to be a mere administrative procedure, with 55% of these procedures today perceiving the lowest price as the only award criterion<sup>12</sup>.

A key challenge identified by many public sector organisations is changing behaviour within purchasing departments. In particular using purchase price alone to decide between offers, rather than the full life-cycle cost of the product or service, can affect the take-up of green products and services<sup>13</sup>. Green products are often perceived as more expensive<sup>14</sup>.

Anecdotally, a survey of twenty public procurers and companies responding to public procurement contracts conducted in Ireland in Summer 2020 as part of the [LifeLevel\(s\)](#) project showed that many local authorities, under a lot of pressure from the Government to get social housing built quickly, were unwilling to add any clauses which they think might add time and cost to the design team or contractor.

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<sup>9</sup> [European Commission \(2013\), EU Green Public Procurement Policy](#)

<sup>10</sup> [European Commission \(2013\), EU Green Public Procurement Policy](#)

<sup>11</sup> European Commission, [Barriers to the take-up of GPP](#)

<sup>12</sup> [COM\(2017\) 572 final](#)

<sup>13</sup> European Commission, [Barriers to the take-up of GPP](#)

<sup>14</sup> [European Commission \(2013\), EU Green Public Procurement Policy](#)

### III. BARRIERS TO USING GPP TO INCENTIVISE UPSKILLING – WORKSHOPS’ FINDINGS

The main barriers identified as part of the desk research were presented and discussed at workshops organised in the six countries involved in that part of the Busleague project between February and July 2021<sup>15</sup>. This section summarises the main barriers to GPP (3.1) and to its use to support upskilling (3.2). It is worth noting that the countries involved in that part of the Busleague project are highly diverse. For instance, some of them are highly centralised, while others have a federal system.

#### 3.1 General barriers relating to GPP

At all events, the workshop participants stressed that GPP is not well developed in construction in their countries<sup>16</sup>. Where GPP is used in construction – e.g., in Austria, the focus is primarily on the building itself as opposed to focusing on the competency of the design and construction teams.

According to the workshops’ participants, lack of awareness of GPP and of nZEB (and of the importance of strong quality assurance) are among the main barriers to the use of GPP in construction in the countries involved. The lack of knowledge and skills within public administration was also perceived as a real barrier to its use. In some countries, participants highlighted that the lowest price remain the main (if not only) award criterion.

Raising awareness about GPP, nZEB and the importance of strong quality assurance was seen as a priority in all countries involved. More specifically, the workshop participants said that awareness raising activities should primarily target senior management within public bodies and specialised departments within public bodies (e.g., building procurement offices and architecture offices). Other actions identified as key to mainstream GPP in construction included technical training for public bodies (Ireland and Bulgaria), developing and mainstreaming tools to support GPP<sup>17</sup> (Spain and Bulgaria) and better sharing of GPP best practice<sup>18</sup> (the Netherlands and Spain – to a lesser extent).

#### 3.2. Barriers to using GPP to incentivise upskilling

In all countries involved the workshop participants discussed the nZEB training clause currently in use in the Hauts-de-France region and how it could be used in their own jurisdictions. Barriers identified were often specific to each country, but the need to introduce it at national level/through legislation was mentioned at several workshops. In all cases, workshop participants highlighted that if the nZEB training clause was to be introduced successfully in their country, it should be introduced alongside supporting measures (e.g., template and training for civil servants) and a comprehensive communication campaign. These results align with the literature on the barriers which states that the introduction of criteria can be most effective if there is a clear understanding of what the criteria are and the reason<sup>19</sup>.

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<sup>15</sup> A full list of organisations which took part in these workshops is available in [Appendix I](#).

<sup>16</sup> As nZEB training clauses are already in use in France, a different workshop structure was used in this country.

<sup>17</sup> E.g., Easy ways to assess skills of construction and design teams.

<sup>18</sup> E.g., through a community of practice for GPP in your country.

<sup>19</sup> European Commission, GPP Training toolkit - Module 2: Strategic Aspects of GPP.

### 3.2.1 Austria

Workshop participants felt that the nZEB training clause in use in France was interesting, but they also raised several questions. First, there is no obvious funding mechanism to implement the nZEB training clause in Austria. The cost of the training would probably need to be borne by the central government or the provinces. Furthermore, public procurement rules are harmonised nationally. An Austrian province cannot decide to include additional criteria as part of its procurement process. It was also highlighted that public bodies were waiting to better understand the possible impact of the EU's "Fit for 55" policies before updating any energy efficiency policies/criteria.

