

A Guidance Note on Social Requirements in Public Procurement

Making the Most of the Construction Delivery Process



This guidance note on social requirements in public procurement has been produced by the Centre for Construction Innovation (CCI). It was written by Richard MacFarlane (rmacfarlanesalt@aol.com), with editing and production management by Emma Kyng (emma.kyng@ccinw.com). Copyright Reserved. Richard Macfarlane. January 2006.

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Achieving Community Benefits Through Contracts: law, policy and practice by Richard Macfarlane and Mark Cook. (ISBN 1 86134 424 4). The Policy Press. Available from Marston Book Services, PO Box 269, Abingdon, Oxon OX14 4YN Tel 01235 465500. Fax 01235 465556.
E-mail direct.orders@marston.co.uk
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This document has been prepared by a policy and project officer with good experience of the legal issues. However, **this is not legal advice and users should seek their own legal advice where they consider this to be appropriate.**

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Executive Summary

- 'Social Requirements' or 'Community Benefits' can be defined as:

Requirements of a social, economic or environmental nature that are included in contracts for the supply of goods, services or works which do not conventionally have these requirements as defined or measured outcomes.

- The inclusion of social requirements in contracts is designed to deliver benefits to disadvantaged people thus maximising the role of the delivery process, offering added value to clients.

The Guidance Note highlights the issues and process of including social requirements in the procurement process.

- 'Social Requirements' can be aligned with many National and Local Government Policies: Best Value, Sustainable Development and Sustainable Communities can be delivered through a procurement process by adding social requirements.
- 'Social Requirements' can be viewed as a way for public bodies to address market failure e.g. in the labour market, where skills shortages are creating market pressure which ultimately is paid for by the clients themselves. Driving training and development through social requirements (e.g. targeted recruitment and training) may address these issues.
- Clients need to establish that they have the powers and policies in place to support the inclusion of social requirements, and need to adopt a process that is compatible with EC procurement frameworks. Enforcement is best driven through the establishment of good working relationships with the project delivery teams.
- Delivery teams need to recognise that this is a growing niche market and develop the skills to meet the requirements of their clients. It should be recognised that this is a value adding exercise for clients, and the development of this capability can give a genuine market advantage.
- At the business case stage, consideration must be given to the affordability of any social requirements. Additional funding streams or resources e.g. for training and job-matching should be sought by delivery teams to help overcome affordability problems.
- Requirements of a social nature need to be well-defined in terms of outputs and any measures and processes that need to be put in place to monitor, manage and deliver them. Any requirements from tenderers should be clear and all tenderers should have the same information.
- If social considerations are to be evaluated as part of the tender process this should be transparent and fair. Social requirements should make up part of the quality aspect of the submission. By clearly identifying what issues are most important through the weighting process tenderers will be clear where key priorities lie.
- Experience of managing and delivering social requirements is like any other management process and requires a building up of skills on behalf of the client and the contractor. When effective processes have been established on a project they should be captured and the learning reused.

Stages 1 – 10 of Social Requirements in Public Procurement

Stage	Actions	Factors to Consider
1. Business Case	<ol style="list-style-type: none"> 1. Decide what you want to buy <ul style="list-style-type: none"> • conventional requirements • additional social requirements 2. Check the powers and policy basis for procuring community benefits 3. Check compliance with Financial Standing Orders 4. Check that resources are available to cover the costs i.e. affordability 5. Check that the requirements are deliverable. 	<ol style="list-style-type: none"> 1. The social requirements need to relate to the other parts of the procurement and be appropriate in scale. 2. The actions need to be designed so they fit the resources available either within the core budget or from additional sources including e.g. access to free training and work by existing staff. 3. Identify how resources will be accessed e.g. funds obtained by client, funds obtained by contractor, in-kind support etc. 4. Target the requirements so they have maximum impact on social need: but avoid locality-based targets. 5. Deliverability includes access to facilities and workers or trainees – supply-side matters.
2. Specification	<ol style="list-style-type: none"> 1. Draft the social requirements that you wish to see included as part of the requirements for the contract. 2. Discuss these with the procurement officers and amend to obtain support. 3. Decide how the cost information relating to the social requirements will be handled 	<ol style="list-style-type: none"> 1. Affordability and deliverability 2. Avoid locality-based targets 3. Include monitoring information and evidence 4. Use examples and good practice from elsewhere. 5. Get support of procurement officers and legal advisers at this early stage. 6. If costs are to be part of the contract then information should be obtained: if no charge to the contract then cost information may not be needed.
3. Identify Procurement process	<ol style="list-style-type: none"> 1. Decide whether the contract is covered by the EC Procurement Directives. 2. Decide whether social requirements are part of the subject of the contract or just contract conditions. 3. Decide the basis for the award of the contract e.g. lowest price or most advantageous tender, and by competitive tender or negotiation. 	<ol style="list-style-type: none"> 1. The need for contract notices relates to the type of goods, works or services and the anticipated value – relative to threshold values. 2. To be part of the subject of the contract the requirements have to be supported by the powers and policies of the client, and they have to be referred to in any Contract Notice. 3. Where procurement is not subject to EU procedures the tender list may be taken from contractors on a Select Tender List.
4. Contract Notice (s)	<ol style="list-style-type: none"> 1. Submit an OJEU Notice if required (Official Journal of the European Union) 2. Draft questions for any Pre-qualification Questionnaire (PQQ) 	<ol style="list-style-type: none"> 1. OJEU Notices can be broadly drafted: it is useful to include social matters in any standard Notice that is developed. 2. The PQQ aims to identify whether a potential bidder has appropriate management and technical skills and experience to deliver the social requirements.
5. Tender List Selection	<ol style="list-style-type: none"> 1. If a PQQ has been used the responses to questions on social requirements can be used in assessing each questionnaire 	<ol style="list-style-type: none"> 1. It may be appropriate to give a weighting to the social requirement questions in the PQQ, but a nil weighting is also acceptable. 2. Avoid using the social requirements questions

	received.	as a filter to being accepted onto the Tender List: this may give them too much weight.
6. Invitation to tender or negotiate	Issue the Invitations together with the specification	<ol style="list-style-type: none"> 1. Ensure that the social requirements are included in the specification. 2. Consider providing a briefing session for bidders on the social requirements requirements. 3. Provide a list of supply-side providers that the bidders may wish to contact 4. Provide answers to queries by e-mail with identical information being provided to each bidder.
7. Tender Evaluation	<ol style="list-style-type: none"> 1. Use a standard scoring framework to evaluate tenders. 2. Where the social requirements are part of the subject of the contract then these can be included in the scoring, otherwise they should be disregarded at this stage. 	<ol style="list-style-type: none"> 1. To develop a standard scoring framework for the social requirements: <ul style="list-style-type: none"> • identify the key matters you expect to see in the tender response • award each matter a % of the available marks. • test the framework by getting a colleague to respond to the tender and then have several people use the scoring framework on this. • amend the scoring framework and then use it rigorously to evaluate each tender.
8. Pre-contract Discussions	Clarification of the offer made by the preferred bidder(s) takes place.	Concerns about the social requirements response of the bidder can be addressed and clarification sought at this stage
9. Contract Award	1. Ensure that the delivery of the social requirements are included as contract conditions, even if they were not part of the subject of the contract.	
10. Contract Start-up	<ol style="list-style-type: none"> 1. Meet the contractor's site staff to discuss delivery of the social requirements. 2. Obtain programming information, or check any programme provided at tender stage. 3. Ensure that record-keeping systems are established for monitoring purposes. 4. Advise supply-side agencies of the programme and requirements so that they can plan. 5. Agree how monitoring information will flow with the client's contract officers. 	<ol style="list-style-type: none"> 1. Don't assume that the staff responsible for the delivery of the contract know what social requirements commitments have been made. 2. Establish direct relationships between the contractor's staff and supply-side agencies. 3. Ensure that the resources are available for the social requirements elements 4. Progress-chase on the monitoring information and any under-performance from the start.

