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Information and Analysis on Legal Aspects of Procurement

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¶ 60 FEATURE COMMENT: A Transatlantic Analysis Of EU And U.S. Strategies In “Green Procurement”

Introduction—Public procurement represents a potent economic force, accounting for approximately one-third of government spending across OECD nations. See Organization for Economic Cooperation & Development (OECD), *Promoting Transparency and Strategic Use of Public Procurement* (2019). Historically, the legal frameworks governing these vast expenditures have been predicated on achieving value for money domestically, see, e.g., Federal Acquisition Regulation 1.102; 48 CFR § 1.102, and fostering competition internationally through market liberalization, see, e.g., World Trade Organization, Agreement on Government Procurement 2012, www.wto.org/gpa. Core to these doctrines are the principles of non-discrimination and the prohibition against preferential treatment—equal treatment of all bidders—which form the bedrock for regulatory approaches to governmental procurement. Over the last two decades, however, these established norms have been criticized for restricting the integration of social and environmental considerations into procurement decisions—for making it harder, in other words, to integrate social and environmental goals into public procurement decisions.

Over recent decades, a significant paradigm shift has occurred. The pendulum has swung from a staunch neoliberal emphasis on unfettered market dynamics to a more interventionist stance, to use public procurement as a tool for social and environmental betterment. Because the U.S. Government has long assimilated social and political goals into its procurement, the shift has been more obvious in the European Union, which traditionally viewed public procurement more narrowly as a means of *economic* integration of the EU. See, e.g., Webinar, *Rethinking “Value for Money” (Best Value) in Government Procurement* (Feb. 22, 2024), blogs.gwu.edu/law-govpro/rethinking-value-for-money-best-value-in-government-procurement/ (program and resources on shift to environmental sustainability); *Cost and EU Public Procurement Law: Life-Cycle Costing for Sustainability* (eds. Marta Andhov, Roberto Caranta & Anja Wiesbrock) (Routledge 2020); Sue Arrowsmith, *The Past and Future Evolution of EC Procurement Law: From Framework to Common Code?*, 35 Pub. Cont. L.J. 337 (2006). In both the U.S. federal system and the European Union, the shift to social and environmental goals has been remarkable.

This shift is particularly important in light of the sheer scale and influence of public procurement. For instance, the European Union’s public procurement expenditures exceed €2 trillion, representing about 14 percent of its gross domestic product, while in the U.S., federal procurement policies can directly influence over 7 percent of the

nation's GDP (US\$28 trillion) through federal procurement rules (covering roughly \$700 billion in annual procurement) and federal grants guidance (over \$1.2 trillion in federal assistance annually).

These figures underscore governments' roles as some of the world's principal buyers, for they wield significant power to sculpt markets, influence social outcomes, and address environmental challenges. Because of the pressing need to address global warming and other societal challenges, governments on both sides of the Atlantic are looking to leverage public procurement to advance the United Nations' Sustainable Development Goals (SDGs)—internationally agreed goals to reduce poverty, raise standards of living and curb environmental damage. See, e.g., United Nations, Department of Economic and Social Affairs, *Sustainable Development: 17 Goals*, sdgs.un.org/goals.

In this article, we examine recent developments in public procurement in the U.S. and the European Union. Our analysis explores whether these two economic powerhouses are converging towards a shared methodology or if they continue to deploy divergent strategies in leveraging procurement for broader objectives in sustainability.

Although sustainability in public procurement, taken broadly, can include economic and social justice goals as well, our focus here is on *environmental sustainability*, in particular on measures to leverage public procurement to ease global warming by monitoring and reducing greenhouse gas emissions—commonly referred to as “green procurement.” See, e.g., European Commission, *Green Public Procurement*, green-business.ec.europa.eu/green-public-procurement_en. We seek to understand what lessons can be gleaned from the EU and U.S. experiences and how these insights can inform future procurement practices globally.

Status Quo—What Is Possible Today?—*European Union*: Within the European Union, the existing legal structure provides a robust platform for Green Public Procurement (GPP). The 2014 Public Procurement Directives have been pivotal, incorporating ex-

PLICIT provisions that encourage the use of Sustainable Public Procurement (SPP) at all stages of the procurement process. These range from the initial product or service specifications to the final contractual obligations. Notably, these directives facilitate innovative methodologies, such as life-cycle costing and the application of eco-labels, which empower public entities to make environmentally conscious decisions.

