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# SEMINAR REPORT

## “PROMOTING SOCIAL RESPONSIBILITY THROUGH PUBLIC PROCUREMENT”

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The following report is an outcome of the seminar organised by EUROCITIES and Nantes Metropoles on socially responsible public procurement. The seminar took place from 30 November to 1 December and gathered more than 40 people from over 22 European cities to discuss ways to promote social inclusion through public procurement. The aim of the seminar was to enable cities to exchange best practices and also discuss what opportunities for socially responsible public procurement the new 2014 Directives bring.

The report entails summaries of the city practices in socially responsible procurement presented at the workshops during the seminar on the topics:

- Promoting inclusive employment through public procurement (Workshop 1)
- Promoting quality jobs and decent work through public procurement (Workshop 2)
- Using public procurement to involve companies and enterprises in promoting social inclusion (Workshop 3)
- Using reserved contacts in public procurement (Workshop 4)

The following document further captures the main findings and discussion points raised during the seminar as well as a short summary of the key points of the political panel discussion at the seminar.

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## Workshop 1 - Promoting inclusive employment through public procurement

### *Social public Procurement Guide of the Barcelona City Council*

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<http://ajuntament.barcelona.cat/contractaciopublica/en/>

#### Practice

In autumn 2016 the Barcelona city council has drafted a first social public procurement guide, which aims at using the purchasing power as a tool for municipal economic and social policy. The guide is mandatory for the entire city council and all companies and bodies where the municipal group holds a majority stake. It contains new awarding criteria for public tenders and is the result of exchanges with the business sector, trade unions and civil society organisations.

#### Details

##### Governance

- Civil-society participation in public procurement in the bid evaluation phase can be requested as experts of the Committee of evaluation
- Creation of a public procurement committee with trade unions, employer organisations, third sector and local residents

##### Labour rights

###### Mandatory conditions:

- Honouring of the collective bargaining agreement
- Transfer of the workforce - in certain contracts a guarantee must be provided that the staff who were already carrying out the service will be kept on

###### Award criteria

- Stability of work force - evaluation of the contractor's labour policy in respect of giving its staff permanent contracts
- Fair salaries - evaluation of whether the contractor pays salaries higher than those stipulated in the collective bargaining agreement
- Evaluation of the price - price is not always the decisive factor in the awarding decision

##### Social rights

###### Mandatory conditions:

- Gender equality - the contractor must present its gender equality plan or measures
- Support healthy work-life balance - contractor must strive to ensure a healthy work-life balance for its staff
- Workers with disability - compliance of contractors subject to the minimum requirement of a 2% quota of employees with a disability

##### New economic model

###### Mandatory conditions:

- Promotion of cooperative, social and solidarity economy - depending on the type of contract, parts of the contract must be subcontracted to a company in this sector
- Ethical public purchasing - compliance with socio-labour regulations in production process and commercial distribution
- Protection of SMEs - if the main contractor defaults on payments, the subcontractor is directly paid by the city council.

#### Findings

- Reducing the weight of the economic bid and the introduction of social clauses in tenders have not led to an increase of costs
- Ensure a more efficient public spending - money spent on SRPP leads to savings in social spending
- To ensure cost effectiveness it is important to ensure that there is real competition, whether for-profit or reserved contracts
- It is important to raise awareness among all city staff that procurement can have positive and/or negative effects beyond the legal and the financial dimension.

### *Jobs through public procurement*

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#### **Practice**

The ESF-funded project 'Jobs through public procurement' (Finnish: Hankinnoista Duunia) aims to create jobs through procurement for people in a vulnerable labour market position. It is coordinated by the Finnish national institute for health and welfare and includes the cities of Helsinki, Vantaa, Espoo and Oulu as partners. The project lasts three years, from 2015-2017.

#### **Details**

The project is currently carried out in 20 procurement processes and follows the following aims:

- Offer employment, traineeship or apprenticeship contracts for unemployed, with a special focus on young people
- Develop an operating model to employ people in vulnerable labour market position through public procurement
- Offer training and information for participating cities
- Improve co-operation between cities, employment services and companies
- Enhance companies knowledge of employing people in vulnerable labour market position (Long-term unemployed, people with migrant background, people with disabilities, young people)
- Tracking of compliance functions through providing work contracts and pay slips for concerned workers and employees
- The public authorities requests a penalty payment in case of non-compliance

