

# **EPR input to the revision of the European Commission Guide to Socially Sustainable Public Procurement**

**March 2018**

This document outlines EPR's proposals for the guide, based on the experience of its members, and includes examples of good practice as reported by members. EPR supports the submission to the consultation made in the name of Social Services Europe, and both as a member of that network, and as an individual organisation, offers itself as a partner to the Commission to promote socially responsible public procurement. EPR would also be happy to liaise with its members to provide additional information on the good practices.

## **The importance of specifically addressing social services of general economic interest in the guide**

Social services deserve their own chapter in the revised guide; in the 2014 Directive such services even have a "specific regime" (articles 74-76), recognising their specific characteristics. The guide should not be restricted to four sectors, but feature all sectors that have distinct characteristics.

## **The importance of an integrated approach**

The Guide should address green, social and fair public procurement to promote synergies and an integrated approach: sustainable public procurement as an overall theme. There should be an overview of how various sustainability considerations were transposed into national legislation; this could be a separate document or online.

## **The challenge of procuring quality services**

EPR members' experiences show that despite the possibilities to procure quality social services, some public authorities do not, for different reasons. They report that it is usually not as simple as contracts being awarded only based on price, but that price may be weighted too highly in the assessment. However, there are a number of good practices from across Europe in procuring quality social services. Therefore, it would be extremely valuable for these good practices to be showcased, and the possibilities offered by the directive to be explained, as well as highlighting the value of procuring quality social services. Five short examples of good practices highlighted by EPR members can be found at the end of the paper.

Some EPR members report that pressure on prices of services from procurement procedures negatively impact working conditions, and some lose out on contracts because they have decent working conditions and are therefore more expensive than competitors. Pressure on wages also impacts the ability of the sector to fill vacancies or meet rising demands. To ensure a win-win of high quality services and quality jobs, the guide should specifically show how contracting authorities can take into account "the organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff employed can significantly impact the level of performance of the contract" in the award criteria, if an authority chooses the best price-quality ratio to

award the contract. Social services are person-intensive and staff interaction with the service users is a key element of the job, so the quality of the staff would clearly affect the level of performance of the contract.

EPR believes that the guide could also play an important role in showing how services can be procured to be in line with the European Voluntary Quality Framework (referred to in recital 114) and the principles outlined in article 76.2: quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation. It would also be relevant for the guide to refer to the UN Convention on the Rights of Persons with Disabilities in this context; and showcase examples of how SRPP can promote the implementation of the Convention.

### **Flexible procurement procedures**

There are a number of procurement procedures that offer negotiation and market consultation; EPR believes it would be beneficial to clarify how they could be used for SRPP; such as the restricted procedure, negotiated procedure, competitive dialogue.

### **Incorporating the issues addressed in the *Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest***

In the context of the previous guide to SRPP, questions related to the contracting of social services were mainly addressed in the *Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest*, dating from 2013, in the form of a Commission Staff Working Document. However, this is less well known and less reader friendly than the current guide. As this Working Document also needs to be revised in light of the 2014 Directive, EPR believes that the most effective way of promoting quality procurement of social services would be to integrate the relevant information from the issues addressed in the Working Document into the new guide, including the rules on financing the provision of social services through methods other than public procurement.

It would also be helpful to reiterate the following which was in the previous guide: *In the field of social services, however, it is possible, in exceptional cases when certain specific conditions are met, to reserve performance of certain contracts for non-profit operators. This requires the existence of a national law regulating this particular activity and providing for restricted access to certain services for the benefit of non-profit operators. Nevertheless, any such national law would constitute a restriction of Articles 49 and 56 of the TFEU on freedom of establishment and the free movement of services and would have to be justified case by case. On the basis of the case-law of the CJEU, such a restriction could be justified, in particular, if it is necessary and proportionate for attainment of certain social objectives pursued by the national social welfare system.*

### **Examples of tendering procedures that took a socially responsible approach to contracting social services**

**Netherlands:** (vocational rehabilitation/ VET): One member reports that all tenders they do (with local government and with national bodies) are very well organised. The demands, timetable, way in which the offers will be judged etc. are all published and in some cases, all service providers can make suggestions before the call. In some cases, based on the procedure, the 2 or 3 remaining organisations can give a presentation about their offer. After that the funder decides who will get the tender. This is always published and there is always a procedure for complaints and appeal.

