

Appendix 1c – Social Clauses: Draft guidance for implementation of social clause policy

BELFAST CITY COUNCIL

Policy on the use of Social Clauses in Council Contracts

Guidance for Staff

1. OVERVIEW

- 1.1 The Council has adopted a policy on the use of social clauses in Council contracts. The aim of the policy is to ensure that, where possible, the money the Council spends on procuring essential goods, works and services brings benefits to the people, the communities and the economy of Belfast too.
- 1.2 This guide sits alongside that policy and is intended to provide user-friendly practical guidance to all Council staff involved in the procurement of goods, services or works. In particular, this guide is aimed at
 - 1.2.1 all those with a significant input into commissioning and purchasing on behalf of the Council; and
 - 1.2.2 contract managers responsible for ensuring that contracts are carried out in accordance with their terms (including social clauses) once the contract is actually let.
- 1.3 In **Part One** below, you'll find a series of key questions and answers which are intended to provide helpful background, answer some of the queries you may have, and establish the parameters within which the policy must work.
- 1.4 **Part Two** includes information on the practical steps you need to take to ensure that proper consideration is given to the incorporation of social clauses in Council contracts and the practical steps to take to ensure that the social clauses are effectively implemented.
- 1.5 **Part Three** sets out, in summary form, some key Do's and Don'ts and is intended to act as a helpful *aide-mémoire*.
- 1.6 We've also set out in an Annex some **model social clauses** that you should consider when awarding contracts.
- 1.7 We hope that the information contained in this guide will make the experience of using social clauses more understandable and easier to manage. Please don't feel that you have to read and digest it all in one sitting. The guide is designed as a reference tool for you to dip in and out of, picking up appropriate information at each reading.

Part One

2. WHAT ARE SOCIAL CLAUSES?

- 2.1 Social clauses are clauses added to contracts that impose a contractual requirement on a contractor to deliver a wider benefit as part of a contract. The benefits can be *social*, *economic* and/or *environmental* in nature and are intended to be in addition to the benefits secured by the provision of the goods, works or services themselves.

- 2.2 To give an example of what we're aiming at here, if you are letting a construction or a long-term maintenance contract, you should always consider whether there is any opportunity to add to the terms of that contract a clause or clauses aimed at increasing employment opportunities ie a *social clause*. A sample clause might be along the following lines:

The Contractor either directly or through its supply chain provides [X] paid employment weeks for the long term unemployed (defined as those who have been unemployed for 12 months or more). The Contractor is required to liaise with the Department for Employment and Learning (DEL) and/or any other organisations identified by the Council to promote employment and apprenticeship opportunities provided through this contract.

- 2.3 Through the use of a social clause like the one above, the Council not only gets the construction work it's paying for. It also gets a social benefit by requiring the contractor to help to tackle long-term unemployment and, potentially, reduce poverty.
- 2.4 Bear in mind that we're not simply targeting construction contracts here. We are much more ambitious than that. Social clauses can be incorporated into other types of contract and can target other types of outcome as well.
- 2.5 Consider, for example, a contract for the construction and operation of a green technology business centre. This could potentially include clauses targeting employment; clauses relating to community use; and possibly also clauses aimed at reducing the environmental impact of the centre by requiring the use of environmentally-friendly materials or technologies and/or reduced consumption of resources such as water and energy. All of these clauses are *social clauses*.
- 2.6 In terms of the contract specification, these clauses would be added alongside your normal contract requirements. In simple terms, this may look something like this:

2.7 **General clauses**

Construction

- The facility will be constructed to the drawing Nos. xxxx attached to this specification.
- The work will be completed to ISO standards xxx.
- The work will be completed by the date xxxx.
- Etc.

Operation

- The building will be made available 24/day 365days/year.
- The contractor will provide receptionist services between the hours of 09:00 to 17:30 Monday to Friday.
- The building will be able to accommodate xxx users and xxx resident businesses.
- Etc.

