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Introduction

As the threat of human-induced climate change increases, bringing with it rising tides, wildfires, and drought, the potential for impactful environmental legislation in the United States is decreasing. Climate change as a policy issue has become partisan, with 80 percent of Democrats to only 29 percent of Republicans believing it should be urgently addressed[1]. The Biden Administration's signature legislation, the Build Back Better Act, which includes $550 billion dedicated to fighting climate change, is stalled in the Senate, demonstrating the difficulty of passing sweeping legislation as a means to tackle the problem.

With the ever-present effects of climate change and the narrowing window of opportunity to mitigate the damage[2], an effective and largely apolitical way to fight climate change is through sustainable public procurement. Sustainable or "green" public procurement (GPP) is the federal, state, and local government's purchasing of products, services, and works that cause minimal adverse environmental impact. As Stacey Foreman, Sustainable Procurement Program Manager for the city of Portland, Oregon, explains, GPP is a mindset that "every purchase we make is a force for good and good is achievable in a variety of ways."

From sustainably resourced wood and low carbon embodied concrete in construction materials to non-toxic custodial products and low-emitting furniture, municipal, state, and federal governments can influence climate policy with what they purchase. This influence turns to impact with the sheer volume of public procurement spending in America. While the Build Back Better bill ascribed $550 billion to climate change relief, public procurement represents around $1.4 trillion per year in America and is 12% of the gross domestic product in the Organization for Economic Cooperation and Development countries[3].

Procurement spending continues to grow as governments increase purchasing to combat the economic effects of the COVID-19 pandemic. The federal government

increased procurement by $70 billion from Fiscal Year (FY) 2019 to FY20 for a total of more than $665 billion[4]. Local governments also boosted public procurement, with Foreman's Portland spending $845 million in FY20, an 80% increase from three years ago[5].

Public procurement has moved well beyond the "ministerial" task it once was and is now a complex, dynamic tool used to address broad public sector initiatives[6]. The high degree of spending in the U.S. means there is an incredible amount of space for procurement officials to utilize sustainable goods, services, and contracts to combat the rapidly approaching effects of a warming planet[7].

Green Public Procurement as Policy

Federal-level procurement regulation and policy are governed by the Federal Acquisition Regulation (FAR), the set of principles for all executive agency procurement. The movement toward sustainable procurement began with the Conservation and Recovery Act (RCRA) of 1976, setting purchasing preferences on recycled material[8]. After little GPP interest in the successive Reagan and Bush administrations, the Clinton Administration passed Executive Order (EO) 12873 to "strengthen the role of the Federal Government as an enlightened, environmentally conscious and concerned consumer" by requiring agencies to purchase recycled products to the extent practicable. The Bush and Obama administrations that followed each signed additional EOs that set targets for agencies on GPP purchasing defined sustainable material as those under guidelines like Energy Star and the Electronic Product Environmental Assessment Tool (EPEAT) and broadened the federal government's GPP purchasing goals to reduce greenhouse gas emissions[9].

The Biden Administration is building on these initiatives. By rejoining the Paris Climate Agreement and signing EOs that promote an "aligning the management of Federal procurement to support robust climate action,"[10] the administration is reestablishing GPP rulemaking in FAR.

Still, the complexity and, as the Trump Administration's revocation of Obama-era GPP rulemaking demonstrates, the transience of executive orders means it cannot be the sole instrument used to 'green' procurement and fight the climate crisis[11]. Many believe that legislation is the only effective way to scale up and mandate GPP. But, the Senate's refusal to support the Build Back Better is another step in the pattern of Congress' inaction on the issue[12]. Fortunately for GPP advocates, state

and local governments are showing the way by enacting their own sustainable procurement legislation. In 2017 California, the world's 5th largest economy[13], enacted the Buy Clean California Act mandating that any purchasing and contracting for state-sponsored construction does not exceed the Global Warming Potential set by the state. Additionally, Governor Kathy Hochul signed New York's Low-Embodied-Carbon Concrete Leadership Act in December 2021, establishing sustainability standards for concrete suppliers in public construction projects[14]. Additional GPP statutes in Colorado, Maryland, and Washington, and dedicated sustainable procurement policies found in large cities like Los Angeles, Denver, and Portland, are blueprints for procurement officials to use procurement as climate policy. But there is room to improve, as 34% of state governments have not adopted green procurement provisions advocated by the National Association of State Procurement Officials and the American Bar Association[15].