1. Introduction

1.1 Defining Social Requirements

Defining `social requirements` is tricky because there is an assumption that all public procurement delivers some community benefit and therefore implicitly includes `social requirements`. This is not usually seen as contentious within the `procurement community`. What is often contentious is the use of procurement to achieve social, economic and environmental objectives that have not conventionally been included with the requirements being procured. So we are looking at convention and practice rather than the definition of a new activity.

For example, a government agency that is managing funds for vocational training (e.g. a Learning and Skills Council or Job Centre) will conventionally procure construction training from Colleges, the CITB, industry training organisations etc. They don't have difficulty in seeing the rationale for this or in defining and measuring the services to be provided. However, the property management unit within the same organisation may well find it challenging if they are asked to include construction training requirements in their maintenance contracts or in the contract to build a new facility: it is not `conventional` (and therefore a risk for them) and it is unlikely they possess the skills or experience to know how to define the requirements and measure the outcomes.

So in practice our subject can be defined as follows:

Social requirements relate to matters of a social, economic or environmental nature that are included in contracts for the supply of goods, services or works which do not conventionally have these requirements as defined or measured outcomes. They are sometimes called `added value`.

The inclusion of social requirements in contracts is designed to deliver benefits to disadvantaged people thus maximising the role of the delivery process, offering added value to clients.

The reference to the `social economic and environmental` nature of social requirements links them to the `well-being` powers under the Local Government Acts, and the Government's policy of `sustainable development`.

The Office of Government Commerce (OGC) has recently produced a `joint note on social issues in procurement` for the Sustainable Procurement Group. This offers no definition of `social issues` but refers to a wide range of matters that would fit the above definition of social requirements: e.g. employment and training, equal opportunities, support for small businesses.

The impact of including social requirements in contracts has been to develop a niche market of `construction and social requirements`. In practice the niche market may be more specific: construction plus targeted recruitment and training. Such niches already exist, e.g. Construction plus tenant consultation is common-place in social housing renewal contracts. It is for suppliers to decide if and how they wish to position their organisation within each niche market, and for purchasers to ensure that the contractors tendering for work do have the expertise and experience to deliver all of their requirements – including the social issues.

1.2 The Acceptable and the Unacceptable

Within the `procurement community` - and maybe for some contractors – there appear to be acceptable and less acceptable `social requirements`. It is not controversial to require contractors to adopt the Considerate Contractor Scheme or (in refurbishments) to carry out

tenant consultation, but , requirements that impact on the selection of the workforce of the contractor seem to be much less acceptable.

Examples of this could be:

Acceptable	Less Accepted or Unaccepted
Considerate Constructor Scheme	-
Tenant consultation	Tenant Involvement
Supply chain management policies	Supply chain opportunities for local business
Equal opportunities policies	Taking action to promote equality of opportunities
Health and safety training and CSCS registration	Provision of apprentices and vocational training
-	Targeted (local) recruitment and training

The above analysis suggests that there are nuances in the response to social requirements within the procurement and contracting communities. These are very subjective and, as will be seen below, are difficult to sustain on the basis of procurement policy and principles.

1.3 Good Practice pointers:

Purchasers:

- recognise the need to develop additional skills and good practice in relation to social considerations;
- seek help from people that whose main activities and skills relate to the social considerations that are being included;
- be even-handed: treat social considerations like other elements of the procurement.

Contractors:

- recognise that this is a niche market that will require additional expertise and appropriate organisational arrangements;
- plan ahead if you want to enter this market: treat it seriously;
- work with experienced organisations to respond to the specification and develop your skills and understanding e.g. CITB, Colleges, other training providers, specialist subcontractors (e.g. in community design or consultation);
- give this element appropriate weight in the tender process, and in contract delivery.

2. Policy Rationales

2.1 Market Failure

It is accepted that there are widespread skill shortages in the construction industry and this is forcing up construction wage costs. Estimated shortfalls vary with:

- the projected growth in demand for the construction industry, especially from major public sector investments in hospitals, schools, transport, housing, the Olympics etc.;
- the numbers of new entrants to the industry, and the number of these that complete NVQ level 2 as a minimum entry qualification (e.g. for a CSCS¹ card).

It is not unrealistic to suggest that the industry needs an additional 30000-40000 entrants each year to replace those that leave and to accommodate the projected growth in demand. In theory the labour market response to this would involve some or all of the following:

- reduce the demand for labour by adopting new technologies and practices: to some extent this is happening;
- export the jobs e.g. through off-site fabrication in other countries: this is being considered;
- import labour;
- change the entry levels and procedures to make the industry more attractive relative to other indigenous industries.

While there is some movement on each of these the main response has been an increased use of imported labour, especially from the white populations of Eastern Europe. This has a number of benefits for the contractor: the commitments are short-term and fit with the dominant pattern of labour-only sub-contracting, and it doesn't challenge the predominantly white male character of the site-based workers in the industry. However, it is also unstable (what happened to the Irish workforce when EU money went to Ireland?), and raises the question of why poor countries in Eastern Europe can manage to train construction workers but Britain cannot.

The stock response to why there are construction skill shortages in Britain is that 'young people no longer want to do construction'. To some extent this is true: young people now have many more options. However, it doesn't square with experience in several regions which suggest that:

- roughly half of the young people that pass the CITB entry-tests cannot be found an apprenticeship;
- many of the people who initially fail the entry-test could have a successful career in the industry if given additional support in the early stages².

Young people that fail to get an apprenticeship may start on a full-time College course (Intermediate Construction Award) but many of these will find it difficult to get an apprenticeship at the end of this. College and LSC statistics don't show how many of these 'industry entrants' actually go on to work in the industry.

This indicates that a key problem is the recruitment practices of the construction industry. It 'wastes' much of the potential new-entrant workforce and has failed to introduce sufficient

¹ The Construction Skills Certification Scheme

² see, for example, the work of the Young Builders Trust.

measures to broaden its recruitment e.g. to less able young people, women, ethnic minority communities, older unemployed people and transferees from other industries. To a degree, public policy has to take some blame for this. Since the Government Task Force schemes in the mid-1980`s contractors have been paid extra to recruit local people from non-traditional sources so – almost uniquely amongst industrial sectors - these actions have become a `public good` rather than just a responsible management practice.

How can this situation exist in a highly competitive industry? The reason is market failure: since all contractors face the same problems they can simply pass the higher labour costs caused by the failure to address training and recruitment shortfalls on to the client. They are only at risk if they don't build enough inflation into their tender.