Despite these provisions, the pursuit of GPP is not without constraints. The foundational tenets of EU law, including non-discrimination and transparency, must remain inviolate because they are central to the EU's core purpose: establishing the unrestricted single market. Furthermore, any GPP criteria used in procurement must withstand objective verification to ensure that vendors do not indulge in “greenwashing”—empty promises of environmental benefit—and procurement requirements must maintain a clear connection to the subject matter of the contract, across all the life-cycle stages of the product or service involved. See, e.g., Article 67 Directive 2014/24/EU; Case C-513/99, *Concordia Bus*, ECLI:EU:C:2002:495.

To aid public procurers in applying GPP, the European Commission dispenses comprehensive guidance through documents such as *Buying Green!—A Handbook on Green Public Procurement*. See Publications Office (2016), data.europa.eu/doi/10.2779/837689. This handbook, currently in its third edition as of 2016, is instrumental in guiding purchasing agencies towards lower environmental impacts, offering sector-specific protocols to achieve GPP. The Commission also circulates good practice examples and detailed GPP criteria, which are categorized into “core criteria” for broad applicability and “comprehensive criteria” targeting the market's best environmental performers. See, e.g., European Commission, *Green Public Procurement*, green-business.ec.europa.eu/green-public-procurement_en. Nonetheless, these guidelines function as soft law, and their adoption is voluntary for Member States' authorities.

A significant turning point in the legal landscape was the recognition of sustainability in Article 18(2) of the EU's main procurement directive, Directive 2014/24/EU. See, e.g., M. Andhov, “Commentary to Article

THE GOVERNMENT CONTRACTOR

18(2)” in R. Caranta, A. Sanchez-Graells (eds.) *Commentary on the Public Procurement Directive (2014/24/EU)* (Edward Elgar 2021). The Member States’ procurement laws must conform to the EU’s directives, and this new provision specifically called for Member States to “take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labor law.” This new provision thus spanned all three types of sustainability—addressing environmental, economic and social justice goals—and marked a shift from merely enabling to mandating compliance with sustainability obligations in procurement; the Court of Justice of the European Union confirmed that shift in its opinion in *TIM* (European Court of Justice, 2020). However, mandatory SPP requirements are still limited to specific sectors under the EU’s purview, such as under Regulation (EC) No 106/2008 (EU Energy Star Regulation), which requires certain energy efficiency benchmarks in public contracting.

United States: Public procurement policy in the U.S. Government has for many years addressed all three aspects of sustainability—environmental, economic and social justice—and that has certainly held true throughout the Biden Administration. Since he took office in early 2021, President Biden’s Administration has (1) taken ambitious steps to reshape procurement to reduce the Federal Government’s impact on global warming (environmental), (2) raised new obstacles to international trade in procurement in an effort to enhance the U.S. economy (economic), and (3) launched historic efforts to improve social justice through federal procurement practices. Our focus here will be on the *environmental* measures, which offer some of the clearest comparisons to parallel measures in the European Union.

Emerging Trends—Exploring the Frontier of Proposed Initiatives on SPP—In this section, we will compare specific efforts in the European Union and the U.S. aimed at improving *environmental sustainability*—in the main, efforts to reduce the greenhouse gases and other environmental harms that can be caused by government procurement.

As Steven Schooner has noted, the common strate-

gies for reducing the environmental impact of procurement include:

- Considering greenhouse gas (GHG) emissions (and their social costs) in procurement decisions and measuring those emissions over the goods’ or services’ life-cycle.
- Creating evaluation preferences for offers—and tools for assessing those offers—that achieve reductions in, or reduce the social cost of, GHGs, and, of course, collecting and assessing GHG data during contract performance, and standardizing and verifying GHG emission reporting.
- Incorporating and mitigating climate-related financial risk into federal procurements.
- Ensuring that an increased focus on the social cost of GHGs in procurement decisions does not adversely impact small businesses.

Steven L. Schooner, *No Time to Waste: Embracing Sustainable Procurement to Mitigate the Accelerating Climate Crisis*, 61 *Cont. Mgt.* 24, 27 (Dec. 2021), ssrn.com/abstract=3980915 (citing 86 Fed. Reg. 57404 (Oct. 15, 2021) (notice of proposed rulemaking suggesting potential strategies for Federal Government)).

As the discussion below shows, the EU and the U.S. have adopted many, but not all, of these approaches; their strategies overlap in important ways, and where they do not—where there are gaps—there are important lessons for the future.

