



EU Public Procurement and Social Services

Briefing Note – February 2018

I. Context

In 2014, the European Union agreed on modernised [EU Public Procurement rules](#), which regulates how public authorities can contract out services (including social services) they cannot, or do not wish to provide themselves. In most, if not all EU Member States, the EU legislation has already been transposed into national law.

Whilst there are some [promising practices](#), there have been many cases where managing authorities use procurement practices to cut costs, rather than to improve the quality of the social services provided. Representatives of managing authorities often refer to the EU Public Procurement rules as their main justification for such activities.

On behalf of our members, the European Association of Service providers for Persons with Disabilities (EASPD) wrote to the European Commission asking for clarification on the meaning of the EU directive for the procurement of social services.

II. European Commission's Clarification

In February 2018, the European Commission responded with a [letter](#). The following is a summary of the most important points made:

1. The Directives do not oblige Member States to contract out social services. **Public authorities are entirely free to choose** whether
 - To outsource the provision of social services
 - To provide the social services themselves
 - To use other means than public procurement

When public authorities decide to outsource the provision of social services, then the EU Public Procurement rules must apply

2. **Increased flexibility and expanded possibilities** to take into account social considerations in public tenders were among the **main objectives** of the 2014 Public procurement reform. This is notably the case when tendering social services. **Reserved contracts** (art. 20), for sheltered workshops or economic operators whose main aim is the social integration of disadvantaged persons is one option.

Another is the **“light regime”** (Art 74 to 77), for certain social services (E.g welfare services and daycare services), which has two sections

- a. For contracts below €750.000, this light regime allows national authorities to regulate and conduct tendering as they wish.
- b. For contracts over €750.000, this light regime means that national authorities must put in place national legislation to regulate these procurements, but are free to decide how to do so (as long as they do not prevent contracting authorities from taking into account the specificities of the social service at stake).

In the light regime, when putting in place the national legislation, Member States must allow contracting authorities to take into account “the need to ensure quality, continuity,



accessibility, affordability, availability and comprehensiveness” of the social service at stake and “the specific needs of different categories of users (and) the involvement and empowerment of users and innovation”.

Also in the light regime, Member States can provide that the choice of contractor is made on the basis of the **best price-quality** ratio; therefore excluding the possibility of a price-only evaluation.

Last but not least, a limited number of social service contracts benefitting from the “light regime” may be tendered as **reserved contracts**, although based on more stringent conditions than regular service contracts. Contracts for daycare or welfare services for persons with disabilities are among these “light regime” services which can be reserved.

3. **Contracting authorities have complete freedom to choose whether to use quality criteria**, depending on the social service they want to purchase and **national authorities may even restrict the use of price-only** as the only award criterion.
 - They recommend in particular the introduction of quality-related criteria when tenders involve a certain degree of complexity and variables that cannot be standardized
4. **The European Commission advocate for increased and effective use of quality criteria**, as well as for the introduction, whenever appropriate, of social considerations, including those related to accessibility and user needs.

III. EASPD’s next steps

As an organisation aiming to develop policies which enable social service providers to help implement the UN Convention on the Rights of Persons with Disabilities, EASPD has [long stressed](#) the crucial need for funding measures to focus on quality principles; rather than solely on cost.

On the 7th December, the European Commission expressed their willingness to update the Buying Social guide and issued a [Public Consultation](#) which aims to build knowledge on the scope and structure of what such an updated Guide should look like. EASPD welcomes this opportunity and is consulting with members to develop input. EASPD also recommends all relevant stakeholders to also submit their own response in order to ensure that the Guide is in sync with the local needs of social service providers for persons with disabilities. Deadline 1st March.

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