How Green Public Procurement Works

As a large GHG emitter and a contributor to climate change, the public sector is obligated to mitigate the worst effects of the climate crisis. U.S. federal and local governments are some of the largest procurers in the world and must leverage their purchasing power to meet environmental policy goals through GPP.

In the U.S. today, 55% of GHG emissions are attributed to the public sector's purchasing of goods and contracting of services[16]. Incredibly, if the U.S. military were a country itself, it would be the 47th largest contributor of GHG emissions in the world[17]. Concurrently, the Department of Defense is also the federal government's largest procurer of goods and services, spending $439 billion in contracts in FY20[18].

This kind of spending power allows governments to shape diverse marketplaces, from office supplies and cafeteria services to construction and transportation. In addition, the government can divorce the procurement process from politics because it acts as a large customer toward its suppliers.While politically fraught climate legislation full of mandates stalls at the national level and is non-existent in many right-leaning states, local governments and their procurement officers have the discretion to enact green policy simply through the purchasing of green products. "At the end of the day, we get to influence the market in a way that is very different from a legislative process and its associated politics. We get to say 'as the customer, this is what we want,'" Foreman explains.

Municipal and state procurement officials can enact environmentally preferable purchasing policies tomorrow without mandates or rulemaking, which each require a lot of processing time. “If the climate is the problem, procurement is the solution. It is a mechanism that is already in place within public authorities. It is essential to use it,” argues Martin Hidson, Global Director of the Capacity Center at ICLEI, a non-profit promoting sustainable procurement in local governments. Hidson and ICLEI point out that governments can move to 100% renewable energy, reduce GHG emissions, and meet other climate goals through practices like buying from local producers for city cafeterias or powering city vehicles with electricity[19].

Challenges in Implementing Green Public Procurement

If sustainable procurement policies are simpler than executive orders and less political than climate legislation, why aren’t GPP initiatives more widespread in the U.S.? For starters, any procurement official interested in GPP first must reject the “tyranny of low price,” says Professors Steve Schooner and Markus Speidel in their “Warming Up on Sustainable Procurement.” Further, the procurement officials have an obsession with purchase prices, particularly low purchase prices.[20] By focusing on the positive externalities (ex., Buying local produce is both green and good for the local economy) and the life cycle cost (factoring in costs like maintenance or operations of the item purchased), officials can start purchasing sustainably. GPP-focused procurement officials, like Foreman in Portland, represent an attitude shift away from how much a product costs in the short run to what impact or value it brings long-term.

The federal government remains behind the curve of its OECD counterparts[21], and with many state governments disregarding GPP initiatives, nation-wide public procurement policy is not ready to meet the growing challenge of climate change. Moreover, with many sustainable procurement guidelines lacking significant teeth, coherence, or transparency, there is also potential for greenwashing or the misleading of the environmental benefits of goods or services from contractors or agency heads who have their ideas on what is green procurement[22].

Additional challenges for procurement officials are a lack of inter-agency coordination on climate goals, little knowledge on GPP implementation or the concept of life-cycle cost, or an absence of support from management[23]. Without coherence through inter-agency communication or a mandated procurement policy in a centralized buying system, the current disparate approach to agency

procurement could blunt the impact of GPP on climate change[24].

Conclusion

In the absence of strong political commitment to climate legislation, and with knowledge of the "historically glacial pace of change management that pervades the acquisition system" (Schooner no time to waste), entrepreneurial public procurement officials are moving to fight climate change by joining, as Professor Schooner calls it, the "coalition of the willing" and using GPP policies.

Sustainable procurement has reduced the harmful effects that conventional public procurement has on the environment[25]. But, in the face of a warming planet, can public procurement officials challenge the status quo and open a new front in the fight against climate change?

Endnotes

1. CBS News poll – Eye on Earth: How partisans take different views on climate change. (n.d.). Retrieved January 31, 2022, from https://www.cbsnews.com/news/climate-change-partisan-opinion-poll-04-22-21/ ↑
2. IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press. ↑
3. OECD (2015), Recommendation of the Council on Public Procurement, OECD, Paris, OECD/LEGAL/0411. ↑
4. Office, U. S. G. A. (n.d.). A snapshot of government-wide contracting for fy 2020(Infographic). Retrieved January 31, 2022, from https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2020-infographic ↑
5. Procurement Annual Report 2019-2020. (2020, November 12). Portland.Gov. https://www.portland.gov/omf/brfs/procurement/news/2020/11/12/procurement-annual-report-2019-2020 ↑
6. Conway, Danielle M., Sustainable Procurement Policies and Practices at the

