

Questions on new procurement rules

The date to submit our response is 21 October, but we welcome views beyond the deadline. Email NCVO at virag.martin@ncvo.org.uk.

Question 1

- a) What are your thoughts, do you agree that Treaty principles and additional guidance are sufficient, or do we need more specific rules relating to the principles such as avoiding trade-marks, specifying evaluation rules, minimum time-limits etc?
- b) Any other hands-on experience you could tell us about?
- c) Have you faced any difficulty where lighter rules should have been applied but authorities followed the stricter regime of 'Part A services'?

Question 2

- a) Once Treaty principle of non-discrimination on the basis of subject matter, cross-border tendering, recognition of diplomas etc. applies at European level, what do you think about sector-specific non-discriminatory rules to be imposed at national level?
- b) Do you think that we would need rules that go against the use of financial appraisal systems that discriminate against not-for-profit organisations?
- c) What could/should these rules be?

Question 3

The discussion paper also asks if extra requirements due to be implemented in the main Directive but originally not applicable to the "Light-Touch Regime" should be introduced and applied to the new regime, too. These additional changes are for instance; exclusion of suppliers based on poor performance, turnover requirement of three times of contact value, time scale limits or whether governments should pay subcontractors directly and ask tenderers to indicate the amount.

On the one hand, could a "Light-Touch Regime" still remain light with so many rules? On the other hand, it would be beneficial for contracting authorities to be fully aware of their limits.

- a) Would we be better off and feeling safer with more or less rules?
- b) Should the extra requirements listed be included in the light touch rules?
- c) Why?

Question 4

Where there are restrictions in the full Public Procurement Directive, it needs to be specified in the light touch rules that these do not apply. For example, the light touch rules should state that social value can be taken into account following the requirements of the Social Value Act. Then, they should go further by stating and explicitly saying that any constraints on social and environmental aspects restricted in the full Procurement Directives do not apply. It is only necessary to ensure Treaty principles are being enforced.

- a) Should it be made explicit in the light touch rules where full procurement rules do not apply?
- b) Are you aware of any other issue where this should be made clear?

Question 5

The discussion paper asks whether the list of procedures (Open, Restricted, Competitive dialogue with negotiations and Innovative partnerships) should be adopted in the “Light-Touch Regime”.

- a) Does the protection gained by the procedures and additional specific rules that come with such procedures make up for the lack of flexibility?
- b) Should standard procedures be specified or is this too restrictive?

Question 6

Whether or not to make “MEAT” (Most Economically Advantageous Tender) the mandatory basis for contracts awarded under the “Light-Touch Regime”.

The answer is clearly yes. Finally, sustainability and quality have been recognised. However, the UK government seems to prefer flexibility in this issue.

- a) What would our convincing argument be?

National Council for Voluntary Organisations

Society Building, 8 All Saints Street, London N1 9RL

T: 020 7713 6161 F: 020 7713 6300 E: ncvo@ncvo-vol.org.uk W: www.ncvo-vol.org.uk

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