Social Clauses

Construction

- The contractor must host a minimum of x information days to present supply chain opportunities targeted towards small businesses, social enterprises, voluntary and community organisations.
- During construction, the contractor will employ a minimum of xxx people who are long-term unemployed.
- As a minimum, xx% of materials used in construction must be from recycled sources.
- Etc.

Operation

- The building will use xx% of gray/recycled water.
- The operator will provide xx of rooms for xx days per month for free use by community groups.
- It will be a condition of use that the operator's staff and staff of tenant organisation undertake equality and diversity training once every x years.
- Etc.

A more detailed list of potential clauses is included in ANNEX 1 and additional guidance is emerging.^{i, ii & iii}

3. CASE STUDIES

- 3.1 The biggest challenge people who are new to social clauses face, is to image what sort of contract will be suitable and what types of clauses can be used. So before getting into the detail of some of the issues you need to consider, here are some examples of contracts that have included social clauses.¹

Birmingham City Council

Birmingham City Council had a corporate aim of reducing worklessness and raising skill levels. They decided that using social clauses within their procurement process may be a useful way of contributing to this aim. They developed a scaleable approach that applied different types of clauses depending on the size of the contract. For example:

- all new service and construction contracts with a value of more than £1m will be subject to jobs and skills clauses;
- all goods/product supply contracts for a value of more than £1 million will be subject to a negotiated Jobs and Skills Charter;
- all existing service and construction contracts with a value more than £5 million will be subject to negotiated voluntary agreements.

The types of employment and supply side clauses that have been used include:

- 60 person-weeks of paid employment for a new entrant trainee per £1 million in invoiced contract value;
- every vacancy arising from the contract to be notified to the council;
- notification of all subcontract and supply opportunities to a portal site approved by the council;

Bridge in Derry/Londonderry

The Peace Bridge was built to provide a pedestrian and cycle link across the River Foyle that divides Waterside from the city centre. It included various clauses to encourage employment opportunities for the long-term unemployed and those in need of help to start their careers. Examples include:

- recruit one person who has been registered unemployed for more than six months for each £1 million of project value;
- secure one apprenticeship for each £2 million in contract value;
- comply with fair employment, equality of opportunity and anti-discrimination legislation.

Raploch URC and Stirling Council Roads Maintenance – Stirling Western Access Road

Although still a construction contract, and a relatively small one, this example shows that social clauses do not just have to involve training and recruitment clauses.

The contract was for approximately £1m and was set in an area of high deprivation. To contribute to the economic development of the area, the contract included clauses relating to training and employment.

¹ NB in some countries social clauses are referred to as community benefits.

However, the work also aimed to improve the local area for the people living there and so included traffic calming measures and a focus on making it friendly to pedestrians. As such, social clauses were included that required the contractor to consult with the surrounding community before works began. The Contractor was also required to be an integral partner in the Community Benefits Working Group (established for the project) and was expected to embrace, add value and take ownership of the Community Benefits Working Group process.

4. **WHAT ARE THE AIMS OF THIS GUIDE?**

- 4.1 The aim of the guide is to promote the use of social clauses in our contracts and to act as a reference tool for their practical and legal implementation. It's essential that all those involved in commissioning and purchasing have the necessary skills, knowledge and willingness to introduce social clauses. This guide is intended to help you acquire that knowledge and those skills.
- 4.2 It also aims to ensure that due consideration is given to the incorporation of social clauses into our contracts by all those with a significant input into the purchasing process and that a consistent approach is adopted by purchasers across the Council.
- 4.3 Above all, the guide aims to ensure that opportunities for the inclusion of social clauses are not missed. It's too late to include social clauses in a particular contract once it's awarded so we need to take steps at the earliest possible opportunity to ensure that such clauses are included in appropriate contracts. We cannot afford to let opportunities to derive additional social benefits from our procurements go to waste.

5. **HOW DOES THE SOCIAL CLAUSES POLICY AFFECT ME?**

- 5.1 If you are responsible for, or have significant input into, making or implementing commissioning or purchasing decisions on behalf of the Council, you have the potential to contribute to social change in addition to simply making a purchase of what you need. Whenever you take a decision to purchase, you must consider the terms of the policy and this guide.
- 5.2 If you are a contract manager, and the contract you're managing contains social clauses, you will have to manage and monitor the implementation of those clauses, alongside managing the implementation of the all of the other contractual obligations.

