

Appendix 2 Draft Social Clauses Policy



BELFAST CITY COUNCIL

Policy on the use of Social Clauses in Council Contracts

NB this document is still in draft form pending Council approval. Modifications have been made following a public consultation exercise and subsequent equality re-screening. Those changes are highlighted *in bold italic text*.

INTRODUCTION

The Council is committed to generating, through its commissioning and procurement activities, positive outcomes for Belfast and the people of Belfast. We will do this by ensuring that, where practicable, the money we spend on procuring goods, works and services benefits the people, the communities and the economy of Belfast. To achieve this, this document sets out the Council's policy on the use of social clauses in Council contracts.

Social clauses are clauses added to contracts that are intended to result in benefits to the wider community. 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.

The decisions made by directors, service commissioners, procurement officers and managers within the Council can have key implications for the sustainability of business and the growth of jobs and wealth within the Belfast area. In addition to the very significant annual investment in the purchase of supplies and services, the Council also makes significant capital investment in infrastructure. Our goal is to ensure that this public spending reaps maximum local economic, social and environmental benefit.

CONTEXT AND BACKGROUND

The incorporation of social clauses into contracts procured by the public sector has been gathering momentum since 2010. In part this has been facilitated by a change in the legislation relating to purchasing. The use of social clauses to deliver significant social and economic benefits is also a key commitment of the NI Executive's Programme for Government 2011-2015.

The Council is committed to the use of social clauses to increase the economic social, and environmental benefit of its procurement spend. This commitment is shown in our Investment Programme and our Procurement Strategy.

Our Investment Programme for 2012 – 2015 contains the following actions to:

- introduce the use of social clauses in our tenders which will aim to give opportunities to access the labour market for the long term unemployed [and other disadvantaged and underrepresented groups such as young people, women (in construction), people who have a disability, or from a minority ethnic background];*
- look at how community benefit clauses can be secured in contracts – for example securing the use of facilities for community use; and*
- work with partners on the Belfast Social Clause Delivery Forum, ensuring that government contracts contain appropriate social clauses to support employment and apprenticeship opportunities that can be easily managed and monitored.*

Our Procurement Strategy aims to “manage and maximise the potential of the Council's procurement spend to support the local economy and environment.” It stresses the need to get best value from our purchasing and to develop formalised process for the inclusion of social clauses into our contracts.

In addition, Local Government Reform increases the powers available to the Council especially with regard to regeneration and planning. This presents further opportunities to incorporate social clauses into our procurement process.

On the 19th June 2014 the Council approved a motion to address economic hardship in our communities due to unemployment and welfare changes. The motion stated that Council would aim to increase the opportunities for real jobs and apprenticeships especially for the long-term (greater than 12 months) unemployed. This policy will support this motion and the Council's wider economic

strategy via appropriate social clauses that meet the necessary legal requirements for the duration of appropriate contracts.

Consequently, by means of this policy, we will exploit the potential of the Council's spending power to harness extra economic, social and environmental benefit for local people and communities by ensuring that appropriate social clauses are always considered in accordance within the agreed criteria.

THE LEGISLATIVE FRAMEWORK

The Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012¹ enabled district Councils to take account of certain matters in the award of public contracts that were previously considered to be non-commercial considerations. Such matters include the terms and conditions of employment of a contractor's workforce and the conduct of contractors or their workers in industrial disputes.

The relaxation represented by the Order potentially makes it easier for the Council to integrate social considerations and social clauses into its contracts. However, some constraints do remain because of the requirements of EU procurement law. There is an inherent tension between the desire to promote the *local* economy by boosting procurement spend with local businesses and the obligations deriving from EU procurement law, the aim of which is to open up the EU market so that contractors throughout the EU can freely access and compete for opportunities in other member states. Restricting opportunities so that only local contractors can bid for contracts, for example, would be illegal under EU procurement law.