State and Local Government Level (April 15, 2012). GREENING LOCAL GOVERNMENT, K. Hirokawa & P. Salkin, eds., 2012, Available at SSRN: ↑
7. Conway, Danielle M., Sustainable Procurement Policies and Practices at the State and Local Government Level (April 15, 2012). GREENING LOCAL GOVERNMENT, K. Hirokawa & P. Salkin, eds., 2012, Available at SSRN: https://ssrn.com/abstract=2095576 ↑
8. *Going Green: Best Practices for Sustainable Procurement* (pp. 66–68). (2015). OECD. ↑
9. Hasanbeigi , A., Becqué , R., & Springer, C. (2019). *Curbing Carbon From Consumption: The Role of Green Public Procurement* (pp. 63–69). Climate Works Foundation. ↑
10. Exec. Order No. 14008, 86 Fed. Reg. at 7623.) ↑
11. Schooner, Steven L. and Speidel, Markus, 'Warming Up' to Sustainable Procurement (2020). 60 Contract Management, Issue 10, 32 (October 2020), GWU Legal Studies Research Paper No. 2020-70, GWU Law School Public Law Research Paper No. 2020-70, Available at SSRN: https://ssrn.com/abstract=3697429 ↑
12. Osaka, Shannon. Is the US uniquely bad at tackling climate change? (2022, January 6). Grist. https://grist.org/politics/is-american-democracy-uniquely-bad-at-tackling-climate-change/ ↑
13. California now has the world's 5th largest economy. (n.d.). Retrieved January 31, 2022, from https://www.cbsnews.com/news/california-now-has-the-worlds-5th-largest-economy/ ↑
14. Ny gov. Sets industry advisory council to fix public contracts process. (Jan 2022). Retrieved January 31, 2022, from https://www.enr.com/articles/53473-ny-gov-sets-industry-advisory-council-to-fix-public-contracts-process ↑
15. 2020 Survey of State Procurement Practices (Executive Summary, pp. 2–15). (n.d.). National Association of State Procurement Officials. ↑
16. Simonen, K., Huang, T., Huang, M. (2018). Draft Buy Clean Washington Study ↑
17. Bigger, B. N., Oliver Belcher, Patrick. (2019, June). The US military is a bigger polluter than more than 100 countries combined. Quartz. https://qz.com/1655268/us-military-is-a-bigger-polluter-than-140-countries-combined/ ↑
18. Defense Spending by State (pp. 2–5). (n.d.). U.S. Department of Defense Office of Local Defense Community Cooperation . ↑

19. Daring cities use their public procurement power to tackle the climate crisis. (2020, October 27). Daring Cities. https://daringcities.org/media/daring-cities-use-their-public-procurement-power-to-tackle-the-climate-crisis/ ↑
20. Schooner, Steven L. and Speidel, Markus, 'Warming Up' to Sustainable Procurement (2020). 60 Contract Management, Issue 10, 32 (October 2020), GWU Legal Studies Research Paper No. 2020-70, GWU Law School Public Law Research Paper No. 2020-70, Available at SSRN: https://ssrn.com/abstract=3697429 ↑
21. Schooner, Steven L. and Speidel, Markus, 'Warming Up' to Sustainable Procurement (2020). 60 Contract Management, Issue 10, 32 (October 2020), GWU Legal Studies Research Paper No. 2020-70, GWU Law School Public Law Research Paper No. 2020-70, Available at SSRN: https://ssrn.com/abstract=3697429 ↑
22. Schooner, Steven L., No Time to Waste: Embracing Sustainable Procurement to Mitigate the Accelerating Climate Crisis (December 8, 2021). 61 Contract Management, Issue 12, page 24 (December 2021), GWU Legal Studies Research Paper No. 2021-53, GWU Law School Public Law Research Paper No. 2021-53, Available at SSRN: https://ssrn.com/abstract=3980915 ↑
23. Barriers—Gpp—Environment—European commission. (n.d.). Retrieved January 31, 2022, from https://ec.europa.eu/environment/gpp/barriers_en.htm ↑
24. Halonen, K.-M. (2021). Is public procurement fit for reaching sustainability goals? A law and economics approach to green public procurement. Maastricht Journal of European and Comparative Law, Vol. 28(4), 535–555. ↑
25. Conway, Danielle M., Sustainable Procurement Policies and Practices at the State and Local Government Level (April 15, 2012). GREENING LOCAL GOVERNMENT, K. Hirokawa & P. Salkin, eds., 2012, Available at SSRN: https://ssrn.com/abstract=2095576 ↑



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