6. **WHEN SHOULD I CONSIDER THE POLICY?**

- 6.1 As soon as your department has made the decision to purchase and the earlier the better. In order to achieve the outcomes we want to achieve, you need to start thinking about how you can create social benefits from your spend as soon as possible and, ideally, *well before commencing any formal procurement/purchasing activity*. Considering what social clauses can be incorporated into a particular contract must become as much a part of the procurement process as specifying your requirements for a particular purchase. In other words, every time you start to think about procuring goods or services, start thinking about opportunities to include social clauses. The more you do this, the easier it will become to identify suitable opportunities.
- 6.2 Of course, initially you might be unsure as to what contracts and what clauses may be suitable to include in your specification. So keep a copy of this guidance handy and refer to it when you start to think about procurement. Also, contact staff in the Economic Development Unit and Procurement Unit who have previous experience of incorporating social clauses.
- 6.3 In summary, don't leave the decision as to whether or not to incorporate social clauses into a particular contract until the point at which you're writing the tender documents. The

decision has to be taken much earlier than this and ideally at the point when you formulate the business case for the purchase. And, if you need help or support, do ask for it.

7. WHY SHOULD I CONSIDER THE POLICY?

7.1 Because we, as a Council, are a major purchaser in the city and through our spending have the power to make a difference to the lives of people living within our area. And because there's a political imperative to do this. The Council's Investment Programme 2012-15 included a commitment for the Council to adopt social clauses and to make better use of its procurement spend in general. Additionally, on the 19th June 2014 the Council approved a motion to address economic hardship in our communities by using contract clauses that provide opportunities for real jobs and apprenticeships. The Northern Ireland Executive also made a clear policy commitment to the use of social clauses in the Programme for Government 2011-15.

7.2 Because you, as a **commissioner** or **purchaser**, have the power to:

7.2.1 be creative and realise added value when making purchases of essential supplies, services or works;

7.2.2 assist us in achieving our goal of maximising benefit from Council spend and making Belfast a better place to visit, live, work, study and invest in; and

7.2.3 influence the behaviour of providers and suppliers responding to our contract opportunities so that they, in turn, come to expect that all Council contracts will include social clauses.

7.3 And because you, as a **contract manager** with day to day responsibility for contract implementation, have the power to produce tangible results and really drive out from our contracts the additional benefits the social clauses are intended to create.

7.4 We are aiming at changing a mind-set with the introduction of our social clauses policy. We want to change our own expectations and practices as well as those of the businesses and organisations we buy from. The mere act of reading the policy and guidance and considering the possibility of including social clauses in contracts is just the first but important step in that process.

8. CAN ALL CONTRACTS ACCOMMODATE SOCIAL CLAUSES?

8.1 In theory most could but in practice many aren't suited and to include them without thinking not only looks bad but creates the impression that we don't know what we're doing. We need to be skilled in the way in which we seek to incorporate social clauses into our contracts. For example, it's unlikely that contracts for small, one-off purchases of supplies are going to be appropriate for the inclusion of social clauses. But longer-term, larger contracts for services or works are ideal opportunities to incorporate appropriate social clauses.

8.2 **Part Two** of this guide sets out the practical steps to take when seeking to incorporate social clauses into our contracts and the factors to consider. It also identifies the stakeholders who need to be involved at each stage in the process.

8.3 Remember that the more often you seek to incorporate social clauses in our contracts, and learn lessons from previous experience of using social clauses, the more embedded – and easier - the practice will become.

8.4 In summary, you should always consider if there are opportunities to include social clauses in a contract and, as a minimum, you should include clauses in contracts that have a minimum labour value of £250,000 and contract duration of at least 6 months. Where appropriate, multiple contracts should be considered in terms of the totality of their combined value.