So it is the clients of the industry that pay for the labour market inflexibilities in the industry, and it is they that have the power to force change by including additional training requirements – or other community benefits – in the specification. Once they know that their competitors will be required to deliver the same measured outputs contractors will feel more able to include any additional net costs³ – related to additional training - into their tender, and implement change.

2.2 Best Value and VfM

The Government's policy is that all public expenditure should represent `value for money` (VfM). This is defined as “... *the optimum combination of whole-life costs and quality (fitness for purpose) to meet the user's requirements*”. This is sometimes used inter-changeably with the duty to achieve `best value` that is set out in the 1999 Local Government Act which is defined as “... *to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*”.

`Best Value` primarily relates to Local authorities and a range of other local public bodies named in the Act. `VfM` relates to all other public expenditure.

Best Value authorities need to consider how they can secure long-term improvement in the delivery of services, and the cost of services. Where these authorities use construction skills it is appropriate that they should take account of current skill shortages and rising costs and take action to ensure that these issues are addressed. The inclusion of training requirements in their contracts – to ensure that all of their suppliers contribute to the expansion of the local construction labour market – could be an appropriate step for them to take.

This argument is less powerful in relation to VfM, but even here future construction skill and labour costs would legitimately be a consideration in so far as they relate to the maintenance of whatever is built – part of the whole-life costs.

2.3 Sustainable Development

The Government's policy on `sustainable development` - which relates to all public sector activities – includes four objectives that are expected to be achieved at the same time:

- *Effective protection of the environment*
- *Prudent use of natural resources*
- *Social progress that recognises the needs of everyone*
- *Maintenance of high and stable levels of economic growth and employment.*⁴

³ After taking account of CITB grants, college provisions and the productivity of the trainee.

⁴ Office of Government Commerce & DEFRA. Joint note on Environmental Issues in Purchasing

Government's Guidance accepts the principle that the inclusion of social issues in public purchasing can contribute to the achievement of the latter two objectives,⁵ although they judge that "... by their nature they are less likely to be clearly related to the subject of the contract."⁶ No justification is given for this statement.

'Social progress that recognises the needs of everyone' can reasonably be interpreted as addressing the needs of people that are 'economically and socially excluded' (as well as others) and this may be used to justify the inclusion of targeted recruitment and training programmes in construction programmes. Likewise, a concern about the achievement of economic growth in a context where there are growing skill and labour shortages in the construction industry – a sector that is required to build the infrastructure needed to support economic growth – may justify the inclusion of training requirements in public sector contracts.

2.4 The Community Strategy and 'Well-being'

Under the 2000 Local Government Act Local Authorities in England and Wales have a general power to promote the economic, social and environmental well-being of their area or any part of their area. They have a responsibility to work with partners to develop a Community Strategy that sets out how this will be achieved. LAs in Scotland have similar powers, and a duty to develop a Community Plan.

The Community Strategy/Plan is designed as a corporate policy and often includes powerful statements in favour of disadvantaged communities.

Excerpt from the Leicester Community Strategy

- *target disadvantaged groups in the labour market to increase their employability prospects e.g. members of ethnic minority communities, the long-term unemployed, those without appropriate skills...*
- *develop a city-wide approach to the intermediate labour market*
- *develop a city-wide approach to employment and training...*
- *support sustainable approaches to enterprise which benefit the local economy and create opportunities for excluded groups.*⁷

The 'well-being' powers are designed to give LAs the legal powers to implement their Community Strategy provided that this does not involve action that is prohibited by another piece of legislation. This can include the inclusion of 'targeted recruitment and training' requirements in their construction contracts provided that this is done in a way that accommodates other 'procurement rules' (see 3.4 below).

2.5 Departmental Powers & Policies

Like LAs, individual Government departments and agencies may have adopted policies that create a rationale for them to include community benefits in their contracting.

One example of this is the NHS policy paper *Choosing Health*⁸ that for the first time made an explicit link between non-employment, ill-health and demands on the NHS. It also included

⁵ *ibid*

⁶ *Ibid* page 16

⁷ Leicester revised Community Plan (2003)

⁸ Department of Health. London. November 2004.

specific references to the role that gaining employment has in aiding recovery from ill-health. The NHS has powers that derive from The Secretary of State to do anything that promotes good health. Following the *Choosing Health* analysis the NHS has a `new` interest in promoting employment and training for `at risk` groups. This has led to an increase in the numbers of NHS bodies that are interested in including employment and training requirements in their procurements.

2.6 Good Practice Pointers

Purchasers:

- be clear about the rationale for including community benefits in procurements, and ensure that there is a sound policy basis for action;
- do not be put off by vague warnings in Government guidance and vague statements that `this can't be done` by procurement officers: the authors of the guidance will rarely have considered the local rationale that would support action.

Contractors:

- be positive in responding to the client`s requirements: treat them as legitimate;
- recognise that this is a growing niche market and future work may depend on being able to demonstrate success in this market.

3. Legal Frameworks

3.1 Government Policy

The Government's procurement policy is that all public procurements should be based on value for money, having due regard to propriety and regularity.

"... the Government's policy of achieving value for money applies to the award stage of the procurement process. In the context of its overall objectives, a Department should decide what to buy and set the specification accordingly, and ensure that its requirement is subject to the normal public expenditure tests of need, affordability and cost effectiveness. It is at this earlier stage that there is most scope to consider social issues."⁹

The above quotation makes clear that public bodies can include social issues in their specification where this is supported by their objects (i.e. is not ultra vires) and the business case. The items that are included in the specification are the subject of the contract: what has to be delivered. It follows that where social issues are supported by the objects and the business case they can be part of the subject of the contract and should be a consideration at all stages of the award process, including the selection of the tender list and the assessment of VFM.

In the context of the above it is puzzling that the OGC should make the following statement:

".....the scope to take social issues into account during the procurement process can be less clear-cut and potentially more limited than for environmental issues because, by their nature, they may be further removed from the actual subject of the contract. This is because they usually relate to the way that the supplier manages its own workforce, rather than the product or service itself."¹⁰

This statement is valid for social requirements that are not supported by the `objects` and policies of the purchaser, and the business case. In this situation the benefits should not be used in any stage of the award procedure, but could be included as contract conditions that the successful contractor has to deliver. However, if the proposed social requirements will achieve a policy objective of the purchaser and pass the business case assessment, then they become part of the subject of the contract and can be used in all stages of the award procedure. Notwithstanding the views of the OGC there are likely to be many occasions when this is the case.

3.2 EC Procurement Frameworks.

All procurement by a `contracting authority`¹¹ is subject to the principles of open markets that are set out in the EU Treaties. This means that purchasers should not directly or indirectly disadvantage contractors from other parts of the UK or EC in competing for the contract. For contracts with an anticipated value above set threshold levels – roughly £150000 for services and £3.8m for works¹² – the European Commission has established procedures that have to be followed in order to ensure open competition. These have been set out in a number of EC Procurement Directives, but from January 2006 a new single EC Procurement Directive will apply in the UK.

⁹ Office of Government Commerce & Sustainable Procurement Group *Joint Note on Social Issues in Purchasing*, June 2005, page 2.

¹⁰ *Ibid* page 4.