#### **Findings**

- Challenge to find suitable employees, but companies and public employment services often have their own networks
- Need for better proof of cost-effectiveness of SRPP
- Participating cities have received sufficient bids to their tenders, but good relation and dialogue with the companies is essential
- Procurement costs are not notably rising, however there is no comprehensive data available for the Finnish case yet

## Workshop 2 - Promoting quality jobs and decent work through public procurement

*Preventing social dumping, exploitation and corporate crime in work and service contracts*  
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### Practice

Oslo decided to implement strategies using public procurement as a tool to combat social dumping. This is among the political priorities of the city and is a cross-party agreement. Oslo faced difficulties to use qualification criteria or award criteria of public tenders to pursue its goals, which is why it is using special contract conditions in Oslo's standard contracts. This is especially applied in riskier industries, namely construction and cleaning.

### Details

The special conditions implemented to combat social dumping and corporate crime entail for example the following:

- All contract terms also apply to sub-contractors
- The use of sub-contractors is subject to prior written approval and there is a maximum of vertical links
- Crew lists to ensure control of working hours, identification of workers and working conditions
- The contracting authority has the right to access documents
- Decent working conditions and salary - use of collective bargaining agreement, inspections of working conditions

The city can also demand a certain number of apprentices within the contract in case there is a need for apprentices of the contract sector. This is subject to proportionality, depending on the contract duration and size/value and is applied to both Norwegian and foreign suppliers.

There is cooperation between the city and the Norwegian tax authorities that provides information on:

- Outstanding tax payments
- Registration of employees
- Other indications of social dumping based on
  - The number of reported employees compared with employer's contribution (social security) paid.
  - The number of reported employees can also substantiate depend on whether it is likely that the company can carry out the contract alone or whether it is likely that subcontractors will be used.

For foreign contractors we can get the following information:

- The number of registered employment last 6 months
- All contracts in Norway during the period
- The number of registered active workers per date
- Number of employees reported to the tax authorities on all contracts in Norway today
- Number of registered contracts as principal last 6 months
- The number of reportable subcontractors in the time period

In case of contract breaches, sub-contractors or contracted labour might be replaced. A serious contract breach and a lack of correction may lead to the termination of the contract.

Upcoming special conditions are currently suggested and discussed:

- Demand of permanent employees of at least 50%

- Demand of skilled labour of at least 50%
- Payment to employees through bank account
- No cash payment of invoice
- Even stricter use of sub-contractors/ contracted labour
- List of foreign workers
- Sanctions for breach of tax or competition law

### *Fair work practices and the living wage*

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#### **Practice**

In 2012 the Edinburgh City Council committed to introduce a Living Wage for Council employees and to further encourage its adoption by Council subsidiaries and contractors.

The Living Wage is not equivalent to the nationally-set minimum wage, but an independently set, hourly rate according to the basic but acceptable cost of living in the UK. However, a EC decision made clear that Living Wage cannot be a mandatory requirement in a competitive procurement process. The Scottish government introduced a statutory guidance on fair work practices, which is now applied for public tenders of the Edinburgh City council.

#### **Details**

Potential contractors are asked to describe the package of measures which demonstrates their positive approach to fair work practices in delivering the service.

This takes in account:

- Recruitment
- Remuneration - living wage, holiday pay, equal pay
- Terms of engagement
- Skills utilisation
- Job support
- Avoidance of exploitative practices, e.g. inappropriate zero hours contracts
- Employee representation including trade union recognition

The Living wage is a strong indicator of commitment; however failure to pay Living Wage does not necessarily mean that the employer's approach automatically fails to meet fair work standards.

The decision whether fair work practices are relevant is taken on the basis of the following aspects:

- History of low or unequal pay in the sector
- Risk that staff is subject to exploitative practices, e.g. zero hour contracts
- Evidence that working conditions make recruitment and retention difficult

#### **Findings**

- All contractors on larger contracts (above £2M) but one are paying the Living Wage
- Estimated 6-9% price increase
- Success is reliant on devolved contract management-system to monitor benefits
- In one case the winning bid, paying Living Wage, was cheaper than other bids

## Workshop 3 - Using public procurement to involve companies and enterprises in promoting social inclusion

*Working towards a responsible public procurement model in Barcelona's city council*

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### Practice

Barcelona considers public procurement a tool to foster the cities policy goals and to promote a new social and economic model. Hence, a new guide for social responsible public procurement has been developed and it will be translated in a future act. The most remarkable element of the guide is the attempt to include social and economic clauses in the subject matter of public tenders. These clauses are the result of a dialogue with stakeholders (purchasers, union, companies, and civil-society networks).