9. **IF THE POLICY IS ABOUT IMPROVING OPPORTUNITIES FOR THOSE WITHIN OUR COUNCIL AREA, CAN I RESTRICT PARTICIPATION TO LOCAL BUSINESSES ONLY?**

9.1 **No.** Restricting a particular procurement to local businesses; forcing the winner to employ local labour; or imposing other conditions or specifications which are materially easier for local businesses to satisfy runs the risk of breaching EU procurement law. But there are other ways of seeking to maximise social benefits for the Council area without breaching procurement law, some of which are set out below.

10. **SO WHAT CAN I DO TO HELP LOCAL BUSINESSES?**

10.1 You cannot restrict participation in a tender process to local businesses only or mandate that those employed by the contractor on the execution of the contract must be from the local area. However, you can take steps to make it easier for local businesses to participate in the procurement process, thereby increasing the chance that the money we spend stays in our communities and that our local businesses get a fair opportunity to bid for our contracts. Many of these steps are not strictly speaking social clauses but have been used in the Council's "Buy Local" initiative.

10.2 For example, think about organising events such as meet the buyer days to notify the market of your needs in advance of the launch of a formal procurement process. That way, local businesses can be geared up to bid for your contract as soon as it's advertised. You can also include social clauses in the final contract so that the main contractor runs similar events for sub-contractors.

10.3 Think about the size of your contracts. Consider breaking larger contracts into lots so that small and medium-sized enterprises (SMEs), which make up the majority of businesses in our area, get an opportunity to bid.

10.4 Think about restricting the number of lots that any one business can win. That way, the opportunities are spread over a wider range of suppliers rather than concentrated on one large contractor.

10.5 When designing your procurement process, avoid tight time-limits thereby giving bidders, particularly less well-resourced SMEs, sufficient time to pull their tenders together, and avoid overly onerous selection/pre-qualification tests which are often much harder for SMEs to meet.

11. **WHAT ABOUT LOCAL EMPLOYMENT?**

11.1 You cannot impose upon a contractor an obligation to employ only local people on a particular contract. But you can *encourage* contractors to do this by making clear to them early on that increasing local employment opportunities is an important outcome for us.

11.2 Moreover, you can require a contractor to advertise any job vacancies arising on a particular contract in local job centres and you can encourage contractors to use specific agencies that recruit staff. By doing this, you can go a long way to attaining our goal of improving employment opportunities for our residents and/or the residents of particular communities, but without risking a breach of EU procurement law.

11.3 When considering employment and training related clauses, you should consider speaking to the Economic Development unit. They have lots of experience in designing appropriate clauses. They can also help with guidance for the contractor on where to advertise job opportunities, host information sessions; and how to make use of existing job information distribution channels via DEL, local Job Centres and training providers.

12. **WHAT'S THE REACTION FROM CONTRACTORS TO THE INTRODUCTION OF SOCIAL CLAUSES LIKELY TO BE?**

- 12.1 Commissioners and contract managers often think that the response from contractors to the inclusion of social clauses in public contracts will be a negative one, leading ultimately to higher costs and/or a failure by the contractor to actually implement them.
- 12.2 This fear of a negative reaction from contractors is one of the biggest barriers to the effective incorporation of social clauses and we must stop expecting that this is how they will respond. Many contractors now have in place policies on corporate social responsibility and will see the implementation of social clauses as an extension of this. Moreover, because social clauses are high on the political agenda, there's an expectation amongst contractors that they will be included in public contracts and an increasing awareness and experience of their use. This will only increase as an increasing number of organisations start requesting social clauses in their contracts.