As part of national GPP criteria, a blower door test which must lead to specific results according to the airtightness of the building envelop must be implemented on federal public buildings. This is perceived as a cornerstone for raising the quality of craftsmanship and could lead to a higher demand for highly skilled construction workers. For these reasons, it may make more sense to extend this national GPP criteria to federal province and community buildings, as opposed to introducing energy efficiency training clauses in Austria.

### 3.2.2 Bulgaria

The workshop participants were positive about the usefulness of the nZEB training clause: Energy efficiency measures are increasingly popular, but the construction industry needs to upskill in that area. The inclusion of the nZEB training clause in public procurement for construction projects could stimulate upskilling, which in turn would improve quality and actual energy performance.

The main challenges identified in relation to the use of the nZEB training clause were resistance to change and lack of skills (municipalities are not used to apply training schemes in GPP), current legislation which does not stimulate enough the use of GPP and the implementation of energy efficiency measures, as well as the priority given to lower-price criteria in public procurement.

Looking specifically at the example of the nZEB training clause used in France, workshop participants expressed concerns around the choice of the training programme. Funding for training is available but any training programmes mentioned as part of public procurement must be tailor-made to the needs of Bulgarian construction workers. Discussions are also needed to determine who should be responsible for organizing and delivering training. E.g., the Contracting authority, the contractor or a specialized VET centre? Offering free training, may not be the best option as these are often associated with poorer quality. Some participants expressed concerns that training organized by contractors could be fictitious and may not lead to any upskilling.

To overcome these barriers, workshop participants felt that energy efficiency training clause should be integrated into legislation (possibly made mandatory). Developing a standardized nZEB training clause would also support its implementation. However, this should be introduced alongside a strong communication campaign, focusing on the added-value and long-term impacts of energy efficiency and how this is interlinked with upskilling<sup>20</sup>. Such a campaign, targeting the public sector could accelerate the use of nZEB training clauses in Bulgaria. Ideally, the training programme should be provided by one or a group of certified training providers, approved by

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<sup>20</sup> Trained workers are likely to deliver more energy efficient buildings, with long lasting environmental, financial and health effects.



the government, to ensure high quality and a structured approach. Finally, a strong enforcement mechanism is needed.

### *3.2.3 Ireland*

In Ireland there is positivity amongst industry professionals about the move to integrate nZEB training requirements into GPP. Given Ireland's ambitious retrofit targets and the need for public bodies to lead by example, this is seen as both necessary and timely. More specifically, workshop participants said that public procurement could be used to better incentivize upskilling, and to "capture" those who have been missed out on energy efficiency training in the industry.

In order for the nZEB training clause to work, this should probably be developed at national level and implemented across the board. Given everyone in the construction industry is extremely busy, there is a risk to lose many potential bidders if a local authority was introducing it unilaterally. Employers may perceive the training clause as an extra cost due to both the cost of the training and employees' "time lost". National funding may be available to pay for the cost of the training, but this needs to be further discussed. Furthermore, subcontractors may present a specific challenge – how do you ensure they complete the training? Although workshop participants like the idea of the "training truck" coming on site, they expressed concerns that on-site training may be difficult to implement. It might also be difficult to ask construction workers to repeat the training again and again. A better option might be the use of accredited courses (e.g., WWETB nZEB training) and the introduction of a "digital badge". This could be modelled on the 'Safe Pass' health and safety training certification required for workers on construction sites. Using accredited courses would ensure the clause is applied consistently and could improve quality assurance. Another possible challenge in Ireland would be enforcement of clause. How could it be enforced? How do we deal with non-compliance?

### *3.2.4 The Netherlands*

Workshop participants felt that the nZEB training clause could support upskilling in the Netherlands. In particular, they liked that it supports cross-trades cooperation. However, many workshop participants were concerned by what was perceived as a rigid, top-down approach giving a significant role to contracting authorities. Contractors could feel that they are no longer in control of how their staff upskill. Resistance is likely to arise if the training clause is used for topics contractors feel they master sufficiently. Public bodies could also perceive the training clause as highly burdensome. They would need to learn more about new forms of public contracts, organize training and have an excellent understanding of nZEB. This could be highly challenging in the current context, as public bodies are given less and less room for substantive involvement in procurement or for innovative forms of procurement.