### Details

The different clauses included in public tenders depend on the nature of the contract and concern the following areas:

- Labour rights (for workers directly related to public contract execution)
- Social rights
- Economic rights
- Environmental rights
- New economy paradigm

Further steps that are planned are a monitoring and verification scheme for social and environmental clauses. Further, the plan is to establish a global framework for responsible public procurement, including an overarching policy and a code of conduct for suppliers.

Another envisaged step is the creation of an eco-social label to promote social and environmental responsibility amongst purchasers and general economic operators. The foreseen indicators are already developed by a local Social Economy network, and have an international equivalence (Global Reporting Initiative, GRI). As initial phase of the development of the label, Barcelona foresees a mapping of the supply chain for the city council based in environmental, social and governance criteria. This mapping would serve as an assessment of the feasibility for a eco-social label and be a parameter for the decision-making of the Barcelona City Council. In case the development of the eco-social label is not a viable option, due to difficulties with the indicators standardization, the city does nevertheless have collected relevant information about social, environmental and good governance criteria of the local suppliers.

### Findings

- It is important to involve and be in dialogue with stakeholders in the development of social clauses
- Good cooperation with the local social economy network
- An over-arching social public procurement strategy also needs political commitment

### *Creating social impact through strategic use of procurement*

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#### **Practice**

The city of Utrecht is committed to strategically use its purchasing power for social policy objectives. This is done by adding a social return clause to all public tenders. Contracts above €100,000 require contractors to spend 5% of the contract value/sum on activities with a social added value. Contractors can fulfil this clause in several different ways; for example by creating jobs for people far from the labour market, providing training or education possibilities or by buying goods or services from a social enterprise or a sheltered workshop.

#### **Details**

The Social return clause has been implemented since 2012 and around 300 public contracts have included such a clause.

The dialogue with companies is important, in order to also understand their concerns. As a result companies carrying out public tenders have now more flexibility in the way they achieve social return. This can be done by:

- Matching vacancies with specific target groups (Long-term unemployed, marginalised groups, etc.)
- Training and educating job-seekers /students
- Buying products or services from social enterprises or sheltered workshops
- Pro-bono sharing of knowledge, expertise or resources
- a partnership with a local initiative in the district

The 5% are calculated from the overall contract sum. How companies fulfil this obligation in detail is monitored during the execution process. This is calculated with a value in € which is connected to the concerned target group. The longer a person is without a job, the higher the value he represents for the contractor. Furthermore actual spending, for example on salaries, purchases of products or services from social enterprises and sheltered workshops or in the case of sharing resources and knowledge by working hours of the employees involved are deducted from the social return value. The city uses a especially for social return developed electronic system to allow an easy monitoring of the achieved social return.

#### **Findings**

- A good relation with companies is relevant to also understand their needs
- Providing companies with flexible ways of fulfilling social return and providing them with guidance is important

## *Cooperate social responsibility in Nantes*

Florent Solier, Nantes Metropole

### **Practice**

Nantes Métropole has developed a responsible public procurement strategy which acts as a lever to promote companies' global responsibility towards the community. This strategy does not take a partial approach, but combines social, environmental and economic factors in one global strategy. The global, sustainable procurement approach also benefits companies, since it does not require or impose any specific actions but allows the company to embed sustainable and social responsibility in its overall strategy.

The cooperate social responsibility initiative (CSR) is built on a collaborative effort. It entails a strong dialogue between companies and public buyers based on guidelines drafted by the local authority, representatives of SMEs and industry as well as responsible employers' organisations. The CSR criteria, developed in partnership are then incorporated into procurement contracts.

### **Details**

The CSR criteria in procurement contracts of Nantes Metropoles are done through assessment, and not by awarding a label. This makes the tender accessible to all potential contractors. The criteria for the CSR assessment are done through 35 indicators and associated evidence. These indicators are divided into five key areas:

- economic indicators
- social indicators
- environmental indicators
- societal indicators
- governance indicators

The CSR criteria are included as award criteria in public tenders, with a weighting of up to 15%. The independent NGO Planet'RSE is responsible for carrying out audits to verify the evidence provided by businesses and handing out the CSR rating. This rating is valid for 2 years and recognised in all procurement contracts of the local authority. Companies can, however, also directly provide evidence that they are complying to the CSR criteria without going through Planet'RSE.