Part Two

13. KEY STAGES

- 13.1 The successful inclusion of social clauses in our contracts involves four key stages as follows:
- Consideration of social clauses;
 - Development of suitable social clauses;
 - incorporation of social clauses into the specification / contract and
 - implementation and monitoring of the clauses as part of the management of the contract.
- 13.2 The diagram below indicates those who are likely to have key responsibility at each of the four stages:

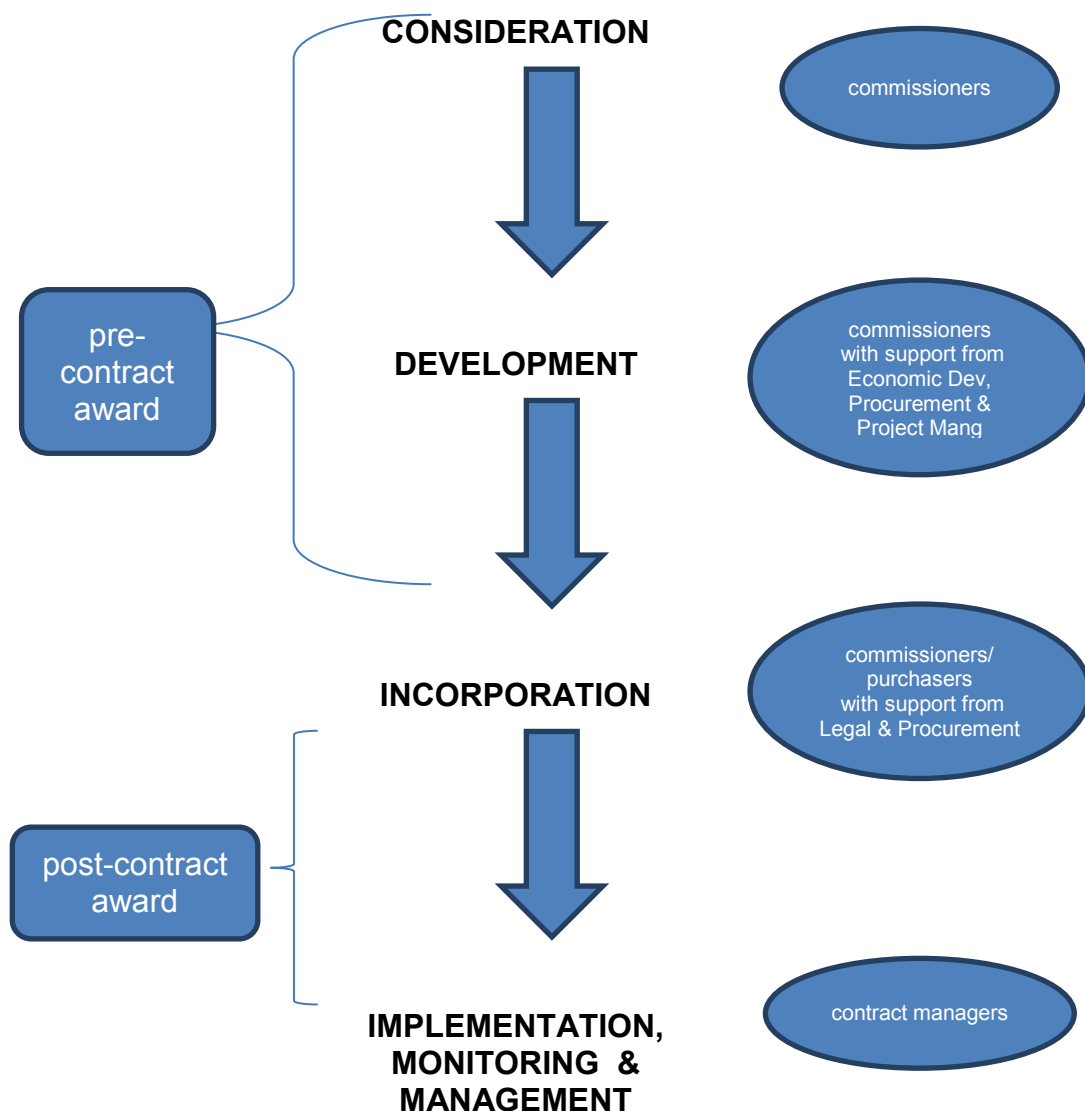


Figure 1. The main stages of using Social Clauses

13.3 We set out below the practical steps to take during each of these key stages and the departments and/or stakeholders who should be involved.

