EPSU, UNI-Europa, EFFAT, EFBWW, ETUF-TCL

Points for the consultation on the
EC guide on socially responsible public procurement

1) ‘More and better’ jobs – the framework

In the European social model – and Lisbon Agenda – value for money and social and environmental considerations go hand in hand. Even if the EC has chosen to do separate Guides, it is important to link social and environmental issues together. Public authorities should take into account the full range of economic, social and environmental costs and benefits of public procurement into account - this is what ‘value for money’ means. The EU procurement directives give plenty of space and opportunities to public authorities to do just this. All the relevant recitals and Articles in the Directive need to be shown visibly in the Guide, including the (non-exhaustive) examples below:

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The Guide needs explain clearly what the concepts of ‘most economically advantageous tender’, and ‘best value’ mean in practice.2

2) The need for good governance and ‘joined-up’ EU policy on procurement

Public procurement is not a one-off event but a continuous process that requires preparation, execution, and follow-up. Public authorities need to be able to compare and assess different options for purchasing goods and services; and to monitor and evaluate in practice how they are being provided.3 They need to integrate social objectives across policies and integrate social considerations into procurement from the earliest stages. In order to do this they need a fair and proper purchasing policy that systematically takes into account social considerations, for example by carrying out citizen / worker impact assessments of procurement.

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1 Also, other references in EU texts need to be included, for example in its latest Communication on equal pay (2007), the Commission calls upon local authorities to promote equality clause in public contracts.
2 For example, the Northern Ireland Government has developed a number of principles to clarify the notion of best value.
3 See CEMR and EPSU conclusions “Supporting the reform process in local and regional government: Joint evaluation of the experience in different forms of service provision” which stress that “public authorities need to….assess the different risks involved, for example regarding the difficulties of defining quality criteria in public contracts, and indeed problems that arise from fragmented procurement processes.”
As with green procurement, the EU needs to develop a process that supports EU and national targets, policies, action plans, and standards on social procurement.\textsuperscript{4} It is important that this involves the social partners and civil society.\textsuperscript{5} A horizontal social procurement advisory committee, involving a range of relevant Directorates General and stakeholders should be established. Trade unions need to be well represented on this. Furthermore, social partners should also be represented in the EC advisory group on public procurement run by DG Internal Market.

3) The EU must comply with international law

Given the Rüffert judgment by the ECJ, the EU must now remove any doubts that the procurement directives might take precedence over international standards regarding the right to freedom of association, collective bargaining and collective action, or the right of public authorities to ensure that tendering companies pay wages that are in line with rates already agreed through collective bargaining at the place where the work is done, as called for by ILO Convention 94. Such an interpretation would run counter to the Courts conclusions in the Albany case (C-67/96), according to which competition law does not apply at all to collective agreements provided that these are aimed at improving working conditions.

4) Quality employment – throughout the supply chain

‘Acting fairly’ does not mean following only the principles of the internal market, but those of the EU as a whole, i.e., also on equality, cohesion, non-discrimination, stable employment etc. Quality services demand quality employment. This is in the interest of business and citizens, not only workers. There is ample evidence that ‘lowest bid’ tendering pushes down wages to unacceptable levels. Where lowest bid is used, strong controls need to be in place to detect abnormally low bids.

Social clauses and ‘fair wage’ policies have been applied to public sector contractors for over a century so that the economic activity of public authorities can “create avenues of just and secure employment”.\textsuperscript{6} The EU itself included the principle of equal pay in the original Treaty of Rome, and procurement clauses were a key mechanism for enforcing this principle, through “the adoption of linkage between procurement and non-discrimination requirements by several Länder (states) in Germany, several local authorities in the United Kingdom, and many local authorities in the Netherlands.”\textsuperscript{7} The EU also has adopted an opinion on an equitable wage and the Communication on equal pay (2007) calls upon local authorities to promote equality clauses in public contracts.\textsuperscript{8} Public authorities should be encouraged as a

\textsuperscript{4} The EU is adopting ambitious targets for green procurement (July 2008) and has recognized the importance of setting standards to facilitate take-up and fair competition; see for example the draft directive on clean, energy efficient vehicles
\textsuperscript{5} The private security sector (CoESS/UNI-Europa), the contract catering sector (FERCO/EFFAT), the cleaning industry sector (EFCI/UNI-Europa) and the clothing and textiles sector (EURATEX/ETUF-TCL) have published guidelines for companies and public authorities, which select their providers through public tenders.
\textsuperscript{6} In 1892, the newly elected London County Council, for example, used clauses insisting on an eight-hour working day, and trade union rates... See A Vision for London, 1889-1914: Labour, Everyday Life and the LCC Experiment. Susan Penny Backer Routledge 1995
\textsuperscript{8} And 60% of average earnings has be set by the Council of Europe as a benchmark for minimum wages
\textsuperscript{9} Good governance demands policy coherence: there is little point calling for equality and social criteria in public procurement in DG employment, and the saying you cannot do it in DG Internal market
matter of policy to reserve a percentage of contracts (1 or more) for supported employment / sheltered workplaces.

Social procurement standards need to all sub-contractors, and authorities have to be able to verify that this is the case. If they cannot check sub-contractors, then contracts should exclude sub-contracting options. Liability must remain with the principle contractor. The EC demands this right in its own tendering rules and therefore should recommend it to other in the Guide.

The size company is not a social criterion as such, and social procurement should not be used to tackle problems caused by the anti-competitive behaviour of large companies. However, authorities may give support to SMEs to achieve procurement standards and standards may be adapted to take into account the specific characteristics of SMEs.

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