### **Findings**

- Focus on solely one sector, such as environmental or social responsibility, is too narrow to have a long-lasting impact
- Cooperation with companies, but also VET providers and other stakeholders is crucial
- Indicators have to be developed in a way that they also allow small companies to bid for public contracts

## Workshop 4 - Using reserved contracts in public procurement

### *Usage of reserved contracts in practice*

Guy Stasse, Servane Mary, Nantes

#### **Practice**

Nantes Metropole has turned its public purchasing into a driver of employment by introducing integration clauses in its contracts since 2004. This policy was strengthened in 2008 by introducing contracts specifically aimed at organisations that work on inclusion through work. Integration through work is intended to allow unemployed persons, who are experiencing particular social and professional difficulties, to benefit from employment contracts aimed at improving their employability.

#### **Details**

Reserved contracts are used as a motor for employment for specific marginalised groups, such as long-term unemployed, recipients of social benefits and young people, not in education, employment or training.

To be eligible to bid for reserved contracts, the entity needs to be officially recognised as qualified organisation by the national government. Among these are intermediate organisations, integration companies and sheltered workshops.

The Integration department of Nantes Metropole is responsible for supporting and assisting the contracting authority. Their support services entails:

- Feasibility studies of an integration approach according to the purchase
- Assisting the contracting authority in the deployment of legal tools
- Consulting companies and organisations through the bid and during the contract performance
- Monitoring of the performance

#### **Findings**

- Nantes Metropole separate their reserved contracts in two different categories according to target groups: inclusion of people with disabilities and the inclusion through employment
- The dialogue with providers is important in order to achieve a better match between needs and supply

## *Reserved contracts for the work integration of disadvantaged persons and persons with disabilities*

*Aurelie Dupres, European Network of Social Integration Enterprises (ENSIE)*

[www.ensie.org](http://www.ensie.org)

### **Presentation on the usage of reserved contracts**

The 2014 Directives brought new, broader propositions for the usage of reserved contracts. This new proposition will guarantee a more efficient and more sustainable integration of disadvantaged and disabled people, while increasing the economic performance of work integration social enterprises and sheltered workshops by contributing to the long term dimension and professional integration.

When operating with reserved contracts, it is important that the contracting authority verifies that the integration of disadvantaged or disabled persons is stated as a primary mission in the statutes of other statutory documents of the applicant organisation.

ENSIE suggests that contracting authorities should include the quality of the social integration project as an essential criterion to be met by the tender. This way it can be prevented that the specific target group is solely employed for the contract duration.

The definition of disadvantaged persons should be interpreted with wide discretion, to include all categories of people facing social exclusion and adapt it to the national context of each country.

## Key findings of the discussion in the workshops

- Public housing and infrastructure are sectors that are ahead in socially responsible public procurement and the learnings can be transferred to other areas
- Many cities use a point system to rate how a potential contractor fulfils social objectives (providing apprenticeship placements, interns, employment of LTUs, etc.)
- Many cities cooperate with civil-society organisations or social economy platforms - differs at what point in the process they are involved
- Some cities split larger assignments into contract “lots” to enable social economy operators to also bid for public contracts
- The organisation of procurement in the city plays a major role: who can purchase, under what framework for what sums (centralisation, de-centralisation)
- The dialogue with the contractors is important to also understand their issues and be able to link them with the right contact in the city
- The department working on social policy does not necessarily have the procurement; so to achieve progress on socially responsible public procurement it is important to break policy silos, raise awareness across departments and establish an overarching strategy
- Some cities involve tax authorities in the monitoring and inspection of contracts

## **Summary of the panel debate: Public procurement as a tool to promote social responsibility across the EU - how do we make the most of it?**

André Sobczak, Member of the Metropolitan Council of Nantes Metropole, explained the importance of working with all different stakeholders and that they developed a platform to evaluate CSR together.

Martine de Regge, deputy mayor of Ghent emphasized that “You have to take risks and dare to be creative to make socially responsible public procurement a reality.”

Christine Jakob also mentioned the importance of collaboration between cities and trade unions on the topic of socially responsible public procurement.

Marie-Christine Vergiat, MEP (GUE, FR) reminded that: “The European Parliament clearly demonstrated the conviction that public procurement can be a tool for social and environmental objectives.” The EP is following closely the transposition of the directives in the member states and the social economy intergroup looks in particular at the support to social economy organization.

The European Commission looks at how to best update the guide on social criteria in public procurement. Anna Lupi, from Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, explained the difficulty to measure the impact of SRPP and that the Commission is looking for more city practices.

EUROCITIES will continue to share city practices with the European Commission, the EP, trade unions, social economy organisations and other stakeholders.