

Employment and skills opportunities through procurement

Guidance and toolkit



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foreword

Each year the public sector spends around £220 billion on goods, services and capital assets. In London, the boroughs and the City of London collectively spend approximately £8.8 billion annually on procurement and contracting. This immense buying power represents a significant opportunity for London local authorities to exert influence over their contractors and suppliers, and to change the face of public procurement in London.

London has more highly qualified residents than the UK as a whole, and one of the lowest rates of young people who are not in education, employment or training in the country. But this is no reason to become complacent about the need to offer skills training and employment opportunities – London has a higher proportion of people of working age claiming out of work benefits, and significantly more children living in workless households, than Great Britain as a whole.¹

By using your buying power to secure social, economic and environmental objectives in ways that offer real long-term benefits, and consistently applying the approaches in this toolkit, you will place jobs and skills at the heart of your contracting procedures. And this approach is not just relevant to construction: goods and services can also be procured sustainably, offering long-term training and employment opportunities to your residents, which can be directly linked to employers' needs.

By adopting the approaches contained in this toolkit, you can not only secure more opportunities for your residents to gain valuable skills and experience, but also make clear your commitment to using procurement as a key part of your work to improve the economic and social wellbeing of your communities.

I hope you will join me in championing these ideas throughout your organisations, your partners and of course your current and prospective contractors.



Cllr Steve Reed, Executive member
for children's services and skills and
employment

¹ All statistics: London Skills and Employment Observatory, Oct 2010

introduction

London boroughs and the City of London collectively spend approximately £8.8 billion annually on procurement and contracting. The vast majority of this spend could potentially offer opportunities for skills development.

It is likely that, as financial pressures on the public sector increase, boroughs will look to more joint procurement opportunities with partner boroughs and other public bodies. It will be worth working closely across different professional areas within authorities so that apprenticeship and regeneration specialists keep up-to-date with the latest developments in procurement and HR to keep this item on the agenda and maximise the potential social benefits of larger scale contracts.

In-house staffing resources will inevitably diminish over the next few years, and with these, the amount of direct authority control over skills and competencies. Building skills and training requirements into contracts could help to ensure that service quality is maintained and improved by setting minimum standards for staff qualifications and development.

This toolkit describes a number of different approaches to securing employment and training opportunities through the procurement process. It is organised in two parts. Part One (page 5) contains information about the overall approach to developing a procurement strategy for jobs and skills, discusses in more detail four different options for integrating jobs and skills into the procurement process, and looks at the legal framework in which this work must be done.

Part Two (page 20) contains model documents and clauses which support the approaches outlined in Part One and can be used in your tender documents and contracts, and more detailed legal guidance.

All of the model documents and clauses in Part Two are designed to be amended to suit the needs of individual boroughs and/or projects. They are not set in stone, you will not necessarily make use of all the documents, and you will need to amend and edit them to fit your purposes in line with your organisation's wider employment and skills plans. **We strongly recommend that you work closely with your legal team to make use of their expertise, ensure that the clauses or documents you are using fit with your house style and are legally sound. London Councils accepts no responsibility for any loss or damage resulting from the use of this toolkit.**

This toolkit is not intended to be read cover-to-cover by everyone that uses it, rather it will be useful to dip into specific sections as and when appropriate. The toolkit will be amended to keep up-to-date with best practice, and in light of your experiences. London Councils would be pleased to hear your case studies and any feedback relevant to the toolkit.

The majority of the content of this toolkit is adapted from the West Midlands Economic Inclusion Panel's Procurement Framework for Jobs and Skills, and we are grateful to them for allowing its use. Copyright in the model documents for use as part of Approach 3 and 4 is reserved by Anthony Collins Solicitors LLP and Richard Macfarlane. However users are given a royalty free licence to use the documents. We are also grateful to Birmingham City Council and Transport for London for sharing other documentation.

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Part one: guidance

Chapter 1: Policy aims and internal issues

A local authority wanting to use any of the four approaches contained in this toolkit will need to be clear about the outcome it is seeking to achieve: there needs to be clarity about the purpose of including employment and training requirements in its contracts and how this relates to its wider objectives.

It will also need to ensure that it has the powers and adopted policies to procure the selected requirements, and may need to tackle internal structural and cultural issues to successfully apply any one of the approaches.

Adopting an official policy setting out the local authority's commitment to and procedure regarding procurement and jobs and skills requirements can help significantly in securing internal buy-in and momentum to put the approach into practice. An example of a local authority Procurement Policy Framework, from Birmingham City Council, is available in Part Two, page 21. Indeed, under EU procurement law, it would be difficult for local authorities to justify the inclusion of employment and skills requirements in contracts without a policy remit – see page 19 for further details.

Policy considerations

A number of possible policy drivers relevant to training and employment that you may wish to consider in your approach to public procurement are set out below.

Social inclusion

Social inclusion benefits are achieved by providing employment and training opportunities for people from target communities. For example, a regeneration strategy may describe the low levels of 'economic activity' and the high levels of deprivation in and around the regeneration area as part of the justification for the proposed activity, but may only include job or training targets in broad terms e.g. numbers of jobs to be accommodated.