A better approach might be to test the competency of the bidders or to do a market survey first and to use the nZEB training clause if a knowledge gap is identified. When this arise, an option might also be to do a market consultation, so that parties can come up with their own ideas on how to fill in the client's demand and deliver the requested quality.

If the nZEB training clause is to be used in the Netherlands, a first step is to create awareness among public bodies and to further explain its benefits. The benefits of repeating the training should also be further discussed as this could be very burdensome. As every project is different and requires different skills, the nZEB training clause may need to be redrafted for each project. The development of templates covering specific situations is likely to make it more manageable.



### 3.2.5 Spain

In Spain, workshop participants discussed extensively how specific an nZEB training clause needs to be. On the one hand, it must be specific enough so that it can be easily and undoubtedly verified by public procurers. On the other hand, it's impossible list all the courses and training centres that could be recognized as valid and creditable. A mechanism must be in place to support the civil servant making that call.

## IV. RECOMMENDATIONS & NEXT STEPS

Given the diversity of situations existing in the countries involved in this part of the BUSLeague project and based on the [feedback received](#), the following next steps are suggested:

|                 |  |
|-----------------|--|
| <b>Austria</b>  | <p>All stakeholder mentioned that the French example is very interesting, but the <b>funding of the training is a big challenge</b>. In Austria, there is no general training tax to be paid by construction companies. Therefore, the costs for the training would need to be paid by the government or the national provinces. For these reasons, none of representatives of the federal provinces engaged with the project has expressed any interest in piloting the clause.</p> <p><b>Styria proposes to cooperate with the national guilds and the chambers of commerce to raise the quality of craftsmanship.</b></p> <p>The representative of the federal real estate agency stated that quality control on-site is of major importance to guarantee energy efficiency. He also stated that <b>any new quality criteria introduced as part of procurement must be harmonized throughout all Austrian provinces.</b></p> <p><b>GPP criteria for federal public buildings already include the requirement to implement a blower door test and to achieve a certain level of air-tightness.</b> This could be a cornerstone for raising the quality of craftsmanship and lead to a higher demand of highly skilled building professionals. It was hence recommended to <b>extent the national GPP criteria to federal province and community buildings.</b></p> |
| <b>Bulgaria</b> | <p>Ideally, the nZEB training clause should <b>be integrated into legislation</b> and <b>standardized contract clauses</b> should be developed. The training should be provided by one or a group of <b>certified training providers, approved by the government</b>, to ensure high quality and a standardized approach. These should be introduced alongside a <b>strong communication campaign targeting procurement experts</b> working in local and central government. Civil servants must be convinced of the added value of high quality nZEB projects, and how these can be driven by GPP.</p> <p>In addition, <b>the Bulgarian BUSLeague team will work closely with Gabrovo municipally</b> to encourage and guide them in their efforts to raise the quality of their construction projects and include training clauses in their public procurement.</p>  |
| <b>France</b>   | <p>The French partner will continue <b>sharing their experience of using the nZEB training clause with the consortium.</b> A key learning</p>  |

|                        |  |
|------------------------|--|
|                        | <p>from that country is that construction companies must acknowledge the need for upskilling and clearly see the benefits of the suggested training (which must be highly relevant). Likewise, public bodies and project managers must be convinced of the usefulness of the nZEB training clause.</p> <p>As part of BUSLeague, the French partner will also explore:</p> <ul style="list-style-type: none"> <li>- <b>How companies that have completed the training could better valorize it.</b> E.g., through accreditation.</li> <li>- <b>How could the nZEB training clause be used on smaller (aggregated) projects?</b></li> </ul>  |
| <b>Ireland</b>         | <p>Workshop participants were positive about the introduction of the nZEB training clause in Ireland as a way to support upskilling. However, there <b>is little appetite for developing new, on-site training courses</b>. Consequently, the project partners should work on defining training outcomes (3 or 4 items) and identifying existing training courses with these outcomes. <b>Standardised templates</b> should also be developed. The Irish project partners should contact public bodies to gain a better understanding of the issues they have faced when developing other social clauses. <b>Testing the nZEB training clause with a few local authorities may be challenging. Local authorities will want a standardized national template and may be worried of the negative impact of introducing additional requirements</b> – if they are the only ones to do so. Consequently, and in parallel to the pilots, <b>the Irish project partners will need to focus on legislative changes too.</b></p> |
| <b>The Netherlands</b> | <p>Introducing the nZEB training clause in the Netherlands could be challenging as many contractors are likely to feel they already have the knowledge to work on these projects. <b>Some work is needed to clearly identify the techniques and energy efficiency measures for which the use of the nZEB training clause may be useful.</b> This is likely to include cross-trade cooperation. Furthermore, the introduction of the nZEB training clause in the Netherlands would require <b>awareness raising</b> throughout the supply chain and among contraction authorities. <b>Standardised templates</b> are also needed. Finally, it might be worth highlighting that legally speaking, the nZEB training clause is not much different from existing requirements regarding social return in projects.</p>   |
| <b>Spain</b>           | <p>The Spanish BUSLeague partner are aiming at <b>integrating the nZEB training clause into the València Regional Government's (Generalitat Valenciana) "Guide for GPP"</b><sup>21</sup>. Published in 2020, the guide has been actively promoted and is a living document.</p> <p>The Spanish partner have a verbal agreement with the Generalitat Valenciana that the nZEB training clause could be integrated into the "Guide for GPP". A Spanish version of the nZEB training clause is currently being drafted. The Generalitat Valenciana is also likely to test the training clause on 3 pilot projects in Autumn 2021.</p>   |