European Union: In December 2019, the European Commission launched the European Green Deal (EGD), a comprehensive response to climate and environmental challenges, with an overarching target set in March 2020 to transform Europe into a zero-pollution continent by 2050. This target is legally binding and encompasses all GHG, not just carbon dioxide. The EGD, conceived within the UN’s SDGs, covers multiple facets of environmental reform:

- A zero-pollution ambition
- Restoration of biodiversity and ecosystems

- Provision of clean, affordable, and secure energy
- Mobilization of industry for a clean and circular economy
- Promotion of energy and resource-efficient construction and renovation
- Encouragement of sustainable and smart mobility
- Development of a fair, healthy, and environmentally friendly food system, from “Farm to Fork”

The EGD and the Circular Economy Action Plan highlight procurement as a strategic lever for achieving environmental goals. Recognizing this, the EU has seen the need for mandatory green criteria in public contracts to bolster the efficacy of GPP. The Commission’s Communication from Jan. 14, 2020, further defines this policy initiative by promising to propose minimum mandatory green criteria or targets for public procurements within sectorial initiatives, EU funding, or product-specific legislation, such as the Proposed Batteries Regulation 2023/1542 and the Proposal for a Construction Product Regulation. These initiatives, taken together, aim to create a common definition of “green purchasing” and to facilitate the collection of comparable data from public buyers to enable the evaluation of GPP impacts.

EU legislation is now evolving to make GPP mandatory in a growing number of sectors, shifting from merely dictating “how to buy” to defining “what to buy” or more precisely “what not to buy” by expanding how public buyers should understand the broader costs of their purchases. This change is reflected in new legislative proposals, some already tabled and others still forthcoming.

All these initiatives can be grouped to create a typology of solutions deployed to achieve climate neutrality. Professor Willem Janssen (Utrecht University) has bunched the mandatory public procurement requirements allowed by the EU into three primary categories, see Willem Janssen, “Shifting Towards Mandatory Sustainability Requirements in EU Public Procurement Law: Context, Relevance and a Typology” in *Mandatory Sustainability Requirements in EU*

Public Procurement Law: Reflections on a Paradigm Shift (eds. Willem Janssen & Roberto Caranta, Hart Publishing 2023), as follows.

First Category: Minimum Mandatory Requirements.

- Substantive. These requirements define the environmental attributes of the procured item. Examples include the accessibility requirements stipulated in Article 42 of the EU Directive 2014/24/EU (analogous to accessibility requirements under Section 508 of the Rehabilitation Act in the U.S.) or the “green” minimum technical specifications and award criteria that will be introduced under Article 70 of the EU’s Batteries Regulation 2023/1542.
- Procedural. These requirements affect the procurement process itself. For instance, the EU’s Deforestation-Free Product Regulation 2023/1115 and the EU’s proposed Green Claims Directive both propose procedural changes. The former requires companies that are importing certain commodities—such as cattle, cocoa, coffee, palm oil, and several others—to verify through a due diligence statement that their products are not sourced from deforested areas, and to include geolocation data specifying where the commodities were produced. Infringements of this Regulation could lead to temporary exclusion from public procurement under Article 25 of this Regulation. A similar punitive measure to forestall “greenwashing” is anticipated in Article 17(3)c of the Green Claims Directive. See European Commission, *Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)* (Mar. 22, 2023), environment.ec.europa.eu/publications/proposal-directive-green-claims_en.
- Horizontal. These are broad sustainability goals which apply to all procurement activities, regardless of sector, exemplified by the EU’s proposed Corporate Social Due Diligence Directive (which was proposed in 2022 but now faces significant opposition, see, e.g., Jon McGowan, In Final

THE GOVERNMENT CONTRACTOR

Push, Vote On Reduced EU Corporate Sustainability Due Diligence Law Set For March 8, Forbes, Mar. 7, 2024), which would require larger firms in the European Union to identify and mitigate adverse environmental impacts in the firms' operations, their subsidiaries and their value chains, and to have a plan to ensure that their business strategies are compatible with limiting global warming. See European Commission, *Corporate Sustainability Due Diligence*, commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en.

- Sectoral. These measures are specific to certain sectors, such as the transportation-focused 2019 Clean Vehicles Directive (which sets standards for vehicles purchased through public procurement), Directive 2019/1161, see European Commission, *Clean Vehicles Directive*, transport.ec.europa.eu/transport-themes/clean-transport/clean-and-energy-efficient-vehicles/clean-vehicles-directive_en, or standards for food or construction materials that promote sustainability within those industries.