¹¹ This is broadly defined but roughly includes all public bodies plus other organisations that are subject to public law and supervision (e.g. RSLs) or where the majority of income comes from public bodies.

¹² The actual values vary from time to time with the exchange rates.

There is no blanket prohibition on the inclusion of social issues in contracts awarded under the EC Procurement Directives, indeed, the new Directive

“... clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area...”¹³

However, the social requirements must not disadvantage non-local contractors, must be mentioned in Contract Notices and should be linked to the subject matter of the contract.

Guidance suggests that social requirements that are locally referenced e.g. `local trainees` would disadvantage non-local contractors since they would not have knowledge of the local labour market or supply-chain. However, it would not disadvantage non-local contractors if they were asked to recruit `trainees` or `long-term unemployed people` provided that these could be brought from any labour market (although they would probably be recruited locally), and it would not be a disadvantage to ask non-local contractors to recruit from a named local agency provided that the service was available to any contractor.

The implications of the EC Procurement Directives – in relation to social requirements and social issues - have been confused by a series of European Court cases that have tested how far social issues that are not part of the subject of the contract can be used in the award of the contract. This is `distracting` because it leads people to overlook the possibility (as set out in 3.1 above) that the social issue can legitimately be part of the subject of the contract. In this situation most of the European case law does not apply.

Where social issues are not part of the subject of the contract they can be included as contract conditions but should not be a consideration in the award of the contract.

3.3 State Aid Rules

Another legal framework that derives from the EC is the state aid rules. These are designed to control the flow of public grants to commercial organisations, to avoid subsidy that would result in unfair competition. The rules are complex but essentially set low limits on the value of public grant that can be given to commercial organisations.

Sums paid to commercial organisations as a result of a proper procurement process are not affected by the state aid rules since these are payments for goods, works or services rather than a grant. However, complications can arise where a contractor provides goods, services or works in excess of what was included in the contract, e.g. under a voluntary agreement. Any payments to the contractor for these items would be subject to the state aid rules.

This has important implications in the context of advice from the OGC to consider (in relation social objectives) *“... other options such as grants and voluntary action.”¹⁴* This approach risks problems with the state aid rules, whereas the inclusion of the community benefits in the subject of the contract avoids such risks.

3.4 Local Government Acts

As well as the enabling `well-being` powers provided to LAs by the 2000 Local Government Act (see 2.4 above) and the equivalent Scottish legislation there remain, in England only, constraints on some social requirements that derive from S.17(5) of the 1988 Local Government Act. This makes labour force matters a non-commercial consideration, i.e. one that cannot be taken into account in the award of a LA contract.

¹³ Ibid 7 above, page 5

¹⁴ Ibid page 30

However, the 2001 Local Government Best Value (Exclusion of Non-commercial Considerations) Order sets aside this element of the 1988 Act where this is necessary for best value. This Order relates only to England. In Scotland legislation in 2002 sets aside the relevant element where this is necessary for the contractor to comply with their contract obligations, while in Wales an equivalent Order simply removed the labour force matters from the list of non-commercial considerations for LAs. So in Scotland and Wales the non-commercial considerations are effectively lifted.

LAs in England are left with a requirement to establish a best value justification for setting aside S.17(5) of the '88 Act if they wish to include labour force matters in the award of the contract.¹⁵ Some elements of 'best value' are set down by Government in annual targets, but to date none of these have related to the type of community benefit being considered here. The other source of 'best value' is the policies adopted by the LA, e.g. through Corporate or other policy statements, the Community Strategy, Best Value Procurement Plans etc. Establishing the 'best value justification' for including labour force matters in LA contracts is within the power of the LA.

3.5. Race Relations Acts

The Race Relations Amendment Act (2000) imposes an obligation on public bodies named in the Act (a wide range) to ensure that contractors carrying out work on their behalf eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups. This is a positive duty that can be cascaded on to contractors through the contract.

However, it should be noted that there is a danger of indirect racial discrimination if the social requirements are targeted at an area that has a non-typical racial make-up. In area regeneration this might be desirable e.g. where the regeneration is targeted at the most deprived population and these include a high proportion of people from minority communities, but this does not justify the potential indirect discrimination that could occur if, for example, the contract specification included targets for the numbers of trainees recruited from this locally-based, disadvantaged, population.

The risk of indirect discrimination can be avoided by using broad characteristics to set the targets e.g. trainees, long-term unemployed people etc., and then maximising local benefits by targeting pre-recruitment and job-matching activities.

3.6 The Recommended Approach

Where the purchaser has the powers (i.e. it is not ultra vires) and an established policy basis for seeking the proposed social requirements then they should consider including these as part of the subject of the contract. The objects and policy provide the 'need' element of the business case assessment, which leaves affordability and deliverability as key considerations.

In drafting the specification care should be taken to avoid social requirements that would disadvantage non-local bidders or risk indirect discrimination. Avoiding locality-based specifications should achieve this. An alternative would be to name a local supply agency provided that this is available to whichever contractor is awarded the contract, and it has an equal opportunities policy and will not directly or indirectly discriminate on the grounds of race, gender, disability and (in the future) age, religion or sexual preference.

¹⁵ As S.17(5) relates to the award of the contract it has always been possible –but rarely understood – that labour force matters could be included as contract conditions even under the 1988 legislation, provided that the award of the contract could be defended on the basis of other award criteria. This remains the case if there is no 'best value justification'.

Extract from the New Approaches to Public Procurement Toolkit

The following model wording is suggested, under the section in the OJEU Notice typically headed "other information".

"Under this [procurement / project] the [contractor / developer] is required to actively participate in the economic and social regeneration of the locality of and surrounding the place of delivery for the [procurement / project]. Accordingly contract performance conditions may relate in particular to social and environmental considerations."¹⁶

The requirements of the EC Procurement Directive must be followed, commencing with the Contract Notice. If the social requirements are included in the Notice then they can be a consideration in the selection of the tender list (the contractors should show that they have the experience and capability to deliver all of the subject of the contracts, including the social requirements) and in the award procedure.

Where the purchaser has the powers but only a weak policy basis, or has failed to refer to the social requirements in the Contract Notices, then the social requirements can only be included as contract conditions. They can be included in the specification but must be disregarded in the award of the contract (i.e. the award decision must be justified on other criteria). However, as contract conditions it is a requirement that the social requirements are delivered.

If the purchaser has no power to procure the social requirements then they could only do so by procuring jointly with another organisation that does have the power.

3.7 Enforcement

It is a widely held view that social requirement clauses cannot be enforced and will not be upheld by a Court because they are not part of the subject of the contract. As explained above, there are many occasions where they can be part of the subject of the contract and are therefore enforceable. There are no known cases where this has been tested in Court.

Remedies for non-performance could include the non-payment of any sums that relate to the social requirements, or being inflexible with the whole contract until satisfactory performance is achieved in relation to the social requirements. In one London LA a contract includes the deduction in payments to the contractor of £150 for each trainee-week that is not delivered by the contractor. This is based on the cost of providing the trainee with an alternative site placement.

However, it is more helpful to recognise that in the range of concerns that the purchaser may have about contractor performance the social requirements are likely to have a relatively low weighting. In this context the best approach is to develop a positive relationship between the contractor's staff and agencies that can help deliver the social requirements. This can be backed up with early progress-chasing by the purchaser, and sound monitoring and reporting of outcomes.