<sup>21</sup> ["Guía Verde de medidas medioambientales en la contratación pública en el ámbito de la edificación de la Generalitat"](#) (from now on "Guide for GPP").

# APPENDICES

## Appendix I: Workshop Participants

| Name  | Sector                | Country     |
|---|-----------------------|-------------|
| Agency for Sustainable Energy Efficiency  | Central Government    | Bulgaria    |
| Bulgarian Construction Chamber  | Construction Business | Bulgaria    |
| EnEffect  | Other                 | Bulgaria    |
| Gabrovo Municipality  | Local Government      | Bulgaria    |
| Sofia Municipality  | Local Government      | Bulgaria    |
| Sofiaplan   | Other public          | Bulgaria    |
| BDP   | Construction Business | Ireland     |
| Coady Architects  | Construction Business | Ireland     |
| Construction Industry Federation  | Construction Business | Ireland     |
| Cork City Council   | Local Government      | Ireland     |
| Cork Institute of Technology  | Research & Academia   | Ireland     |
| Department of Education   | Central Government    | Ireland     |
| Department of Environment, Climate and Communications   | Central Government    | Ireland     |
| Department of Housing   | Central Government    | Ireland     |
| Department of Public Expenditure and Reform   | Central Government    | Ireland     |
| Dublin City Council   | Local Government      | Ireland     |
| Dublin City University  | Research & Academia   | Ireland     |
| ESB   | Energy                | Ireland     |
| Grangegorman Development Agency   | Other public          | Ireland     |
| Greenville  | Other                 | Ireland     |
| Heritage Council  | Other public          | Ireland     |
| Irish Green Building Council  | NGOs                  | Ireland     |
| Kildare County Council  | Local Government      | Ireland     |
| Limerick County Council   | Local Government      | Ireland     |
| Limerick Institute of Technology  | Research & Academia   | Ireland     |
| Local Government Management Agency  | Local Government      | Ireland     |
| NUI Maynooth  | Research & Academia   | Ireland     |
| Offaly County Council   | Local Government      | Ireland     |
| Office of Government Procurement  | Central Government    | Ireland     |
| Office of Public Work   | Other public          | Ireland     |
| Philip Lee Solicitors   | Other                 | Ireland     |
| RKD   | Construction Business | Ireland     |
| Sligo County Council  | Local Government      | Ireland     |
| Solas   | Research & Academia   | Ireland     |
| South Dublin County Council   | Local Government      | Ireland     |
| The Land Development Agency   | Other public          | Ireland     |
| Transport Infrastructure Ireland  | Other public          | Ireland     |
| Waterford County Council  | Local Government      | Ireland     |
| Waterford Wexford Enterprise Board  | Research & Academia   | Ireland     |
| Bouwend Nederland / Stichting Aanbestedingsinstituut  | Construction Business | Netherlands |
| Central Government Real Estate Agency   | Central Government    | Netherlands |
| HBO Bouw & Energie  | Energy                | Netherlands |
| Kaandorp-Wijnker  | Energy                | Netherlands |
| Rotterdam City Council  | Local Government      | Netherlands |
| Austrian Energy Agency (AEA)  | Energy                | Austria     |
| Austrian Federal Procurement Agency, (BBG)  | Central Government    | Austria     |
| Austrian Research Promotion Agency (FFG)  | Research & Academia   | Austria     |
| Austrian Society for Environment and Technology (ÖGUT)  | NGOs                  | Austria     |
| Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology | Central Government    | Austria     |
| Federal Real Estate Agency (BIG)  | Other public          | Austria     |
| Government of Carinthia   | Local Government      | Austria     |
| Government of Salzburg  | Local Government      | Austria     |
| Government of Styria  | Local Government      | Austria     |
| Klimaaktiv Management   | Central Government    | Austria     |
| Styrian Energy Agency   | Other public          | Austria     |
| Alliance Villes Emploi  | Local Government      | France      |
| Maison de l'Emploi de Cambresis   | Local Government      | France      |
| Constructys   | Construction Business | France      |
| Practee formations  | Other                 | France      |

