

Best practises for buying social in the EU

Introduction

The European Business Services Alliance (EBSA) represents providers of business services within a wide variety of sectors. Our members are innovative and invest significant resources in ensuring high quality services and respect for social standards. The market for public procurement is essential for business services, and public buyers in some sectors account for up to 40% of the market. EBSA therefore sees a significant potential for the Commission's Buying Social Guide to ensure respect for social standards in public procurement of services.

Despite the 2014 reform of the EU directives on public procurement and the introduction of alternative criteria than price, our members still experience that price is the most used criteria in public procurement. This has a negative effect on the market actors that strive towards innovative, high quality and socially responsible service provision and excludes the taxpayers and beneficiaries of the services from the most advantageous offers. In this paper, we have collected best practises on the inclusion of social aspects in public tenders from different sectors all over the EU. Furthermore, we point to areas where there is a need for clarification, which the guide should aim to address. We hope that these contributions can be useful to the Commission in the ongoing work on the update of the Buying Social Guide and dissemination of best practises as a part of the program on professionalisation of public procurers. Finally, we wish to reiterate our members call for a consultation of at least the Social Partners on the updated Guide, as it is important to take the view of all impacted stakeholder into account and would be in line with the principles of Better Regulation.

EBSA stands at your disposal for further elaboration and is looking forward to continuing the collaboration on ensuring the uptake in use of the best price/quality ratio award criteria in public procurement more generally.

Examples of Best Practises

1. Selecting best value sector guides

Several of our member associations have developed best value guides together with their social partners. The guides provide specific examples on how a quality-based approach ensures the best working conditions for employees and compliance with European and national legislations and collective agreements before and during the execution of contracts. We are convinced that their use during the review process, as well as references to them where appropriate will enrich

the Buying Social Guide and ensure a good sectoral approach and practical examples to improve socially-focused public procurement:

[Selecting best value in the cleaning sector](#)

[Selecting best value in the catering sector](#)

[Selecting best value in the security sector](#)

2. National guides on socially responsible procurement

Some member states have already developed guides on how to ensure responsible public procurement. Some have focused on specific sectors while others have taken a more horizontal approach.

Sweden:

In the end of 2018 a guide for procurement of cleaning services was published in Sweden. The guide, that aims to improve and simplify the public procurement process of cleaning services, was written jointly by Almega Cleaning Companies and the Swedish labour unions Fastighets and Kommunal, in collaboration with relevant authorities and public procurement specialists. The Guide is concentrated to 13 pages and divided into three chapters - 1) before, 2) during and 3) after the procurement process. In each chapter, the guide gives practical advice for the process so that the business agreement in the end will be as satisfactory as possible for all parties. The guide can be found [here](#) (Swedish language only).

The Netherlands:

The Dutch [Code of Responsible Market Conduct](#) is currently adopted by the cleaning, catering, security, and temporary employment service sectors, and can be extended to other sectors.

The Code is developed in cooperation between the client organisations, service providers and trade unions and has as its goal to encourage socially responsible behaviour and improve tendering and hiring policies in the Netherlands. The Code outlines the way towards commercial transactions based on trust and good price-quality ratios, without losing sight of social interests.

Denmark:

In Denmark the national association of municipalities “Kommunerne Landsforening - KL” has developed a [guide](#) and an online tool for “[The responsible procurer](#)” (Danish language only). While the guide is very general and short the online tool is elaborated and covers many different sectors, both with regards to procurement of products and services. The tool gives the procurers step-by-step guidance and contains suggestions for concrete wording to include in the tenders.

The overall recommendation with regards to labour conditions is to include provisions ensuring that the employees working under the public contract have at least the same conditions (working hours, salary etc.) as those provided for by the most representative collective bargaining agreements covering the relevant sector. Some municipalities simply refer to “collective agreement-like” conditions in their contracts.

France:

The French government has validated a model of social clauses conform to different sector's specificities. A [web tool](#) for companies to help them take social clauses into account has been created. Further, a guide on the social aspects in public procurement has been developed, integrating the above mentioned model of social clauses: [Guide des aspects sociaux de la commande publique](#).

Spain:

The Spanish Private Security Observatory has closely followed up on the transposition of the European Directives in the national public procurement framework. After the entry into force of the Act 9/2017 on public procurement, the Spanish Observatory has produced a [guide](#) on best practices in procuring private security services according to the new legislation. The Observatory has also produced a proposal of quality criteria that could be used by the national public procurement authorities in this process, since according to Spanish National law quality criteria must represent at least 51% in the awarding process of private security services.

3. Promotion of education and training

Promotion of education and training in the workplace are very relevant for the social aspects of public procurement. The recognition of their importance in the tendering process would enhance their valorization and allow for better understanding of the costs they entail for companies, which need to be sufficiently recognized both in the price and in salaries. In Denmark, the Competition Authority in December 2018 updated their [guide on social clauses in relation to vocational education and training](#). The guide outlines when the social clauses can be used and gives concrete suggestions on how the clauses can be formulated.

4. CEN's horizontal services standard for procurement and the JIS guide for use of standards in public procurement

EBSA wish to applaud the work undertaken in CEN TC447 regarding the horizontal service standard for procurement. The standard is close to finalisation and will be a good tool to guide

public procurers through the service procurement process and help them set the relevant criteria. Furthermore, EBSA has as a member of the Joint Initiative for Standardisation contributed to the development of a guide on the use of standards in public procurement. This guide can also be an important tool to help procurers use other criteria than price in a just and transparent way.

Needs for clarification

1. Social clauses and collective agreements

Several judgments on social clauses in public tenders which valued and gave points to salary raises above the agreed salaries in the relevant collective agreements have been issued by Spanish Courts¹. The courts found that the clauses were invading collective bargaining and affected the very heart of a labour relation that cannot, and should not, be regulated in the conditions of call for tenders nor in public contracts. Such clauses constitute, according to the Courts, an “unjustified discrimination”, an invasion of competences and an illegal amendment of collective agreements. A specific reference to such cases and to the need to respect collective bargaining would be welcomed in the guide.

2. Sheltered employment and state aid rules

Recent cases in Sweden² and Brussels Region³ have given clarity and set a standard on the rules applicable to social companies, in particular with relation to their use of sheltered employment in connection to public contracts and the EU rules on state aid. However, more generally the current situation remains unclear for the companies and this can lead to an unlevelled playing field. A specific reference to these cases and to European state aid rules would enhance the reflection and raise awareness on this specific matter.

¹ Central Public Procurement Administrative Court of 8 March 2019; and Judgement by the Administrative Court for Contractual Appeals of the Parliament of Andalusia of 26 November 2018

² Samhall's State Aid decision by the Commission of 6 December 2017

³ Judgement of the Brussels Court of Appel of 28 February 2018