PRACTICAL STEPS

13.4 Consideration

Responsibility - The person/department making the decision to commission/purchase

13.4.1 Every time you make a decision to commission goods, works or services, think about the social clauses policy and what broader benefits the contract could potentially deliver. Build the consideration of social clauses into the front end of the commissioning process. Don't advertise the contract or initiate a tender process until you have thoroughly scoped it and fully considered what social clauses you can incorporate.

13.4.2 Think about your existing contracts and future needs. Consider what contracts you've let in the past which could have accommodated (but didn't include) social clauses. Are those contracts due to expire soon? Will they be re-let? Now is the

time to think about what social clauses can be included if and when the contract is re-let. Review the example of social clauses in this guidance.

13.4.3 Identify suitable opportunities for including social clauses. Consider the following:

- (a) What type of contract are you seeking to let – goods/works/services?
- (b) Is it a major one-off project or a routine purchase of supplies?
- (c) What is the duration of the contract and its value?
- (d) Does it involve construction or maintenance works?

13.4.4 Certain types of contract will be more suitable for the inclusion of social clauses. Major projects involving the construction of a building or infrastructure, for example, should easily be able to accommodate employability-related social clauses, such as those set out in Annex 1. Longer-term contracts, such as outsourcing contracts, offer significant opportunities for including social clauses. The following table gives a very basic idea of when clauses might be appropriate. Please note though, it is not an exhaustive or definitive list. It is only intended to help you think about opportunities while you gain experience. You should always try to find new opportunities.

Contract Type	Duration/Financial Value			Examples
	Short/Low	Medium/Medium	Long/High	
Works	Environmental benefits	Employment & training. Environmental benefits Equality & good relations.	Sub contractor opportunities. Employment & training. Environmental benefits. Community engagement. Equality & good relations.	Subcontractor info days. 3 rd sector & Social Enterprise involvement. Employment weeks. Apprenticeship & work experience. Recycled materials. Environmental impact. Community consultation. Community use of facility. Equality impact assessment and action plan.
Services	Community engagement.	Employment & training. Environmental benefits. Community engagement. Equality & good relations.	Employment & training. Environmental benefits. Community engagement. Equality & good relations.	% of new recruits. Apprenticeship & work experience. Environmental impact. Community involvement in design of service. 3 rd sector partnership. Equality monitoring and reporting.
Goods			Environmental benefits. Community.	Recycled materials. Environmental impact. Ethical sources.

Table 1. Possible clauses

13.4.5 Ask around and identify colleagues (particularly those in Procurement and Economic Development) who have already used social clauses in contracts they've let. Get the benefit of their experience and expertise. What has worked well for them? What has worked less well? What difficulties have they encountered that you can anticipate and try to avoid?

13.4.6 Engage with potential contractors early on and in advance of any formal tender process. Hold a market engagement or "meet the buyer" day to inform them of what you want to achieve in terms of social benefit. Talk to contractors about the importance to the Council of securing social benefits. Get the message out into the market that social benefits really matter to us. This will help to secure better buy-in on the part of potential suppliers/contractors which should, in turn, make the attainment of the broader social benefits much easier in the long-run.

- 13.4.7 Consider what other "stakeholders" need to be involved and get them on board now. These can be internal stakeholders (eg our Economic Development Unit) or external stakeholders such as the Department of Employment and Learning (DEL), the Construction Industry Forum (CIFNI) or the further/ higher education sectors.
- 13.4.8 Remember, as a minimum, you should include clauses in contracts that have a minimum labour value of £250,000 and contract duration of at least 6 months. Where appropriate, multiple contracts should be considered in terms of the totality of their combined value.

13.5 Development

Responsibility - The person/department making the decision to commission/purchase; the Economic Development Unit; Procurement and, if appropriate, Project Management.