¹⁶ Mark Cook (Anthony Collins Solicitors) and Richard Macfarlane. NAPP Toolkit. Birmingham. 2004.

3.8 Disclaimer

It is important that the client and local agencies are protected from claims by the contractor that they were forced to recruit unsuitable workers, trainees, sub-contractors etc. through the social requirements.

Extract from a Glasgow Housing Association Contract

In the spirit of partnership Glasgow Housing Association will seek to ensure that there is appropriate construction training and job-matching services available to contractors carrying out works on its behalf. However, this action does not comprise or imply any promise on the part of GHA or their agents to provide suitable services.

Any action taken by GHA to broker relationships between the contractor and local individuals/firms/agencies does not imply and should not be deemed to imply that they or their agents consider the individual/firm/agency as suitable for engagement by the contractor. Within this context GHA will work with local agencies to help facilitate the achievement of the employment and training elements requirements.

3.9 Good Practice pointers

Purchaser

- clarify the powers and policies that will support the inclusion of the social requirements as part of the subject of the contract: take steps to improve the policy basis where necessary;
- prepare for the business case assessment (see 4 below);
- develop expertise and take care in drafting the requirements: do not use the term `local` in the contract notices or specifications;
- protect the client from claims by contractors arising (they may claim) from the social requirements;
- enforce the social requirements by building a good relationship with the contractor and early progress-chasing rather than by relying on contractual remedies.

Contractors

- give due weight to social requirements where they are included in the subject of the contract or as contract conditions;
- understand that the legal and policy frameworks for the procurement of community benefits/social issues are changing;
- develop the management structures and staff skills for delivering social requirements, and be prepared to provide evidence of past experience e.g. in Pre- Qualification Questionnaires and interviews;
- don't think this is a simple, secondary, matter that can be easily sorted at the last minute;
- get organised to deliver the social requirements and related monitoring information from early in the contract.

4 Business Case Assessment

4.1 Powers and Policies

The principle focus of a business case assessment will normally be resources. This is partly because most procurements fall clearly within the established operations of the purchasing body and `policies and powers` are not an issue. The intention to include community benefits in the subject of the contract may be innovative and it is appropriate that the business case assessment includes examination of the powers and policies that facilitate their procurement. Legal opinion may need to be sought on these matters.

For LAs the issue of powers is unproblematic because of the general `well-being` powers included in the 2000 Local Government Act, but it is necessary to ensure that there is a clear policy basis for action. This may be derived from the Community Strategy, the Procurement Strategy or departmental policy documents e.g. an area regeneration strategy. In England it is also important to confirm that the policy supports a judgement that the inclusion of the social requirements is necessary to achieve `best value`.

Finding the policy basis for action may need some detective work. The required policy references may be tucked away in appendices or included in separate documents that are merely referred to in the main policy statements. If this is the case then there is an argument for action to ensure that the required policies are made more explicit, ideally in a corporate strategy (e.g. on Procurement) that can be used as a basis for action by all Departments.

City of Sunderland Targeted Recruitment and Training Procurement Strategy

The City of Sunderland is committed to achieving the economic, social and environmental objectives set out in the Sunderland Strategy so as to ensure a better quality of life for all the City's residents, now and in the future. To achieve this the Council commits to considering the following actions on a case-by-case basis, and where affordable and within the relevant legal and policy frameworks commits to their implementation.

- *To include recruitment, training, equal opportunities and opportunities for small and medium sized enterprises, in its service specifications and works contracts, where it considers this appropriate and affordable.*
- *To include other social and environmental matters in its service specifications and works contracts, where it considers this appropriate, and affordable.*

These specifications will feature in all stages of the selection and appointment process and as core contract requirements.

(Excerpt from City of Sunderland Cabinet Report. September 2004)

For other public bodies the starting point will need to be the purpose and powers of the organisation. These can change through policy over time. For example, NHS bodies have very wide powers in relation to promoting health, but the link between health and levels of employment/unemployment were not made explicit until the *Choosing Health* white paper in late 2004. Again, there may be benefits in the organisation adopting more explicit policies to

facilitate the inclusion of community benefits in procurement. For example, North East London Strategic Health Authority has adopted a Regeneration Strategy that provides an explicit policy basis for targeted recruitment and training. This can be used by Trusts within its operating area.

4.2 Affordability

This is perhaps the biggest barrier to the inclusion of social requirements in public sector contracts, mainly because the `procurement community` is inexperienced and may put forward the worst case – high cost – scenario.

As with other elements of the procurement it is important to design the social requirements so that they are in line with the budget that is likely to be available. This budget may be a notional or `ring-fenced` sum within the mainstream funding, or it may be an additional budget that can be brought to the funding package for the social requirements elements.

In looking for resources there are three actions to take:

- identify what resources, if any, are available within the existing funds for the project;
- identify additional funds that can be accessed – and any conditions that are attached to these e.g. European Social Fund, neighbourhood regeneration budgets, training budgets etc.;
- identify existing resources that can be accessed as a way of reducing costs to the contract e.g. training provided free of cost by Colleges, job-matching services provided by Jobcentre Plus, and CITB grants and apprentice management services;

On the basis of this research, design social requirements that they are affordable. These may be less than ideal, but it is realistically the only way the social requirements are going to pass the business case assessment. The designed scheme can then be used to draft the community benefit requirements for the specification, and to draft questions for the pre-qualification questionnaire that will help ensure that the contractors asked to tender for the contract have the management skills to deliver what is required.

Given the difficulty in packaging funds from a number of sources it may seem unfortunate if the social requirements have to be funded separately from other elements of the procurement. However, this does avoid one danger of the social requirements being part of the mainstream budget: being cut out as part of essential cost savings at a later date.

One problem with reliance on external funding can be the relatively short duration of much public funding. For example, a hospital building programme may last for 10 or more years, but funds for construction training may be allocated annually. This has to be accommodated by flexibility in the contract requirements e.g. the contractor to produce two year rolling projections of the training they will provide and how this will be funded.

4.3 Deliverability

The issue here is the practicality of delivering what is being requested.

For example, a requirement that x number of trainees be employed for a total of y weeks would need to be examined in relation to:

- the impact that this could have on the management of the site and the quality of the works;

- the number of potential trainees that are available over the duration of the construction period: this would link to numbers of potential, suitable, applicants and to the available of suitable training facilities;
- the quality of training experience (the social requirements) that could be provided to the trainees, including their potential to complete training in the contract period or arrangements to provide continuity of employment and training beyond the contract period.

A second aspect of deliverability is whether there are sufficient contractors in the market place with a capacity to deliver the social requirements. This needs to be judged in relation to the proposed requirements. For example, many contractors can show evidence of their capability to manage training – or to bring in a sub-contractor with this experience – even if this is currently limited to technical and professional grades. But if there were serious concerns about this then the requirement could be re-phrased so that the contractor has to support the work of an existing training provider (e.g. a College or the CITB) in order to deliver the outcomes. This places less importance on the contractor’s pre-existing experience and skills.

4.4 Management

This element of the business case assessment refers to the capacity of the procuring body to adequately manage the delivery of the contract, including the social requirements.

