

PUBLIC PROCUREMENT REFORM

FACT SHEET No 8: SOCIAL ASPECTS OF THE NEW RULES

The aims of the new public procurement rules include contributing to the implementation of environmental, social inclusion and innovation policies. However, social aspects are not limited to social inclusion, but cover compliance with applicable legislation.

- The new guidelines now include a **cross-cutting 'social clause'**:
 - based on respecting applicable environmental, social or labour law obligations under EU and national rules, collective agreements or international law. Member States and public authorities must ensure compliance with the obligations in force at the place where the work is carried out or the service is provided;
 - any company failing to comply with the relevant obligations may be excluded from public procurement procedures;
 - public authorities will be required to exclude any abnormally low tenders if these result from failure to comply with environmental, social or labour law obligations under EU or national rules, collective agreements or international law. This is a new tool to combat social dumping.
- Provision may be made for social criteria in public procurements:
 - public purchasers may now consider the process by which the goods, services and specific work they intend to purchase are **produced**. Therefore, they may decide to award the contract concerned to the company that intends to employ the greatest number of disadvantaged people, such as the long-term unemployed, to produce the goods or services concerned. They may also consider the specific working conditions of the employees concerned, which may extend beyond legal requirements;
 - however, these criteria may apply only to staff involved in the construction, production or supply of goods or services covered specifically by the public procurement contract in question. The company cannot, therefore, be required to apply a general social or environmental responsibility policy, as such a requirement is not specific to the goods or services purchased.
- **Social inclusion** is also encouraged. It will now be possible to **reserve procurement procedures**:
 - for all types of work, services and supplies for specific structures ('sheltered workshops') or social enterprises working for the inclusion of disadvantaged people. To participate in such reserved procurement procedures, 30 % of the employees at the company must be disadvantaged;
 - for certain social services only, and for a limited period of up to 3 years, for non-profit companies with a public service remit based on employee participation.

- **Social, cultural and health services** and some others, such as legal, hospitality, catering and canteen services listed in the directives, will benefit from the **new simplified arrangements** (see FACT SHEET No 6):
 - these arrangements apply to contracts worth more than EUR 750 000 (compared with EUR 200 000 for other services); it is assumed that contracts worth less than this and not benefiting from EU funds are of interest only to companies in the Member State concerned;
 - public purchasers may award contracts to tenders that meet all the quality criteria, such as the accessibility, continuity and sustainability of the services offered, that they consider critical to the service concerned;
 - apart from the obligation to treat all companies equally and provide adequate publicity for the call for tenders and award of contracts (in a simplified form), national rules will apply to the relevant procedures.

- The new EU rules will not affect **the national organisation of public services**:
 - Member States will continue to choose the way in which they organise their public services themselves. Public authorities may either perform the public services for which they are responsible using their own resources, or may have recourse to an outside body;
 - the rules on public procurement and concessions will apply only when a public authority decides to outsource services;
 - public procurement rules do not cover cooperation between public authorities, such as municipalities; this cooperation is now governed by new rules specifying special conditions (see FACT SHEET No 5).

- Economic operators that violate certain rules or obligations will now be **excluded from public procurement procedures**. Public authorities are now required to exclude economic operators if they:
 - have been convicted for failure to pay taxes or social security contributions. They may also be excluded even if no judgment has been passed, when it can be proved that the public authority concerned has failed to pay;
 - have failed to comply with the cross-cutting 'social clause' (see above), which will lead to the relevant tender being rejected.

- **Subcontracting** is now subject to specific provisions:
 - competent national authorities must also ensure compliance with environmental, social or labour law obligations under EU or national rules, collective agreements or international law (see cross-cutting 'social clause' above) for subcontracting;

- at the call for tenders stage, any company may be required to specify what part of the contract it does not intend to perform itself but intends to assign to a third party. In some cases the winning company will have to inform the public purchaser of the names and addresses of the subcontractors it intends to use. These obligations may also apply to subcontractors of subcontractors;
- a chain of responsibility may be drawn up;
- the subcontractor's services may, if necessary, be paid for directly by the public purchaser.