- 13.5.1 Draft appropriate social clauses. If you are using clauses relating to employment and supply chain opportunities, refer to the **model clauses in Annex 1**. But bear in mind that these are *template* clauses and need to be carefully scrutinised to ensure that they work for your particular contract.
- 13.5.2 One size does *not* fit all and the model clauses in Annex 1 are likely to need to be adapted to properly align with the contract you're letting. For example, if the contract has a term of less than two years, then it is unlikely to be possible to include in that contract clauses imposing on the contractor an obligation to take employees on formally recognised paid apprenticeships (see the clauses relating to Apprentices in Annex 1). This is because it normally takes at least two years to complete an apprenticeship. However, we are working to develop other approaches with DEL and others to look at how these sorts of issues can be overcome. So do check in with Economic Development to see what options exist.
- 13.5.3 Additionally, the same contract may be capable of accommodating other employability-related social clauses such as the obligation to provide a specified number of weeks of work placements for students in further or higher education. Or other (non-employability-related) types of social clauses e.g. a community use clause or a community consultation clause.
- 13.5.4 Consider what sanctions (if any) should be included in the contract for failure to comply with the requirements of the social clauses. Will the contractor be allowed an opportunity to remedy breaches of the social clauses? Could a breach and subsequent failure to remedy give rise to a right to terminate? (see section 13.7 for more information).
- 13.5.5 And don't forget the Contract Manager, the person who will ultimately be responsible for actually managing the particular contract and monitoring the implementation of the social clauses. Get the contract manager on board now (if he/she isn't already involved) so that they are properly invested in the decision-making process and the outcomes you want to achieve.

13.6 Incorporation

Responsibility – commissioners/ purchasers with support from Legal Services & the Procurement Unit.

- 13.6.1 If you are unsure about what clauses you can use, especially in the early days, do ask advice from others who have more experience. As with all Council procurement, you should ask Procurement and Legal Services to check and sign off your contract specifications for large high value contracts.
- 13.6.2 Clearly flag in the tender documentation that:

- (a) the contract will include social clauses;
- (b) what the clauses will cover; and
- (c) that compliance with the social clauses is a mandatory requirement.

That way, you will ensure that potential bidders are clear on what their responsibilities will be should they win the contract and, hopefully, deter bidders not serious about delivering the benefits deriving from the social clauses from taking part in the procurement process.

- 13.6.3 Once the clauses are signed off, make sure they're added into the appropriate form of contract. For example, if you're letting an NEC construction contract, add the social clauses in as Z clauses. The Procurement Unit will be able to give you advice on this.
- 13.6.4 Run your tender process and choose the winner. Award the contract.
- 13.6.5 Notify relevant stakeholders (for example, DEL if there are employment clauses) of contract award to enable them to forward plan and so that they are geared up to play their part in ensuring the successful delivery of the social clauses.

13.7 Implementation, monitoring and management

Responsibility – Contract Managers

- 13.7.1 As indicated in Figure 1, this stage takes place after the contract is awarded. All the vital, upfront work has now been done but without this stage, we won't reap the benefits of that work. The monitoring and management which takes place at this stage is absolutely central to ensuring that real, live social benefits are actually delivered. Key to success at this stage is the contract manager.
- 13.7.2 As soon as possible after contract award, the contract manager should arrange an initiation meeting with the contractor's representative. The aim of this meeting should be to focus exclusively on the social clauses, the substantive obligations they impose on the contractor (including reporting requirements) and the practical steps to be taken to ensure that the social clauses are implemented.
- 13.7.3 If necessary, invite relevant internal stakeholders (for example, a representative from the Economic Development Unit with expertise on using social clauses) to the initiation meeting.
- 13.7.4 Brief the contractor on the schemes or programmes in place locally which will enable them to fulfil the requirements of the social clauses. Provide contact details for relevant external stakeholders.
- 13.7.5 Pro-actively monitor the implementation of the social clauses – they are just as important as the other contractual obligations. Log the information provided by the contractor in a central database which can be used to monitor progress against expected delivery. At the time of writing this guidance, the reporting mechanisms for social clauses are still being defined. Contact the Procurement Unit and Economic Development Unit for further information. The Council's overall performance against its aims for social clauses is being reported at senior management and Committee levels so this aspect must not be overlooked.
- 13.7.6 Make sure the contractor complies with any reporting obligations relating to the social clauses. Don't overlook a failure to provide the reports or otherwise let implementation of the social clauses slip. Turning a blind eye to a failure to comply with the requirements of the social clauses, including the reporting requirements,

sends the wrong message to the contractor. Endeavour to work in partnership with the contractor to ensure successful implementation of the social clauses.