It can be seen from 4.1-4.3 above that the design and drafting of the social requirements requires specialist knowledge that will be held by people whose main activity and skills relate to the social requirements rather than to procurement. This is no different to other elements of the project where, for example, an architect or surveyor will advise on the design and cost elements of a construction project, and a service manager will advise on the facilities and equipment that is required.

So to satisfy the management element of the business case assessment there has to be a clear plan for how specialist skills relating to the social requirements will be made available in the procurement (e.g. in evaluating the community benefit element of tenders), monitoring, progress chasing and management of the contract. In many cases this will require co-ordination between different departments in the procuring body, but it may also require an inter-agency approach or contracting with a specialist external consultancy.

4.3 Good Practice Pointers

Purchaser:

- involve social requirements specialists from the earliest stages in the development of the project;
- identify external funds and other resources that can be used to minimise the cost impact on the mainstream project budgets;
- design the social requirements to suit the resources that are available;
- make sure that the requirements, including the scale of requirements, are deliverable and do not put at risk other outputs from the contract e.g. quality, delivery on time and within budget;
- be as sophisticated and professional in the preparation of the social requirements elements of the scheme, as is normal for other elements of the scheme.

[This all goes on before involvement of the contractors]

5. The Requirements

5.1 Specify Outputs

One principle in good procurement is to specify the required outputs but leave the contractor to devise an appropriate process for delivering these. A second principle is that the contractors' proposals should be capable of comparative assessment. To accommodate these two principles it is useful to ask potential contractors to provide a pro-forma social requirements method statement or work plan with their tender. The pro-forma will ensure that all tenderers provide information in a standard format, which makes comparisons easier.

Extract from the Employer's Requirements for a Southampton City Council Highways Maintenance Contract.

2.1. Recruitment and Training Workplan

The contractor is required to submit, after discussion with the Council's Training and Employment Initiatives unit, a Recruitment and Training Workplan setting out how they will deliver the requirements set out in 2.2 – 2.7 below. This must be submitted to the Employer with each valid tender using the pro-forma set out in Part 3.

A revised Recruitment and Training Workplan must be submitted to the Employer within four weeks of a written request for this, e.g. because of changes to or clarification of the works programme.

It is the contractor's responsibility to develop a working method and where necessary secure sub-contractor co-operation in order to achieve these recruitment and training requirements.

This approach is perhaps especially useful in relation to contract requirements that may be unfamiliar to the tenderer. The pro-forma method statement helps to make sure that they think through the requirements and work out just how they are going to deliver them.

5.2 Definitions and measures

A requirement of a good procurement process is that the requirements are clear and capable of comparative assessment. This is also important in establishing a 'level playing field' for tenderers: they need to have confidence that they are interpreting the requirements in the same way as their competitors. This can present a challenge for social requirements if there is no history of procuring these as a part of a wider basket of requirements. On the other hand the requirements may commonly be the subject of grant funding or service level agreements where some form of measured outputs are used.

A common problem with recruitment and training requirements is that they are specified as number of jobs, when the term job in the construction industry is somewhat ambiguous. How do you distinguish between an electrician coming on to site for three days to move a cable, and an electrician working for a year wiring new homes. Both time-periods may be termed 'a job'. A more useful measure of time on a construction site may be person-days or person-weeks. This can be used to measure the total time utilised on the site and set targets (and measure) the time provided by the target groups e.g. trainees.

Extract from the recruitment and training method statement for a Southampton City Council Highways maintenance contract.

P/wks - A person-week is the equivalent of one person working for 5 days either on site, or through a mix of on-site work and off-site training. The total person-weeks utilised on the contract to include time provided by management and professional staff, trades and operative staff, and ancillary staff.

A new entrant is a person that is leaving an educational establishment (e.g. school, college or university) or a training provider, or a non-employed person that is seeking employment that includes on-site training and assessment or offsite training, or a mix of these.

An apprentice is a person registered as an apprentice with an industry recognised body. Each apprentice can be counted as a `new entrant` for up to 104 weeks.

Other Trainees – people that have a trainee contract or a contract of employment or self-employment that are not apprentices. Each `other trainee` can be counted as a `new entrant` for up to 52 weeks.

Not all requirements are capable of objective measurement e.g. numbers of person-weeks. An alternative by monitorable requirement could be that the contractor demonstrates that they have gone through an agreed process to implement the social requirements.

Extracts from the Draft Protocol on Prosperity and Employability from the Leicester City Council Building Schools for the Future Programme

Every vacancy on site, including those with subcontractors, is to be notified to agencies named by LCC at least 2 working days before being filled from other sources, and the selection process must demonstrate that candidates from the named agencies have an equal opportunity of being recruited.

Monitoring information can be devised to check that the process is being followed (e.g. by comparing numbers of vacancies notified with the numbers of new starts on the site) and to identify the outcomes (i.e. number of people recruited from the named agencies). Poor outcomes could relate to a lack of commitment by the contractor, poor screening by the named agencies, or a lack of appropriate training for the target communities.

In the above example the client specified a process that must be followed. In other cases it may be appropriate to ask the contractor to establish a process. The following clause was drafted for use by a Housing Association in Middlesbrough:

The contractor must establish a procedure for recording and responding to incidents of discrimination and abuse on the basis of race, gender, ethnic origin, colour, religion, sexuality, marital status and disability.

These approaches can also be used in seeking to provide opportunities for small businesses to act as subcontractors or suppliers to the main contractor. A simple approach to this is

illustrated by this example from a Middlesbrough Housing Association:

The Contractor use reasonable endeavours to provide opportunities for social enterprises¹⁷ operating within the Middlesbrough area. Information on how to contact these enterprises can be obtained from

An alternative approach, that requires the development of an acceptable process is provided by the following extract from the Leicester BSF Draft Protocol:

Local Supply-chain Opportunities

In relation to a minimum of 25% of expenditure by value, a process agreed with LCC will be implemented in order to identify and provide tender/pricing opportunities to additional suppliers¹⁸ that are SMEs with a LE post-code.

One of the benefits of the `develop a process` approach is that any contractor can deliver this. The reference to locality does not favour contractors with an existing local supply-chain since all contractors have to develop and implement a process to identify additional suppliers. In the Middlesbrough example the potential advantage to local contractors that could arise from existing knowledge and relationships with social enterprises is balanced by a source of information on potential social enterprise suppliers that is available to all bidders.

5.3 Scale and type of requirement

The issues here have already been discussed under 4.2 and 4.3 above. The social requirements must be seen as part of the wider package and should be designed to reflect their relative importance in the whole package. They must be deliverable in relation to cost/funding, the labour market context and the available `supply-side` support,¹⁹ and must not put at risk other key requirements like contract completion dates or quality of services/works provided.

It is useful to develop a rational basis for the scale of the social requirements being requested. For example, a rough estimate of a requirement that `10% of the person-weeks required to deliver a construction contract should be provided by trainees` can be obtained as follows:

Estimated value of works (say) £10m
Estimated labour content –50% = £5m
Estimated average weekly wage - £600
Therefore total labour required = 8333 person-weeks (£5m divided by 600)
10% trainee requirement = 833 person-weeks.
Typical training period of 52 weeks = 16 trainee opportunities

Clearly, there are many assumptions built into this formula, but the rough scale and impact of the requirement can be assessed. From this, funding, targeting and supply-side issues can be examined: e.g. the split of trainees between school-leavers and adults, how much funding is available to support each cohort, and what supply-side agencies can the contractor work.