## Appendix II: Training Clause

### NOTICE OF COMPETITIVE PUBLIC TENDER

The following text should be included in the invitation to tender, under the “additional information” section:

“The implementation of this contract includes a “training clause”. Specific tradespeople working on this project and involved in improving the energy efficiency of the building must take part in a training course organised by the contracting body”.

[See Example of a notice of competitive public tender with a training clause published in France.](#)

### TEXT TO BE INTEGRATED INTO PUBLIC TENDER

#### Tender rules

- Add a new “Training clause” paragraph

“The aim of the training is to enable tradespeople involved in this project to improve cross-trade cooperation and to achieve energy efficiency and environmental targets”.

“The successful tenderer commits to complete this training course as described in the special conditions of contract and in the technical specifications<sup>22</sup>”.

#### Special conditions of contract

A specific article on the training clause should be included. This must cover: the aim of the training clause, the target audience, how the training course will be delivered, its content, as well as information on the fees and penalties for non-complying with the requirement of the training clause.

#### XY. Training

##### XY.1 Aim of the training course

*Here you must include information on the objective of the training course and why it is included in this tender. Below is an example of the main points that are covered in the text in use in France but this would most likely need to be changed for each project and to suit your national market:*

- Importance of energy efficiency skills to comply with new building regulations (fabric first, airtightness, etc.)
- Objective of the training clause (improving energy efficiency skills, etc.)
- Brief description of the training course: How it will be delivered (e.g., onsite) and who the target audience is.
- Short description of the aim of the training course for this specific project (learning outcomes for people taking part in the training).

##### XY.2 Target audience

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<sup>22</sup> This is based on the methodology in use in France. This may be done differently in your country.

Here you describe the target audience i.e., the successful tenderer(s) that should get involved in that training course, and more specifically the list of tradespeople/ building professionals working for these organisations that should complete the training course.

### **XY.3 About the training course**

Here you describe the training course, its duration and how it will be organised (e.g., onsite). Descriptions of the module should also be included, as well as the target audience for each specific module.

### **XY.4 Training pathways**

Here you explain the various training options. E.g., How many hours of training should a plumber working on this project complete vs. a site supervisor.

### **XY.5 Cost associated with the training course**

Here you include information on the cost of the training and who is responsible for paying the fees (e.g., the successful tenderer).

### **XY.6 Benefits of the training course**

Here you describe the benefits of completing this training course for both employees and employers. Would the tradespeople completing the training course get a certificate? Would you be able to use these certificates of completion for future tenders? Etc.

### **XY.7 Penalties**

Here you explain how the completion of the training course will be verified and the penalties for companies / craftworkers not completing the training course<sup>23</sup>.

### **XY.8 Supporting mechanism**

If a training clause coordinator<sup>24</sup> has been appointed, his/her contact details should be included here, as well as information on the mechanisms in place to support the successful tender in ensuring all targeted tradespeople complete the training.

## **Technical specifications**

The training clause is an implementation clause which requires commitment from the successful tenderers. As such, it is included under the tender “technical specification” in France.

This is to ensure all tenderers know about the training clause, are aware of what this means, as well as the information they must provide to the contracting body.

Example of what should be included in an article on the training course to be included under technical specifications:

## **I.X Training course**

### **I.x.1 Background information**

Information on the project’s energy / environmental target.

Why tradespeople working on this project should upskill and complete this training (rationale).

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<sup>23</sup> For information, the current penalty in France is €30 per hour of non-completed training

<sup>24</sup> Although not mandatory, having a training clause coordinator has been highly recommended by all organisations currently using the clause.

### **I.x.2 Relevant lots**

If there are multiple lots in the tender, it should be clear to which lots the training clause applies.