Equal opportunities

In some areas there may be a correlation between the communities experiencing high levels of social exclusion and a shortfall in employment and training opportunities, and those communities with particular characteristics, for example, black and minority ethnic communities or young people. In these circumstances a local authority may seek to address social exclusion by ensuring that organisations carrying out works and services on their behalf adopt equal opportunities recruitment procedures.

Promoting local business

Supporting the development and growth of locally-based businesses – especially SMEs – may be seen as a way of securing additional job and training opportunities for the community. Some of these could benefit the socially excluded and help achieve some of the other policy objectives set out above.

The local impact

The recruitment of non-employed people from within target communities, and the provision of training that will increase the value they add through their work, will increase the amount of money that is spent in the local economy. However, issues such as travel-to-work patterns and areas, the size and location of projects or developments, and the potential for joint working across borough boundaries should be considered where it might help to deliver better results.

The efficiency agenda

Local authorities face an ever increasing challenge as a result of continually trying to achieve both value for money and make efficiency savings. This is especially the case now, when budgets are being stretched and belts tightened across the public and private sectors alike.

However the Office of Government Commerce (OGC) still maintains the view that value for money is achieved through assessing the whole life costs of a contract, rather than just price:

“Delivering value for money in procurement means securing the best mix of quality and effectiveness for the least outlay over the whole lifetime of the goods or services, from purchase through to disposal.”²

It is still the case that sustainable procurement is good procurement practice. There may be a decision to be made at the start of each contracting/ procurement exercise over what can be afforded, but this should always have been the case.

Organisational issues: overcoming barriers

A key element of this toolkit is the inclusion of social clauses in relevant contracts. These are clauses requiring outcomes of social or economic benefit which would not normally form part of a contract, and whilst they require a careful approach, many of the legal barriers to the use of social clauses in contracts are perceived rather than actual.

There are, however, some real legal and non-legal barriers which can either stop or dissuade contracting authorities from using social clauses or restrict their use or effect. Similarly, social clauses can be more or less cost effective or affordable in different circumstances. In general terms, a lack of understanding or commitment within an organisation will always hinder progress – expertise and enthusiasm are needed across all areas of the contracting authority, as well as, of course, the contractors. This may mean encouraging links and lines of communication between separate departments of a contracting authority which have broken down (or have never existed).

Hopefully, the discussion below will help to ease contracting authorities’ minds regarding what they are and are not able to do.

Organisational concerns

As a whole, organisational concerns can act as a barrier to the use of social clauses.

A contracting authority will need to consider how it is going to address each of the following concerns when

it chooses to consider issues such as jobs and skills in its contracting:

- **political will:** this is clearly vital. Support for the use of social clauses is needed at all levels of an organisation – from the officers who will be implementing and delivering the contracts on the ground to service directors, chief executives and political leaders;
- **the need for expertise, capacity and champions:** training can be an organisational cost, but is invaluable for officers being asked to deliver contracts on the ground. The need to consider jobs and training requirements needs to be built into officers’ job descriptions and roles if capacity is to be found to ensure these additional requirements are fulfilled;
- **organisational costs and pressures:** these include the perceived added expense of training staff (and contractors) in the use of social clauses in contracts;
- **access to advice and guidance:** one of the tips for a smooth procurement and contracting process is to direct bidders and contractors to external advice, guidance, resources and funding that are available to them. To be able to do this, contracting authorities need to know not only where these sources of assistance are to be found, but also where in turn they themselves can find external (or internal) advice and guidance on how best to implement jobs and training requirements (see page 15).

Ultimately, what most of the above boils down to is the need for a culture change within the contracting authority – once social issues are embedded in the everyday practices of the contracting authority, training becomes standard, expertise and capacity are built into job descriptions and roles, and champions are identified and communicate well with others in the organisation.

Political will for the improvement of jobs and training provision through the local authority’s contracts will only increase as the organisation’s attempts at including jobs and skills requirements in its contracts are seen to be successful and valuable. And advice and guidance will increase and improve over time as these social issues become embedded in contracting authorities’ practices and therefore become increasingly mainstream.

Organisational costs of social clauses

Many public bodies are discouraged from considering the inclusion of social issues in their procurement by the fear that doing so will come at a cost to the organisation in terms of the internal management of the procurement process, and the contract once it has been entered into. The organisational costs of incorporating social issues into procurement can include:

- satisfying training needs where an organisation, team or individual is new to the issues involved;
- the development of appropriate policy and strategy for the inclusion of social issues in contracts; and
- the ongoing resource needed for contract management and co-ordination of the procurement process.

Clearly, some of these costs are ongoing, while others are periodical or one-offs. In either case, it is important to emphasise that these costs will decrease over time with increased experience in the field. If the local authority holds true to the principle that including social issues in procurement makes the

organisation's contracting practices more sustainable overall, and fits within good procurement practice more generally, then these costs are easily justifiable.