EU law was also amended through Article 20 of the new EU Public Contracts Directives (2014/24/EU). Article 20 allows contracting authorities to reserve the right to participate in tender competitions, for specified contracts, to specified groups such as mutuals and social enterprises which operate supported factories, businesses or employments programmes for the disabled and disadvantaged persons. This is a significant change in the approach to promoting opportunities for the disadvantaged and full guidance is yet to be issued (as of December 2015). However, the Council is committed to this approach and officers are expected and encouraged to identify contracts that would be suitable to be reserved for suitable organisations.

In summary, EU procurement law permits the inclusion of social and environmental requirements as contract conditions, provided those conditions are compatible with EU law and are indicated in the contract notice and contract documents.²

THE AIMS OF THE POLICY

The aims of this policy are as follows:

- To ensure that directors, commissioners, Council officers and all those engaged in procurement activity consider the opportunity to embed social considerations in a prospective purchase at the outset of the procurement process;
- To engage with the market and so encourage suppliers to include as much social value within contracts as possible;³

¹ This 2012 Order was made by the DOE under powers conferred by Section 2 of the Local Government (Best Value) Act 2002. The Best Value Act 2002 will be repealed in April 2015 as its provisions have now been re-enacted within the Local Government Act 2014 and a new Order will be provided by the DOE.

² Regulation 39 of the Public Contracts Regulations 2006

³ ***Please note, officers must still clearly state what they require as the outputs from contracts. The aim of this statement is to encourage suppliers to start to think of ways to add social value that are above and beyond what the Council directly requires and that officers may have thought of. In effect, we hope to encourage innovation.***

- To ensure that, wherever possible, appropriate social clauses are included in all Council contracts; and
- To ensure that every pound spent on public service provision and procuring goods, works and services reaps maximum economic, social and environmental value and benefit, ultimately resulting in an improved quality of life in Belfast and its communities.

More broadly, the policy is intended to provide a solid foundation for the inclusion of social clauses in all appropriate Council contracts. To inform staff across the Council, particularly those involved in commissioning, when and how to assess the suitability of, integrate (where appropriate), manage and monitor social clauses in Council contracts.

WHO IS THE POLICY AIMED AT?

The policy is aimed at staff across the Council but particularly those with responsibility for making, influencing or sanctioning investment or spending decisions. It is aimed at directors, service commissioners, procurement managers, procurement officers, and contract managers. The policy is also intended to influence contractors so that they are better able to accommodate social clauses and to identify ways in which they can increase the economic, social and environmental value of their work.

A separate guidance note for staff on how to implement and monitor social clauses sits alongside this policy.

WHAT OUTPUTS ARE WE SEEKING TO ACHIEVE?

We aim to provide additional outputs that are germane to the main contract. Examples include:

- Creating employment opportunities for disadvantaged and underrepresented groups such as the long term unemployed (defined as those being unemployed/economically inactive for a minimum of 12 months), young people, women, people who have a disability, or from a minority ethnic background
- Providing work placements and skills development for young people
- Sustaining/creating apprenticeships
- Promoting essential skills amongst suppliers existing workforce
- Providing paid placement opportunities for students on a University or College of Further and Higher course
- Delivering supply chain events to increase accessibility to supply chain opportunities for SMEs, micro-businesses and social enterprises
- engagement with local schools/community groups to promote enterprise or careers in key sectors;
- Delivering environmental improvements such as waste minimisation and/or recycling schemes, carbon reduction, CEEQUAL or BREEAM etc.
- Identifying and delivering relevant community focused projects.
- Identifying and delivering other contributory social benefits that are complementary to the main contract.

When drafting a contract specification, officers should consider the above outputs as objectives of the contract.

In summary, our procurement activity needs to consider how we can better design contracts and use social clauses to achieve better outcomes in line with the Council's strategies, how we deliver long-term improvement in the effectiveness of services and other activities; and increase value for money and social value by placing social, environmental and economic outcomes at the heart of commissioning.

WHAT TYPES OF CONTRACT ARE APPROPRIATE TO THE POLICY?