- 13.7.7 The non-delivery of social clauses should be considered a breach of contract. The officer responsible for the contract should first aim to manage the delivery of social clauses in the same way that they manage all other contract requirements. That is, the contract should be managed so that it delivers the agreed outputs. If a breach in contract does occur, then the officer managing the contract must seek advice from the Council's Legal experts. At the time of writing this guidance, the exact approach to dealing with non-compliance is still to be determined. Compared to traditional clauses the problem is that it is unlikely that the failure to deliver a social clause will be of sufficient significance to the client. For example, it will be difficult to demonstrate a significant financial loss against which we could claim compensation. Hence the need to contact Legal Services at the earliest opportunity^{iv} and the importance of a successful management relationship with the contractor/supplier.

Part Three

By way of refresher, we've set out below so key *Do's* and *Don'ts*.

14. DO's

- Do think about the use of social clauses early on and what the procurement process can achieve;
- Do speak to colleagues who have previous experience of using social clauses in Council contracts;
- Do get the message out to suppliers that sustainable procurement and social clauses are important to the Council. Ultimately, there will be better buy-in from suppliers who will come to see the inclusion of social clauses in Council contracts as a matter of course;
- Do bear in mind the constraints of EU procurement law – for example, avoid mandating that a contractor employs local labour to carry out the contract;
- Do be mindful of their other legal obligations for example, ensuring that there is not unlawful direct or indirect discrimination against any particular section of the community;
- Do try to be creative and think about how you can encourage the involvement of local businesses and local labour but without falling foul of EU procurement law. Do make it easier for contractors to employ local people by directing them to specific agencies;
- Do calibrate the clauses to the contract - for example, there is generally no point in including employment-related clauses in contracts for the procurement of goods;
- Do ensure a level playing field for contractors bidding for contracts that include social clauses;
- Do put in place procedures and systems for monitoring the implementation of the social clauses;
- Do refer to the Equality Screening attached to the main Social Clause Policy to gain a better understanding of how clauses could help underrepresented groups and consider equality screening your procurement contract;

- Do seek further advice if you have queries about the use of social clauses. In particular, talk to the Equality Unit and the Economic Development Unit about employability, apprenticeships and training clauses, and the Environmental Health team about environmental clauses. They will be able to arrange further support for example from DEL for employability clauses.

15. DON'TS

- **Don't** miss out on opportunities by failing to consider the incorporation of social clauses at any early stage in the commissioning process;
- **Don't** use the word "local" in your contract documents or specifications. Think instead of ways to encourage local businesses and people to apply for the opportunities that the contract creates;
- **Don't** think of Social clauses as directly creating jobs (the overall contract is responsible for creating work and hence employment) but rather as a way of encouraging underrepresented groups to apply for job opportunities;
- **Don't** randomly employ social clauses in contracts unsuited to their inclusion, social clauses need to be practical and realistic;
- **Don't** expect a negative reaction from contractors and don't allow your own prejudices to act as a barrier to the inclusion of social clauses;
- **Don't** ask for more than the contractor can deliver or the contract warrants as this may lead to an increase in price;
- **Don't** forget to monitor and manage the implementation of the clauses.

16. AND REMEMBER

If there is one factor which is critical to the successful inclusion of social clauses in public contracts, it's the need to think about what social benefits you want to derive from a particular contract **at the earliest possible opportunity** and well in advance of launching any procurement process.

ⁱ http://www.dfn.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/content_-_cpd_-_policy_-_procurement_guidance_notes/pgn-01-13/pgn_01_13_sus_considerations_-_revised_27_february_2015.pdf

ⁱⁱ <http://www.buysocialni.org/>

ⁱⁱⁱ <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2015/finance/2715.pdf>

^{iv} <http://www.buysocialni.org/sites/default/files/Buy-Social-Toolkit.pdf>