### **I.x.3 About the training course**

How will the training programme be implemented (e.g., on site or not), who should take part in the training and an overview of what is covered in the training.

### **I.x.4 Training course content**

Descriptions of the various modules, their duration and who should attend these training courses (e.g., plumbers, site supervisors).

### **I.x.5 Cost of the training course**

What's the cost of the training course and who is covering it?

### **I.x.6 Supporting mechanism**

If a training clause coordinator<sup>25</sup> has been appointed, his/her contact details should be included here, as well as information on the mechanisms in place to support the successful tender in ensuring all targeted tradespeople complete the training.

### **I.x.7 Suspension of the training course**

Information on the circumstances under which the contracting body may decide to suspend the training course. E.g., if not all tradespeople take part in it.

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<sup>25</sup> Although not mandatory, having a training clause coordinator has been highly recommended by all organisations currently using the clause.



## AVIS D'APPEL PUBLIC A LA CONCURRENCE

### MARCHE DE TRAVAUX

Pouvoir Adjudicateur : Sia Habitat, SA d'HLM au capital social de 1 835 808 euros, dont le siège social est situé 67 avenue des Potiers CS 80649 59506 Douai Cedex, enregistrée au RCS de Douai sous le numéro B045 550 258 et représentée par Mme Marie-Hélène FOUBET en sa qualité de Directrice Générale.

Objet : **MARCHE DE TRAVAUX DANS LE CADRE DE LA CONSTRUCTION DE 20 LOGEMENTS COLLECTIFS ET INDIVIDUELS LOCATIFS SOCIAUX ET 4 LOGEMENTS INDIVIDUELS EN ACCESSION SOCIALE A LA PROPRIÉTÉ RUE SADI CARNOT A RONCHIN (59790).**

Référence de la consultation: SIADIDP2017073

Procédure de passation : procédure adaptée avec négociation telle que visée par les dispositions de l'article 42-2° de l'ordonnance n°2015-899 du 23 juillet 2015 et de l'article 27 du décret n°2016-360 du 25 mars 2016.

NB : Dans le cadre du présent marché, les candidats s'engagent à réaliser une action d'insertion par l'activité économique (voir sur ce point le règlement de consultation, le CCAP et l'acte d'engagement) ou à réaliser une formation intégrée au chantier.

Allotissement : Le présent marché est composé de 12 lots comme suit :

- Lot 1 : Gros Œuvre étendu
- Lot 2 : Serrurerie - ensembles vitrés des halls d'entrée
- Lot 3 : Cloison - Doublage - Plâtrerie - Isolation
- Lot 4 : Menuiseries intérieures bois - Volets battants
- Lot 5 : Plomberie - Sanitaires - Chauffage - YMC
- Lot 6 : Electricité - Courants faibles
- Lot 7 : Carrelage - Faïences
- Lot 8 : Peintures
- Lot 9 : Sols souples
- Lot 10 : Ascenseurs
- Lot 11 : VRD
- Lot 12 : Espaces verts - Clôtures

Renseignements et justificatifs à produire :

La liste des pièces exigibles est fixée à l'article 10-2 du Règlement de consultation.

CPV- Objet principal : 45211000-9 - Travaux de construction d'immeubles collectifs et de maisons individuelles.

Code NUTS : FR301

Modalité d'obtention du dossier de consultation :

Les dossiers sont directement accessibles sur le site :

<http://sia-habitat-marchespublics.com>

Date limite de réception des offres : Le 03/07/2017 12 heures.

Renseignements complémentaires :

Pour tout renseignement d'ordre technique :

Monsieur Pierrick MOURETTE -Chargé d'Opérations -GROUPE SIA -Tél:03.27.94.63.05

Monsieur MARTIN -Cabinet B.M.G Tél: 03.21.38.00.60

Pour tout renseignement d'ordre administratif :

Monsieur Arnaud BENSOUSSAN - Juriste Marchés Construction - GROUPE SIA

Tél : 03.27.94.63.04.

Date d'envoi du présent avis de publication : le 22/05/2017

14024487600

## Example of a commitment form to be included as part of a public tender

To be printed on the organisation  
headed paper

On behalf of **[organisation name and address]**, I, **[name and job title]** confirm that **[organisation name]** commit to:

- Completing the training courses as per tender **[tender reference and relevant section of the tender document]**.

I understand that as part of this project, I may be asked to provide feedback on the training course, including quotes.

Date

Signature and company stamp





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