Second Category: Targets. The second category of measures involves “targets” which are set as specific procurement objectives, such as the heavy-duty vehicle procurement benchmarks under the Clean Vehicles Directive (discussed above), or as part of wider environmental measures such as the European Green Deal’s target for net-zero GHG emissions by 2050, which includes procurement goals within its broader scope. See generally European Commission, *The European Green Deal*, commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

Third Category: Product-Specific Legislation. This category covers laws that dictate the environmental or social standards for products, influencing procurement by determining which products are available in the market. The Proposal for a Regulation on Ecodesign for Sustainable Products is a case in point, aiming to sway market offerings and, consequently, procurement decisions toward sustainability. See European Com-

mission, *Proposal for Ecodesign for Sustainable Products Regulation* (Mar. 2022), environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en.

As the preceding discussion reflects, Willem Jansen’s typology for mandatory sustainability measures in the European Union aligns broadly with the types of measures outlined by Steve Schooner, above—and with the ongoing efforts in the U.S.

U.S. Initiatives in “Green Procurement” in the Biden Administration: As noted, our focus here will be on the environmentally sustainable initiatives undertaken by the current U.S. administration. See generally Office of the Federal Chief Sustainability Officer, Council on Environmental Quality (CEQ), *Net Zero Emissions Procurement by 2050*, www.sustainability.gov/federal-sustainability-plan/procurement.html (overview of initiatives); *COP 28 UAE: Roundtable on Environmentally Sustainable Public Procurement* (Dec. 2023), publicprocurementinternational.com/2023/12/04/cop-28-uae-roundtable-on-environmentally-sustainable-public-procurement/ (author’s review).

The U.S. Government has joined the Net Zero Government Initiative (NZGI), which is a global initiative of countries committed to achieving net-zero emissions from national government operations by no later than 2050. Partner countries in the NZGI are leveraging governments’ critical role in spurring national economies to reach country-level and global climate targets. Besides the U.S., other countries across the EU have joined the initiative. See, e.g., Office of the Federal Chief Sustainability Officer, CEQ, *Net-Zero Government Initiative*, www.sustainability.gov/federal-sustainability-plan/net-zero-initiative.html.

Through President Biden’s Executive Order 14057 on “catalyzing American clean energy industries and jobs” through a comprehensive “Federal Sustainability Plan,” the U.S. has undertaken an ambitious effort to achieve net-zero emissions from federal procurement by 2050 while increasing the sustainability of the federal supply chain, through several separate initiatives. Most of the initiatives, discussed below, are

in the proposal stage. The November 2024 elections may prove important because the Biden Administration may not be able to finalize these initiatives before then, and if President Biden leaves office in 2025 some or all of these initiatives may be narrowed or closed.

Proposal to Require Major Federal Contractors to Disclose Emissions and Set Targets. The first initiative would require larger federal contractors to disclose their GHG emissions, and to set targets for reducing emissions. This initiative under a proposed FAR rule, see 87 Fed. Reg. 68312 (Nov. 14 2022), would center on contractor qualification (known as “responsibility” in U.S. procurement)—presumptively only compliant contractors would be found “responsible.” As is discussed below, however, this initiative may have been stalled by a provision in the National Defense Authorization Act for Fiscal Year 2024 which (at least temporarily, and over the Biden Administration’s objections, [65 GC ¶ 195](#)) bars the Defense Department from demanding GHG emissions information from its contractors.

Under the Biden Administration’s proposed rule, to be considered qualified (“responsible”), major federal contractors (those with over US\$50 million in annual federal obligations—see table below) would be required to report publicly their GHG emissions and their efforts to reduce those emissions. While the Federal Government considered other means of enforcement—requiring contractors to submit GHG emissions information per a contract clause, for example, or barring awards to noncompliant contractors—regulators ultimately concluded that using *qualification* as an enforcement mechanism “not only establishes the Government’s position that responsible contractors take action to address and reduce climate-related financial risk, but also allows contracting officers some flexibility to determine what actions a noncompliant contractor has taken to comply.” See *FAR Case 2021-015: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk Regulatory Impact Analysis*, at 39-41 (Nov. 2022) (“*Regulatory Impact Analysis*”), www.regulations.gov/document/FAR-2021-0015-0004.