The scope of this policy does not extend to leases or grants. Instead, it relates specifically to contracts let by the Council for goods, works and services. This includes a very broad range of contracts and will cover construction contracts, facility management contracts, and contracts for the purchase of goods. Every time the need for such a contract arises, an assessment of the potential to incorporate social clauses into that contract should be undertaken.

Factors to be considered include the nature of the purchase (goods/works/services) and the expertise of the potential providers/suppliers; the value of the contract; the size of the contract and the duration or term. Straightforward supply contracts, for example, ***may*** not be able to accommodate skills, training or employment opportunities but such requirements should be capable of being included in contracts for works ***and services***.

Examples are given in the accompanying guidance note for staff to help determine when a contract should be considered for the inclusion of social clauses.

WHAT TYPES OF CLAUSES ARE APPROPRIATE?

There are constraints around the inclusion of social clauses in public contracts. These derive from EU procurement law. For example, it is not permissible to include in a public contract a clause obligating a contractor to employ only local labour. Nor is it permissible to confine the opportunity to bid for Council contracts to only local firms. ***When specifying the contract, officers should always 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.***⁴

Some key points to remember are set out below:

- Don't include clauses that exclude non-local firms or labour as this is illegal under current European legislation. Instead, think of ways that you can encourage local firms and labour to apply for our contracts;
- ***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.***
- Do think about the use of social clauses early on and what the procurement process can achieve. You should try to weave social considerations into the investment decision, business case and procurement notices;
- 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;***

⁴ See page 82 of the Equality Commission guidance and, more generally, Section 75 of the Northern Ireland Act 1998 and Article 75(1) of the Fair Employment and Treatment (NI) Order.

- Do refer to the accompanying guidance, the example clauses included in Appendix 2 and the Benefits Realisation model in Appendix 3 to identify clauses that may be appropriate;
- ***Do refer to the Equality Screening of this policy, which is contained in the guidance document, to gain a better understanding of how clauses could help underrepresented groups and consider equality screening your procurement contract;***
- Don't randomly employ social clauses in contracts unsuited to their inclusion, ***social clauses need to be practical and realistic;***
- Do get the message out to suppliers that sustainable procurement is important to the Council - 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;
- Don't include social clauses in the evaluation criteria, when included they should be a non-optional part of the specification;⁵
- ***Do ensure a level playing field for contractors bidding for contracts that include social clauses.***
- ***Do consider opportunities relating to Article 20 and the right to restrict participation in tender competitions to specified groups that operate supported factories, businesses or employments programmes for the disabled and disadvantaged persons.***
- Do seek further advice if you have any 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.***

Also remember that the process must not become a box ticking exercise and should focus on outcomes. Social clauses need to be administratively efficient. It costs money to provide social and community benefits. This should be recognised.

WHEN SHOULD THE POLICY BE CONSIDERED?

The consideration of the opportunities for including social clauses in contracts must become embedded within the Council's purchasing process. A determination of what social benefits can be derived from a particular contract should be as much a part of the procurement process as drafting the specification.

In order to successfully secure social benefit through the commissioning and procurement process, social benefit needs to be thought about as early as possible in the process. Ideally it should form part of the decision to invest. There needs to be real internal buy-in from key stakeholders within the Council to driving additional social value out of the procurement process.

In short, this policy should be considered every time a decision is made to spend money on the procurement of goods, services or works. As a minimum, contracts with a minimum labour value of £250,000 and contract duration of at least 6 months are to be screened for the inclusion of social clauses, in line with the guidance produced by the Construction Industry Forum for Northern Ireland (CIFNI). ***Where appropriate, multiple contracts should be considered in terms of the totality of their combined value.***

⁵ ***Once the Council has gained more experience in the use of social clauses, it will review this decision and clauses may become part of the assessment criteria.***

MONITORING SOCIAL CLAUSES

To ensure the use of social clauses is effective and delivering the desired outcomes, clauses need to be monitored and reported. Monitoring needs to be appropriate to the size of the contract and the type of social clause. Consideration needs to be given to how non-compliance will be addressed. Further details are included in the accompanying guidance for officers. The results will be reported through the Council's existing performance management framework.

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 as soon as possible.