

GUIDANCE ON FAIR AND ETHICAL TRADING

Purpose

1. To offer general guidance and advice on the action that public sector bodies can take to meet any fair trade objectives, without breaching European procurement rules. However, individual circumstances may impact on the interpretation placed upon this note, and in all cases where there is doubt or uncertainty about the implications for European procurement rules, appropriate legal advice should be sought.

Background

2. The Executive welcomes the important contribution that Fairtrade schemes make in helping improve the conditions faced by small producers in developing countries. The term “fair trade” covers a range of activities aimed at helping producers and workers in developing countries. One important objective is to help excluded and disadvantaged producers, including independent small farmers, to access international markets and receive a fair price for their products. Other objectives are to encourage: traders to buy as directly as possible from producer groups and to develop long-term relationships; the transparency of supply chains; and the empowerment of producer groups and workers. Another vital goal is to ensure decent working conditions and fair wages for workers on plantations and in factories.

3. The Fairtrade Foundation awards a consumer label – the FAIRTRADE Mark. This mark demonstrates that internationally recognised standards of fair trade have been met. Items covered by the mark include coffee, tea, chocolate, bananas and honey products.

4. SPD’s procurement policy is that all public procurement of goods, works and services is to be based on value for money, having due regard to propriety and regularity. Value for money is not just about price. It is defined as the optimum combination of whole-life cost and quality to meet the user’s requirement. In addition the EC Treaty principles of non-discrimination, transparency, equal treatment etc apply to all public contracts.

5. It is for each public and private sector organisation to decide how best to meet its catering needs, taking account of any fair or ethical trading objectives. In so far as public procurement of catering services or supplies is involved, there are a number of factors which need to be taken into account to ensure that the requirements are consistent with value for money policy and the EC rules.

- **specifications** for catering services and supplies cannot be framed in terms of fair or ethically traded requirements, as such “social” labels do not define the end product in terms of characteristics or performance as required by the EC rules;

- however, **advertisements and invitation to tender documents** can make it clear that fair trade options can be included in the products provided to meet the organisation's catering requirements. For example, fair trade coffees might be included in a range of coffees which providers can offer;
- and the **contract documents** can make it clear that, where the winning tenderer is able to provide fair trade options, such products should be made available, as required, for internal meetings, conferences and hospitality purposes;
- in referring to the possible inclusion of fair trade options, specific marks or trade names should be avoided. It can however, be pointed out that, where providers do offer fair trade options, the **FAIRTRADE Mark or equivalent** is a helpful way of demonstrating that fair trade standards are being met;
- contracts for catering services and supplies should be awarded on the basis of the best value for money bid (in EC terms "the most economically advantageous tender") for the whole requirement – regardless of whether fair trade options have been included. Quality aspects, as well as price, will be relevant. A bid cannot be rejected or considered non-compliant simply because it does not include any desired fair trade options; and
- **in all cases**, the organisation concerned needs to be clear that it is meeting all its refreshment and catering services needs in a way which makes efficient and effective use of public expenditure and which delivers value for money for the taxpayer.

6. Where the canteen service provider sells teas, coffees etc direct to staff, and there is no contract for the supply of such goods between the authority and the provider for consideration, public procurement policy and EC rules do not apply. In these cases there are no procurement policy or public expenditure constraints on the supply or use of fair trade goods. Of course, the principles set out in paragraph 5 will apply to the procurement for the canteen service provider itself.

7. In May 2004 Mr Andy Kerr, the then Minister for Finance and Public Services announced that the Scottish Executive's catering contractor would be asked to ensure that all tea and coffee provided at official Scottish Executive meetings was bought under a recognised fairtrade label or equivalent. Fairtrade tea and coffee options have also been introduced in all the Executive's staff restaurants.

Conclusion

8. There is scope within the Scottish Executive's procurement policy and the EC procurement rules to encourage, in non-discriminatory advertisements and specifications, the inclusion of fair trade options in tenders for catering and canteen services and supplies contracts. However, specifications cannot be framed in terms of fair trade requirements, as such social labels are not permitted under the EC rules. Where the winning tenderer is able to provide fair trade options, and they can be provided on a value for money basis, an authority can decide how fair trade products (tea, coffee etc) can best be made available for meetings,

conferences and hospitality activities. Where the catering provider is selling direct to the staff, there are no “procurement” implications from making use of fair trade products.

Dissemination

9. Please bring this Procurement Policy Note to the attention of all relevant staff in agencies and NDPB’s and other sponsored public bodies within your field of responsibility.

Enquiries

10. Any enquiries in relation to this SPPN should be addressed to Dave Cook
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