THE GOVERNMENT CONTRACTOR

Federal Contractors		Federal Supplier Climate Risks and Resilience Proposed Rule Requirements		
Segment	Annual Federal Obligations	Scope 1, Scope 2, and relevant categories of Scope 3 emissions in alignment with the GHG Protocol Corporate Standard	Climate Risks assessed in alignment with the recommendations of the Task Force on Climate-Related Financial Disclosure (TCFD)	Emissions reduction target validated by the Science Based Targets Initiative (SBTi)
Major Contractors	>\$50M	Yes (through Carbon Disclosure Project (CDP))	Yes (through CDP)	Yes (through SBTi)
Significant Contractors	>\$7.5M-\$50M	Yes (Scope 1 and Scope 2 only)	No	No
Other Contractors	<\$7.5M	No	No	No

Table: Summary of Requirements Per Proposed Rule To Require Contractor Disclosures of GHG Emissions (source: www.sustainability.gov/federsustainabilityplan/fed-supplier-rule.html).

The proposed GHG monitoring requirement would be subject to some important exceptions, for example for Alaska Native Corporations, Indian tribes and Community Development Corporations. Contractors that failed to meet the GHG-related requirements could also avoid a non-responsibility determination by showing the contracting officer that their noncompliance resulted from circumstances beyond their control, proffering evidence of their substantial efforts to comply, and making a public commitment to comply as soon as possible (i.e., within at most one year) on a publicly available website. 87 Fed. Reg. at 67316.

The proposed rule paralleled the Securities & Exchange Commission’s separate and (ultimately weakened) proposal, see 87 Fed. Reg. 21334 (Apr. 11, 2022), to require certain publicly traded companies to disclose the GHG emissions attributable to their operations, and their efforts to mitigate climate impact. See, e.g., Securities & Exchange Commission (SEC), *Fact Sheet: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules*, Mar. 6, 2024 (summary of final rules); Rachel Frazin & Saul Elbein, SEC Finalizes Weakened Rule to Make Companies Disclose Climate Information, *The Hill*, Mar. 6, 2024. Like that parallel SEC initiative, the proposed FAR rule was controversial because of the costs and burdens it could impose on business. See, e.g., *Regula-*

tory Impact Analysis, supra, at 39–41; [65 GC ¶ 44](#), [65 GC ¶ 129](#), [65 GC ¶ 153](#).

The debate over the proposed rule requiring contractor GHG disclosures was stopped—or at least postponed—by Section 318 of the most recent National Defense Authorization Act (NDAA), P.L. No. 118-31, which became law in late December 2023. See generally *National Defense Authorization Act for Fiscal Year 2024: Key Procurement Provisions—Study Guide*, on www.publicprocurementinternational.com; see also U.S. House Armed Services Committee, *Ending Wokeness in the Military*, at 1 (summary of House version of NDAA noted draft legislation would block “DoD from requiring defense contractors to document the impact their weapons systems have on greenhouse gas emissions and submit plans to reduce emissions”).

Section 318 imposed a one-year bar against the Defense Department requiring that defense contractors disclose GHG inventory or emissions as a condition of receiving a defense contract. The bar would be permanent for “nontraditional” defense contractors. Because the largest share of U.S. federal procurement is by the Defense Department, by passing Section 318 Congress raised a serious obstacle to this key Biden Administration initiative—the proposed requirement that contractors chronicle and disclose GHG emissions—in environmentally sustainable procurement.

A “Buy Clean” Initiative to Promote Low-Carbon Materials. A separate initiative in the Biden Administration would promote the purchase of *low-carbon materials* in the construction industry. This sector-focused

initiative would rely more on information-sharing than mandates. In February 2022, the Biden Administration launched a task force for its “Federal Buy Clean Initiative,” in order to “promote use of construction materials with lower embodied emissions and pollutants across their lifecycle.” The initiative includes a “Federal-State Buy Clean Partnership” with a dozen states, which would “prioritize efforts that support the procurement of lower-carbon infrastructure materials in state-funded projects,” and ease intergovernmental collaboration “to send a harmonized demand signal to the marketplace.” *www.sustainability.gov/buyclean/*.

Procurement Planning to Minimize Climate Change and to Assess GHGs’ Societal Costs. Another Biden Administration initiative would advance “green procurement” by requiring agencies, during the procurement planning process, to consider the life-cycle costs of sustainable costs of sustainable alternatives. Critics have long argued that procuring agencies focus too narrowly on the immediate costs of a public purchase, and ignore the full costs—including the broader social costs of GHG emissions—across the life-cycle of the purchased product or service. This initiative addresses that problem of assessing “externalities” borne by those *outside* the procurement process, due to GHG emissions.

