



Compliance – from box-ticking to added value

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10 June 2008



The “compliance” paradigm

- Box ticking
- Cf Data Protection
- Cf the Swiss banking model
- Adding value through compliance



Is there a legal test of “green IT”?

- The sources of “green IT” standards
 - supply of products & services
 - procurement of products and services
 - corporate governance
- How to define, measure & apply “green IT” standards
- Creating competitive advantage



Why go “green”?

- Because legally required?
- To save money
- To attract money
- “C(S)R” and the “Inconvenient Truth”



How to generate added value?

- Beating the “compliance” paradigm
- Leveraging value from compliance
- Creating competitive advantage



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Keen to be Green

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And it's legal! Public Contracts Regulations 2006

Reg. 9 (7) A contracting authority may define the technical specifications referred to in paragraph (5) in terms of performance or functional requirements (which may include environmental characteristics) provided that the requirements are sufficiently precise to allow an economic operator to determine the subject of the contract and a contracting authority to award the contract.



Public Contracts Regulations 2006

Information as to technical or professional ability

Reg. 25 (1) Subject to regulation 27, in assessing whether an economic operator meets any minimum standards of technical or professional ability required of economic operators by the contracting authority....a contracting authority may have regard to any means listed in paragraph (2) according to the purpose, nature, quantity or importance of the contract.



Public Contracts Regulations 2006

Reg. 25(2) The means referred to in paragraph (1) are....
(h) the environmental management measures, evidenced in accordance with paragraph (4), that the services provider or contractor is able to apply when performing the contract, but only where it is necessary for the performance of that contract;



Public Contracts Regulations 2006

Criteria for the award of a public contract

Reg. 30 (2) A contracting authority shall use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous including quality, price, technical merit, aesthetic and functional characteristics, **environmental characteristics**, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery



Public Contracts Regulations 2006

Conditions for performance of contracts

Reg. 39(1) A contracting authority may stipulate conditions relating to the performance of a public contract, provided that those conditions are compatible with Community law and are indicated in —

- (a) the contract notice and the contract documents; or
- (b) the contract documents.

(2) The conditions referred to in paragraph (1) may, in particular, include social and environmental considerations.



Public Contracts Regulations 2006

- PQQ: technical standards and qualifications can include environmental standards
- Award: criteria can include environmental characteristics
- Contract conditions: can include social and environmental considerations



The myth

- Great caution required, environmental elements must be essential to subject matter of contract



The reality

Provided

- Standards, criteria and weighting are related to subject matter, hence
- Not merely a pretext for getting some incidental benefit and are
- Reflected in the terms of the contract



The reality

And provided they are

- Clearly defined
- EU-equal
- Objectively ascertainable and measurable
- Weighted proportionately

they will be legal

Within reasonable limits, public policy is itself a basis for including green criteria in rejection, selection and award criteria and in contract conditions



How – understanding the business

- Consider impact of regulation
 - Compliance should be a PQQ specification, not an award criterion
 - Caution about requiring significantly more than compliance – but not impossible
 - Analyse the business, considering (for example):
 - Use of Materials
 - Use of Chemicals
 - Use of Natural Resources
 - Energy Consumption
 - Waste minimisation and management
 - Recycling
- And social issues? – equality, diversity.....



How? – information and implementation

- **Consult**
 - The market
 - Sources of expertise and authority
- **Define**
 - Technical standards and metrics (PQQ)
 - Required behaviours (criteria, contract conditions)
 - Evidence
 - Weightings (and reasons)
- **Devise**
 - Process: sources of evidence, applying metrics, maintaining and improving standards



Questions?





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Achieving a return on a Green Investment

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Achieving a return on a Green Investment

- Reduce costs
- Reduce risk
- Attractive to customers and investors



Reducing Costs

- Simple measures can save large sums without cost
- Some measures require investment
- Where does the law fit in?



Galvanising your workforce

- Carrot and stick?
- Carrot, for example:
 - good HR
 - Rewards
- Stick, for example:
 - Contractual terms
 - Internal procedures
 - Disciplinary proceedings



Contracting with your suppliers

- What if IT does not meet specification?
- What if IT does what it should but environmental credentials are overstated?



Reducing Risk

- Increasing environmental legislation
- Increasing risk of class actions
- Issue if very much in the boardroom
 - Duty to consider environmental impact
 - Environmental reports
 - Enforceable by shareholders



Becoming attractive to customers and investors

- Customer like environmental benefits – particularly where no additional costs
- Investors like environmental benefit – particularly where there are increased profits
- Securing the benefits
- Proving the benefits
- Standing behind the benefits



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