Surveyors have been able to develop more sophisticated computer models that estimate the numbers of trainees per £1m in construction spend, by trade. The projections will vary with different building technologies: the labour content and trade breakdown of a pre-fabricated shed will be quite different from those of a traditional brick-faced house etc.

¹⁷ Not-for-profit businesses that seek to undertake contracts and provide benefits to local communities.

¹⁸ An `additional supplier` is a firm with less than 250 employees that has a LE post-code and that has not had a contractual relationship with the developer or contractor.

¹⁹ e.g. existing training and job-matching facilities, local liaison officers etc

The latter illustrates a key point. There are professionals around who have the skills to estimate the impact of different requirements – on both the community and the contract. These professionals will be unaware that their skills and experience can usefully be applied to determine the type and scale of social requirements that can reasonably be achieved through a procurement. For example, the involvement of the surveyors in estimating labour and training requirements helps them to understand, own, and have confidence in the social requirements.

5.4 Identifying Costs

The approach to costs has also been discussed under 4.2 above. Essentially, the requirements need to be developed in response to the resources that are available. However, other key concerns are how the resources are made available to the contractor and to what extent are they identified in the tender. Options for the way resources are channelled to the contractor include:

- through the contract: the client holds the budget and pays the contractor against measured outcomes;
- partly through the contract: the client pays for some elements of the requirements but the contractor finds external resources (e.g. college provisions and CITB grants) that pay for other elements;
- entirely from external resources: the resources to deliver the social requirements have to be found from outside of the contract sum e.g. by working with other agencies, colleges, neighbourhood regeneration programmes etc..

State Aid rules may come in to play if delivery is dependant on grants from other public agencies, although in practice it seems that this is not an issue because the agencies provide services to the contractor rather than money. Another variable is how much cost information the procurement body obtains with the tender. Obviously, if the contractor is being paid by the purchaser through the contract they will need to have cost information as part of the tender evaluation. However, even where this is not the case the purchaser may request cost and resources information to show that the contractor has thought through the requirements and knows how they will be resourced.

Extract from the Employer’s Requirements for a Middlesbrough Housing Association.

The Constructor is expected to make full utilisation of the services and funding provided to construction sector employers by the Building Bureau, Job Centre Plus, the Learning and Skills Council, the Construction Industry Training Board, and construction training providers. Any remaining net cost that will be charged to the Employer – after allowing for productive work provided by trainees and work experience placements - should be shown in Table 2.1 below.

Table 2.1 Breakdown of Recruitment and Training Costs

Cost Item	£ Net Cost²⁰	Basis of calculation
<i>Management and administration</i>		
<i>Training costs</i>		
<i>Additional site costs</i>		
<i>Other</i>		
Total		

²⁰ Net cost is after deducting resources that can be obtained from other sources and after allowing for the value of work that will be undertaken by trainees and work-placement operatives.

5.5 Key Performance Indicators (KPIs) and Monitoring Information

The term KPI is sometimes reserved for matters that are part of the subject of the contract: `monitoring information` can refer to other matters.

A significant benefit of including social requirements in procurement, rather than as a voluntary agreement, is that the provision of KPI and monitoring information can be a contract condition.

It is important to include a list of the monitoring requirements in the contract specification, not only to give the purchaser the right to demand the information but also to allow the tenderers to work out any cost or staffing implications.

As with many other aspects of community benefits, experience of what and how best to measure community benefits is probably available, but not necessarily within the traditional procurement team. There is a danger that too much information is requested. Sometimes very detailed information is required because of the sensitivity of the development e.g. a housing stock-transfer where part of `sales pitch` to tenants was the job opportunities that would be available within their communities. Otherwise try and limit the demand for monitoring information to those matters that will demonstrate delivery.

Extract from the Employer`s requirements, City of Southampton Highways Contract

One week prior to each Contractor Site Meeting the contractor must provide the Employer or their agent with a schedule and report covering the following key performance indicators (for the period and cumulative):-

2.5.7.1 the number of person-weeks utilised on the contract that are delivered by new entrant trainees, split between apprentices and other trainees, and what % this represents of the total person-weeks utilised on the contract;

2.5.7.2 the number of vacancies notified to the organisations named by the Council`s Employment and Training Initiatives unit;

2.5.7.4 the number and % of vacancies that are filled by candidates referred by agencies named by the Council`s Employment and Training Initiatives unit.

2.5.7.5 the numbers of people working on the contract for which a Training Plan is being maintained;

2.5.7.6 the numbers of people that complete a qualification accepted by the Council`s Employment and Training Initiatives, while working on the contract.

It is advisable to ensure that there is some corroborating evidence to support the monitoring information. In some instances this may be provided by the named `supply agency`, but otherwise it may be appropriate to make it a contract requirement that the evidence is made available to the client`s agents when requested.

In seeking access to the original data it may be necessary to take account of the Data Protection Act. This prevents organisations that hold personal data from passing this on to other organisations without the agreement of the person concerned. This would apply, for example, to workers` and trainees` home addresses and training achievements. To obtain access to this information the contractor can be required to maintain personal records that include a signed statement allowing personal data to be made available to the client for contract monitoring purposes only.

Extract from a road contract let by Stirling Council

The contractor is required to

...6.1 maintain a Site Security Record that includes the following data for each person engaged on site in any capacity:-

- 6.1.1 the date they commenced on site;*
- 6.1.2 their home address (rather than a local accommodation address) including the full post-code;*
- 6.1.3 their employer (or who they have been engaged by if self-employed);*
- 6.1.4 their trade/occupation;*
- 6.1.5 the date they finished working on site*

To comply with the Data Protection Act the Site Security Record must include a statement authorising the Contractor to disclose personal data from the Record to the Council or their Agent for the purposes of contract monitoring. This statement is to be signed by the person listed

The Site Security Record must be available to the Council or their agent at any time.

Finally it should be recognised that monitoring data needs to be used by the client's team if it is to be of any use. It is important that the client's contract management team receive the information, but it is likely that any progress chasing and interpretation of the information will need to be done by people with knowledge of, and commitment to, the community benefit elements. So they also need to receive copies. This progress chasing is critical in ensuring that the contractor takes the community benefit requirements seriously. If the client shows no interest why should the contractor?

Staffing the `monitoring process` needs to be considered as part of the Business Case assessment. With very large developments it may be viable to have one or more full-time officers dedicated to collecting and aggregating monitoring information, interpreting this and taking follow-up action. It may also be worthwhile introducing electronic transfer of data and computer analysis outcomes.

5.6 Providing Information to Contractors

There is often a need to brief potential tenderers (or firms on the tender list) about aspects of the development and contract. This is especially the case where there are innovative elements (e.g. partnership contracts), including social requirements.

The key principle in providing information is that each tenderer must get access to the same data. However, there are different approaches to how this is done. Options include:

- for large programmes there may be an information session for interested contractors at which the client officers explain the works programme, form of contract, procurement process etc: information on the social requirements can be introduced at this event;
- sending out an Addendum to the tender with information about the social requirements sources of funding, supply-side resources etc;
- providing an opportunity for contractors to make contact with questions: equality is best maintained if the questions are answered by e-mail with a copy going to each tenderer;
- tenderers may be called in for a briefing meeting on the social requirement elements, either as a group or singly.

