

Consultation Response  
February 2018



# Social Services Europe

**Response to the Consultation**  
on the scope and structure of a European Commission  
Guide on Socially Responsible Public Procurement

## INTRODUCTION

Social Services Europe represents more than 100,000 providers of social and health services active across Europe promoting social inclusion and social cohesion. The sector, employing over 10% of the EU workforce<sup>1</sup>, has a long-term commitment to address the needs of disadvantaged persons people through innovative and sustainable solutions to provide quality services that realise the best value of public money.

Our members – [Caritas Europa](#), CEDAG, [EASPD](#), [Eurodiaconia](#), [EPR](#), [FEANTSA](#), [Red Cross EU Office](#) and [SOLIDAR](#) –aim to strengthen the profile and position of social services, and promote the role of not-for-profit social service providers in Europe. They seek to ensure that the specificity of not-for-profit social and healthcare service providers be recognised and that enabling economic, social and legal conditions exist for quality social and healthcare services.

## CONTEXT

Although not compulsory, public procurement is often used by national, regional and local authorities to fund the provision of social care and support services. If national authorities decide to tender out the service, they are then subsequently bound to the Directive 2014/24/EU on Public Procurement.

According to the experience of members of Social Services Europe public authorities still struggle to create the necessary conditions to procure quality social services that enable social inclusion and, in some countries, there have been reports on very poor-quality services that don't observe the rights or dignity of service users.

Our sector is of increasing importance and demand due to demographic changes, changing family patterns, increasing inequalities and evolving social needs. Social services' jobs are very person-intensive, given that staff interaction with the service users is a key element of the job. Working conditions, therefore, have a big impact on the quality and effectiveness of the service delivery. In many countries, recruiting the right people to the sector has had some barriers, as it's not uncommon to find cases where public contracts do not provide enough income to the service providers and do not ensure good working conditions for their staff.

As such, we believe it is important to feature these services in the proposed guide, to support and inform public authorities on how they can ensure that the services they contract meet their needs and those of the service users, and to promote as high a quality as possible, guaranteeing that the rights and dignity of people are upheld.

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<sup>1</sup> European Commission (2014) [EU Employment and Social Situation. Health and social services from an employment and economic perspective.](#)

Directive 2014/24/EU on Public Procurement acknowledges the specific regime of social services and, in accordance with that, offers significant flexibility and requires contracting authorities to consider the quality characteristics of the service that is being provided and the potential impact that it has on the users. For instance, there would be room for contracting authorities to take into account the wishes and needs of the beneficiaries of such services or for reserving contracts for social economy providers alone.

Several contracting authorities already use such flexibility for the care and support services they fund. Too often, however, national and contracting authorities do not adequately use the quality criteria and social clauses available to them; preferring to focus primarily on the cheapest offer. Whilst there are several explanations for this, an important cause is often due to the lack of capacity or knowledge of contracting authorities in including such quality criteria and social clauses in their tendering processes.

## CONCLUDING REMARKS

Social Services Europe wishes to ensure that public procurement practice realises the full positive impact of quality, sustainable social services on people's lives. We very much welcome that the European Commission wishes to boost the uptake of social criteria, the use of the best price quality ratio and to give a more strategic dimension to public procurement to release its full social potential. Our responses were built taking in account the experience of our members with public procurement rules and contracting authorities for social services.

## SOCIAL SERVICES EUROPE ANSWERS

**In your view would it be more helpful for contracting authorities and other stakeholders that the Commission published:**

*1. An extensive, in-depth and comprehensive guidance on socially responsible public procurement including legal and technical explanations as well as examples*

\*Concerning the collection and publication of good practices related to socially responsible public procurement, in your view would it be more helpful for contracting authorities and other stakeholders that the Commission:

*1. included good practices in the text as examples illustrating the theoretical explanations published,*

### Outline of the guidance

1. Practical guidelines on the use of the legal tools and options provided under the 2014 Directives./ This section could describe in a practical way how to implement the opportunities made available by the Directives throughout the public procurement procedure. **crucial**

2. Socially responsible public procurement: policy and institutional framework./ This section could explain how to put in place a comprehensive policy on socially responsible public procurement at national and local level, presenting examples from central governments and local authorities across the EU. **crucial**
3. Market consultation, market involvement./ This section could explain the importance of appropriately and effectively consulting the market in advance and how to maintain a fruitful dialogue with bidders/contractor to maximize the intended socially responsible outcome of the procurement. **crucial**
4. Execution of the contract, responsible supply chains and verification of requirements./ This section could explain how to put in place proportionate, effective and cost-efficient measures allowing contracting authorities to monitor and verify compliance with socially responsible requirements in the execution phase of the contract. **very relevant**
5. Relationship of EU public procurement rules with EU rules on labor conditions./ This section could summarize the existing rules and case-law on the topic. **very relevant**
6. Accessibility rules in public procurement procedures./ This section could address the use of accessibility criteria in public procurement procedures (possibly taking into account the upcoming European Accessibility Act). **crucial**
7. Encouraging access to socially responsible public procurement procedures for social economy stakeholders./ This section could explain how contracting authorities may take into account the peculiarities of the social economy sectors, so as to support their participation in public procurement procedures. **crucial**
8. Socially responsible public procurement in relevant sectors./ This section could explain how to run socially responsible public procurement procedures in a few key sectors. **Crucial**
9. \*/Four selected priority sectors to be treated in the guidance. **Crucial**

**\*If you indicated that tackling priority sectors as at least "relevant", please select four among the following sectors which in your view should be treated in the guidance:  
at least 4 choice(s)**

cleaning services; catering, food and agricultural supply; built environment; transport; ICT services

**Other:**

**Social services of general economic interest.**

In the 2014 Directive such services have a “specific regime” (articles 74-76), recognising their specific characteristics as compared to many other services, and they therefore also deserve being specifically addressed in this guide. The guide could show how the 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.

According to the experience of members of Social Services Europe a number of public authorities struggle to procure quality social services. This sector is of increasing importance and demand due to demographic changes and in some countries there have been scandals regarding very poor quality services that did not ensure the rights or dignity of the service users. We therefore believe it is important to feature these services in the guide, to support and inform public authorities on how they can ensure that the services they contract meet their needs and those of the service users, and to as high a quality as possible, ensuring rights and dignity are upheld. Social services are person-intensive and staff interaction with the service users is a key element of the job. Working conditions therefore have a big impact on the quality and effectiveness of the service delivery. In many countries it is a challenge to recruit people to the sector, in some cases because public contracts do not provide enough income to the service providers to ensure good working conditions of the staff.

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.*

The guide should feature more than four sectors, where they have distinct characteristics. Examples should be detailed enough for authorities to learn from.

**General comments\*\***

It should address green, social and fair public procurement to promote synergies and an integrated approach. Procurement policy initiatives should be linked to the implementation of SDG 12. There should be an overview of how various sustainability considerations were transposed into national legislation; could be a separate document or online.

Good practices can be found in Social Platform’s guide [http://www.socialplatform.org/wp-content/uploads/2015/10/Public\\_procurement\\_for\\_social\\_progress.pdf](http://www.socialplatform.org/wp-content/uploads/2015/10/Public_procurement_for_social_progress.pdf)