**Denmark:** The municipality of Gribskov in the Northern part of Zealand in Denmark conducted the largest public tendering procedure in 2013-2014. The process was executed very professionally with an open process plan from beginning to the final decision on who was granted the contracts. It was in the field of social service provision, including four nursing homes, home care delivery, rehab centre, meals on wheels, and a small facility for young

adults with multiple disabilities. The percentages for winning the various contracts were:

- 50% price
- 25% quality
- 10% cooperation with other players
- 10% Innovation
- 5% CSR (involvement of community, work place ethics)

**Ireland:** JobPath tender, Ability tender, both in activation to access the labour market, the first for Long-term unemployed, the latter for persons with a disability. They included clear instructions, extensive preparatory scoping work carried out by the tendering body, experience from international and national best practice was incorporated into the tender scope, detailed briefings for Tenderers was given, responsive and comprehensive responses to requests for clarifications were given, qualitative criteria out-weighed price criteria.

**Spain:** In Spain it is quite common practice to reserve calls for the provision of goods or services to organisations classed as sheltered workshops (Article 20).

The Law on Public Sector Contracts in its Additional Provision 4 establishes the possibility of reserving contracts for Special Employment Centres (companies where at least 70% of the staff are persons with disabilities) and Insertion Companies. The reservation of contracts for Special Employment Centres is limited exclusively to those considered as social initiative centres, that is, those promoted or participated in more than 50 percent, directly or indirectly, by one or several entities, whether public or private, non-for-profit or with a social goal as established in their Statutes. Also, they must be committed by statutes or social agreement to fully reinvesting their profit in improvement of employability and creation of employment opportunities for people with disabilities, improvement of their competitiveness and their social economy activity, with the possibility to decide to reinvest their profit in the special employment centre itself or in other social initiative special employment centres.

The criterion of quality-price ratio was established in the new legislation, as opposed to the price criterion, understanding quality as the application of social and environmental criteria.

Some notable examples of public authorities carrying out SRPP would be the City Council of Avilés (Asturias), the City Council of Barcelona (Catalonia), and the Autonomous Communities of Castilla y León, Catalonia, the Balearic Islands, the Basque Country, Navarra and La Rioja.

**Estonia:** In Estonia, from 2010 to 2014 in the framework of a European Social Fund project, providers of services to persons with disabilities and other disadvantaged persons implemented the European Voluntary Quality Framework for social services in their organisations - private, semi-public and public entities alike. One outcome of the project is that meeting the requirements of the Framework, together with financial considerations, has become one of the criteria for the funding of social services by public authorities in Estonia.

The Framework was implemented through the EQUASS Assurance tool, and saw an increase in the level of quality, efficiency of service governance, promotion of users' rights and their enhanced participation<sup>1</sup>. This practice, which has earned the Ministry and the partner organisations multiple awards, can be replicated through public procurement.

EQUASS is an initiative of EPR, launched in 2003, that enhances the social sector by engaging social service providers in continuous improvement, learning and development. EQUASS aims to guarantee service users high quality services. The sector-specific quality framework provides a comprehensive approach to quality management, features a rights-based approach and is a recognised tool for implementing the European Voluntary Quality Framework for Social Services. For more information: [www.equass.be](http://www.equass.be)

*EPR's mission is to build the capacity of its members to provide sustainable, high quality services through mutual learning and training. More information on [www.epr.eu](http://www.epr.eu)*

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<sup>1</sup> Analysis of EQUASS final report, "The quality of social analysis and proposals for the introduction of a comprehensive quality assurance system"