In his first year in office, President Biden issued Executive Order 14030 which directed regulators to amend the FAR to “ensure that major Federal agency procurements minimize the risk of climate change, including requiring the social cost of greenhouse gas emissions to be considered in procurement decisions and, where appropriate and feasible, give preference to bids and proposals from suppliers with a lower social cost of greenhouse gas emissions.” The Biden Administration sought to “strengthen lifecycle cost approaches to include the SC-GHG [social costs of greenhouse gas emissions]—the incremental future economic damages caused by each ton of carbon pollution,” because this “can be a valuable tool to guide agencies toward investments that are compatible with the low-carbon economy of the future.” In September 2023, the White House announced that it was directing federal regulators to incorporate SC-GHG estimates into a wide range of federal agency actions, including

each agency’s procurements. See White House, *Fact Sheet: Biden-Harris Administration Announces New Actions to Reduce Greenhouse Gas Emissions and Combat the Climate Crisis* (Sept. 21, 2023); [65 GC ¶ 284\(a\)](#).

While FAR 7.105 already calls for federal agencies to consider life-cycle costs in their planning processes, this Biden Administration initiative would go further to require agencies to consider specifically the social costs of GHG emissions in the planning process. Because of the deference afforded agencies in a relatively closed planning process, as a practical matter it is difficult for bidders (or other third parties) to force agencies to abide by planning requirements rooted in regulation. That said, this initiative would open a much broader perspective in procurement planning—one that would take into account the broader costs of global warming, and so would weigh against goods and services that threaten more GHG emissions.

Leveraging “Eco-Labels” to Maximize Procurement of Sustainable Goods and Services. Another Biden Administration initiative would broaden the use of approved “eco-labels” (product labels based upon accepted environmental standards), and would call for the purchase of those products whenever practicable. In August 2023, the Biden Administration issued a proposed rule to update FAR pt. 23 to “focus on ... environmental and sustainability matters and to implement a requirement for agencies to procure sustainable products and services to the maximum extent practicable.” 88 Fed. Reg. 51672, 51672 (Aug. 3, 2023). The proposed rule would rewrite FAR 2.101 to define “sustainable products and services” relatively narrowly, as those products and services identified by the U.S. Environmental Protection Agency under various mandates and eco-labels. 88 Fed. Reg. at 51683.

The proposed rule would expand upon the current FAR 23.103, which calls for only 95 percent of procurement actions to use eco-labels—and thus leaves a 5 percent loophole which makes the requirement very difficult to enforce. Under the proposed revision to FAR 23.103, agencies would be required to “procure sustainable products and services ... to the maximum extent practicable”—an arguably more sweeping

THE GOVERNMENT CONTRACTOR

mandate, though hampered by the narrow definition of “sustainable products and services” noted above, and potentially undermined by the inherently elastic definition of “practicability.” Under the proposed rule, procuring sustainable products and services would be considered practicable unless the agency could not acquire products or services (i) competitively within a reasonable performance schedule; (ii) that meet reasonable performance requirements; or (iii) at a reasonable price. See 88 Fed. Reg. at 51676.

Reinforcing Agency Leadership in Environmentally Sustainable Procurement. A final Biden Administration initiative would reinforce senior officials’ understanding and support for sustainability, by establishing a “Net-Zero Emissions Procurement Federal Leaders Working Group” to drive strategy and implementation. Under this initiative, federal officials would work within the Biden Administration’s broader “Federal Sustainability Plan Strategy Mix,” which includes procurement as a core pillar of the administration’s overall plan for meeting sustainability goals.

Conclusion—The EU and U.S. initiatives in GPP are striking in how they overlap—and in what they omit. On both sides of the Atlantic, initiatives to address GHG emissions in public procurement have moved forward, though sometimes tempered by politi-

cal opposition. The initiatives look to common methods, such as requiring vendors to assess and reduce their GHG emissions, sector-specific efforts to boost low-carbon procurement, and “eco-labels” which identify environmentally sound products. Notably, *neither* the EU nor the U.S. Government has yet moved aggressively to make greenhouse gas emissions a graded evaluation factor in procurement awards—a technically difficult next step which could (if not done right) severely distort competitions in public procurement. Taken in sum, the EU and U.S. initiatives offer important practical lessons in how to mitigate procurement’s contribution to global warming, and how governments might serve as “catalysts” for broader efforts to reduce greenhouse gas emissions.

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