

Second Contribution to the Guide on Social Considerations in Public Procurement

In addition to our previous contribution in the first consultation round in December we, as networks representing women, ethnic minorities and people with a disability, would like to present the Commission the following comments on the draft Guide on social consideration in public procurement (version April 3).

We welcome

1. That employment opportunities for disadvantaged groups, social inclusion and accessibility and design for all are put forward as key issues in the list of examples of social considerations (p. 7)
2. That these approaches take the perspective of gender, race, religion and disability into account in an inclusive manner with specific attention for specific groups where necessary (p. 7)
3. That the important issue of non-discrimination on the basis of race on grounds of race, gender, age, sexual orientation, disability and religious beliefs is mentioned in 3. 'EU social model' (p 10) and 4. 'legal and policy approach' (p 10)
4. That Gender equality and Decent Pay is part and parcel of the Decent Work approach.
5. the approach of impact assessment on different social and ethical subjects prior to the procurement procedure.

We regret

1. That the important issue of non-discrimination on the basis of race on grounds of race, gender, age, sexual orientation, disability and religious beliefs is not mentioned in the list of examples of social considerations (p. 7)
2. That non-discrimination is mentioned nowhere in the stages of the procurement procedure. We believe it is very important that non-discrimination is mentioned as an exclusion criterion under b) selecting suppliers, service providers and contractors (p. 33) and as a performance clause under d) contract performance. For the reader, it remains unclear if failure to comply with national antidiscrimination laws can be a ground for exclusion from a public procurement procedure or breach of the contract. The public procurement Guidelines and the Commissions Interpretative Communication nevertheless provide a clear answer.¹
3. That in a) defining the requirement of the contract (p. 27) and c) awarding the contract (p. 39) no mention is made of the issue of the neutrality of vocational selection tests that give access to the labour market. Government selection agencies should demand that the tests they buy do not discriminate against women or against people with a different cultural background.
4. That the concept of gender balance seems to be restricted to and underrepresentation of women., while this holds true for men in feminized sectors such as childcare, basic schooleducation,....

We suggest

1. That the Guide mentions failure to comply with national legislation prohibiting discrimination as an exclusion criterion on page 33

What's permitted – an example

Exclusion of a tenderer who has been convicted by a judgment that has force of *res judicata* for failure to comply with national legislation prohibiting the employment of clandestine workers or with national legislation prohibiting discrimination on grounds of race, gender, age, sexual orientation, disability and religious beliefs of or with national rules regarding security at work

2. That the Guide mentions compliance with national legislation prohibiting discrimination as an execution condition on page 46

4. compliance with national legislation prohibiting discrimination

3. That the Guide mentions vocational selection tests as an example of a service where equality/non-discrimination considerations can be included in the technical criteria and attribution criteria. This can be done under a) defining the requirements of the contract, for example by mentioning the Belgian government selection agency Selor as a good practice on page 35

What's permitted – an example

Le Selor a intégré «l'égalité des chances» dans les critères d'attribution pour certains marchés. Ainsi, «l'égalité des chances» formait par exemple un sous-critère du critère d'attribution «qualité du test proposé» dans le marché relatif au développement des tests de sélection. Ces offres ont été contrôlées sur le plan de la méthodologie utilisée lors de l'élaboration des tests et, plus spécifiquement, sur le plan de la neutralité de genre des tests.²

4. That the guide fully subscribes the need for social life cycle assessments in certain product groups to fully understand the social consequences of the procurement act. In this context we refer to the recent UNEP/ SETAC publication on Socio-economic life cycle assessment. Such tools needs further development and support.

Signatories

Minderhedenforum (Forum of Ethnic and Cultural Minorities)
 Vlaams Overleg Duurzame Ontwikkeling (Flemish platform for Sustainable development)
 Nederlandstalige Vrouwenraad (Women's Council)
 Gebruikersoverleg Handicap & Arbeid (platform on disability and labour)



European Network Against Racism
 Réseau européen contre le racisme
 Europäisches Netz gegen Rassismus

² Example from the Belgian Institute for the equality for women and men: [Egalité des femmes et des hommes dans les marchés publics \(2008\)](#)