When a contractor is appointed it may be useful to set up a meeting to discuss the social requirements, how they will be delivered, supply-side support and monitoring requirements.

Waltham Forest Housing Action Trust – an early 1990`s pioneer in the use of social requirements – also instigated an induction programme for all managers and foremen starting on the site. This covered a range of matters, but included a briefing on the reasons for the targeted recruitment and training elements and what was required under the contract. This was found to be very beneficial in maintaining the support of contractors.

5.7 Good Practice

Purchasers:

- Use people with skills and experience in social requirements to help develop relevant and well-defined measures;
- Use the skills and experience of the professional team to identify the appropriate scale for each social requirementst: this will help them to understand and `own` the targets;
- Make an early decision about what cost information should be obtained through the tender;
- Make the provision of monitoring information and supporting evidence a contract requirement, but limit the data requirements to the bare essentials;
- Set up arrangements for reviewing and responding to the monitoring data;
- Provide opportunities for tenderers to ask questions about the social requirements requirements, but provide the same information to all contractors.

Contractors:

- Recognise that the social requirements elements may be new to the estimating team: address these early;
- Make contact with supply-side agencies to get help in understanding how you can best respond to the requirements;
- Make use of briefing meetings provided by the purchaser;
- Share experience within the company, and utilise the experience of sub-contractors that have a track record in delivering the required benefits;
- Induct site staff – starting with the contract manager – on the requirements and key elements;
- Set up the administrative systems to collect and provide monitoring information from the start of the contract;
- Collect and collate this data centrally, it will help in providing the evidence that will lead to new contract opportunities in this niche market.

6. Evaluating Tenders

6.1 An Evaluation Framework

There will only be a need for an evaluation framework if a social requirements method statement or work-plan has been requested with the tender. These will need to be scored as part of the tender assessment process.

It is important that the assessment is rigorous and fair. One methodology for this has the following elements:

- identify the different elements of the social requirements e.g. targeting recruitment, provision of apprenticeships, supply-chain opportunities for additional small firms, the provision of monitoring information, a suitable site management arrangement;
- give each element a weighting e.g. targeting recruitment 20%, site management 10% etc.;
- for each element make a list of the key requirements that you believe are necessary to achieve delivery, and allocate each of these a share of the weighting for the element e.g. for targeted recruitment allocate the 20% across, `informing all sub-contractors of the requirements`, `making links with labour supply organisations`, using an equal opportunities recruitment process etc.;
- from the above create a standard evaluation framework (a form);
- score each method statement using the framework and recording the outcome on the form;
- create a composite score for each tender by adding together the scores from each section.

The scores from the social requirements evaluation can then be given a weighting as part of the overall tender assessment. This is typically part of the `quality` element of the assessment: perhaps 15%-20% of this element, but this is a matter for discussion within the whole evaluation team on a case-by-case basis.

Where cost information has been provided as a part of the tender then this can be evaluated as one element in the above process. Key questions here may be whether the tenderer has shown that that will have sufficient budget to deliver the requirements, and perhaps whether they have maximised the use of resources from outside of the contract to minimise the cost to the client. If they have not done the latter then they may subsequently `pocket` some extra profit by obtaining additional resources to cover items that the client is already paying for.

The above process will need to be undertaken by people with considerable knowledge of the social requirements in question e.g. those that have been involved in drafting the requirements and working out appropriate `measures`.

6.2 Good Practice

Purchasers:

- create the evaluation framework as part of designing the method statement;
- identify who will carry out the assessment of the community benefit elements;
- identify the weighting to be given to the social requirement elements, within the whole tender evaluation, early in the process;
- consider making this weighting clear to tenderers;
- at the end of the evaluation process review the scoring framework and adjust this in readiness for subsequent contracts: develop experience and expertise.

Contractors:

- check that you understand what social requirements are required and what information is required on any method statement: ask for clarification where necessary;
- read any method statement carefully and provide all of the information that is requested;
- identify what weighting is given to the social requirements in the tender evaluation;
- recognise that clients are becoming more professional in their approach to social requirements, and more rigorous in examining contractor's proposals and performance.

7. Managing Delivery

7.1 Contractors

It may sound obvious, but contractors need to recognise that social requirements that are contract conditions have to be delivered. As with many other elements of the contract this probably means proper management of the supply-chain organisations.

For example, delivery options for the employment of additional trainees would include:

- making it a condition of sub-contracts: allocating the number of trainees or trainee person-weeks that have to be delivered by each sub-contractor;
- employing the trainees within the main contractor and charging them out to sub-contractors (with appropriate deductions from sub-contractor payments);
- bringing in a sub-contractor that is responsible for delivering the social requirement elements: this can be a good way of bringing in expertise that the main contractor and other sub-contractors do not have.

Working out how this will be done should be part of the preparation of the tender. However, it is also important that the assumptions and commitments made at that stage are passed on to the staff that are actually delivering the contract.

The other part of the delivery methodology relates to monitoring and reporting. These systems need to be established early. Responsibility for this needs to be allocated (e.g. to a site clerk), and review procedures established (e.g. monthly report that is then provided to the client's site or contract review meetings).

On large sites the collection of monitoring data and supporting evidence can be made part of the site security and health and safety records. See whether the required information can be collected as part of the `swipe card` process. Make sure that you accommodate any contract requirements relating to the Data Protection Act.

7.2 The Purchaser

Meet with the contractor's site staff just prior to, or soon after, commencement of the contract to go through their delivery plan and ensure that the contract managers are fully aware of the requirements. Include the delivery of the social requirements as an agenda item in each site meeting or contract review meeting. Establish the ethos that monitoring information is at least brought up to date for each of these sessions.

On large, complex and politically-sensitive contracts/programmes invest in a computer-based data processing system for handling the monitoring information. Obtain inputs from contractors electronically. A robust data-base will allow detailed analysis of the social requirements that have been obtained, including retrospective analysis of outputs e.g. in response to claims that `nobody from our community got a job on the site`.

Analyse the monitoring information and take up delivery issues with the contractor. In a challenging environment contractors – and indeed other contract officers - are not going to give priority to the social requirements if the `champions` for these requirements do not seem to care.

Including the requirements in the contract should be seen as the basis for developing a delivery partnership with the contractor not as the end of the process. Like many partnerships, there are benefits in knowing that behind the good day to day relationships there is a clear, formal, statement of rights and responsibilities that both parties have signed up to.

7.3 Routinise

In section 1.1 social requirements were identified as items of a social, economic or environmental nature that are included in contracts that do not conventionally include these matters. From section 1.2 it can be seen that over time such elements can become accepted.

The process of acceptance needs to start by establishing the legitimacy of the client's wish to purchase the community benefits as part of the `basket of items` that is to be the subject of the contract. This is a matter of powers and policies. After this, acceptance comes through familiarity and through the development of routines and methodologies that enable contractors to deliver the requirements without undue concern, and allows purchasers to monitor the outcomes.

It is hoped that this guidance will help the process of acceptance for a range of social requirements.

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