Internal divisions of budget and responsibility

Many public bodies will divide both their budgets and their powers and responsibilities internally. For example, there is often a divide between capital and revenue expenditure.

These internal divisions can prove to be barriers to good procurement practice, even where their aim is to improve efficiency. The way of breaking down these barriers is almost always found through improved communication within the organisation. As always, there is also a need to find 'champions' within any organisation – people who are motivated and passionate about achieving social ends through procurement – who are able to communicate with each other. These champions will often be the drivers of sustainable procurement, and can help to break down barriers within an organisation where these are unnecessary and to overcome any other organisational issues that arise.



Chapter 2: A variety of approaches

This chapter looks at a variety of models you might want to consider when developing your plans to secure training and employment opportunities via procurement.

It looks at charters, voluntary agreements and contract clauses and identifies the various steps local authorities may need to take to ensure their commitment to securing training and employment outcomes is supported by robust internal systems.

For all approaches you may want to decide on a set of conditions which will inform when and how the approach is applied, for example the value of the contract, the subject matter of the contract, and the period of time over which the services, goods or capital project are to be delivered.

The four distinct approaches are as follows:

Approach 1: Charters

Approach 2: Voluntary agreements

Approach 3: The specific use of contract clauses

Approach 4: The strategic application of contract clauses

Approach 1: Charters

A charter is a means through which local authorities share their strategic priorities and goals (specifically around employment, training and skills) with current and prospective contractors, encourage the adoption of exemplar behaviours and practices and look to develop new customer-supplier relationships.

Charters, by their very nature, are a ‘non-legal’ approach. They create no contractual obligations – unless, of course, a local authority imposes compliance with a charter on a contractor through a contract or contract framework. They are simply a way of outlining the principles, functions and organisation of the body in question and communicating these to others. So, for example, a ‘jobs and skills charter’ would set out the local authority’s policy and strategy priorities and goals in relation to jobs and skills.

Charters can be used as a way to convey policy drivers to other organisations, and to encourage those organisations with which the local authority

contracts to act in accordance with those policy drivers. They do not, therefore, act as a constraint on third parties, nor will they generally mean that the local authority can enforce compliance by third parties with their terms.

Local authorities seeking to draw up charters will need to consider whether or not they have the necessary powers to make the bold statements that charters make, and will also need to ensure that any charters they draw up accurately reflect their policies and strategies. Local authorities will therefore wish to consider the impact of their powers (see Chapter 4: The legal framework, page 17) on their ability to determine their policies.

See supporting document 3: A model charter on page 27 for suggested wording of a charter, including indicators of success.

Approach 2: Voluntary agreements

Voluntary agreements allow local authorities to work with their existing contractors to secure commitments to specific jobs and skills outcomes over a specified time period, with support provided to contractors by a range of public sector agencies.

This approach can be used retrospectively with longstanding contractors and in the middle of long-term contracts. See supporting documents 4 (page 29) and 5 (page 31), a model voluntary agreement and a template for a voluntary agreement, for suggested contents and wording.

Approach 2 can be seen as a step on the road to the more formal use of contract clauses. Where a local authority has existing contracts or frameworks in place, it will not generally be possible or practical to renegotiate the contract terms to include requirements on the contractor to provide additional recruitment and training benefits.

Instead, local authorities may wish to consider attaching voluntary jobs and skills elements to existing contracts or frameworks on a non-contractual basis.

Voluntary arrangements can be useful in a number of ways:

- they can enable the local authority to 'trial-run' jobs and skills requirements with an existing contractor it knows and with which it has a strong relationship, before eventually using contract clauses when a contract is next retendered;
- they can enable the local authority to introduce a contractor or sector to the types of contract clauses it may wish to use in future;
- they can be applied retrospectively to existing contractual arrangements – this is especially beneficial in longer term contracts and frameworks. These voluntary arrangements can have a considerable impact, which would otherwise not have been achieved due to the need to wait until the local authority next put that contract or framework out to tender, or where the contract is not one that will be repeated.

Local authorities should ensure, however, that voluntary agreements are not used in a way which jeopardises the fairness and transparency of their earlier procurement exercises, for example, by effectively renegotiating an existing contract or framework, or unfairly providing an advantage to certain contractors for future procurement exercises. To do so would run the risk of potential challenge by bidders who were unsuccessful and who could argue that they were not given the opportunity to bid for the contract or framework in its re-negotiated form.

Approach 3: The specific use of contract clauses

This approach involves local authorities including jobs and skills clauses within specific procurement exercises, leading to a contractually agreed set of outputs and outcomes.

See supporting documents 6 on page 34, 'Standard requirements for specifications and tender documents', 7 on page 39, 'Standard contract conditions' and 8 on page 42, 'Basic Pro-forma Method Statement' for suggested contents of tender and contract documentation.

Contract clauses can represent the most 'legal' of approaches to including social issues in public commissioning. This is the most highly regulated of the three tactical approaches set out in the toolkit.

So long as contract clauses are used legitimately and appropriately, they will usually be the most legally enforceable and justifiable of methods.

What do we mean by contract clauses?

In referring to 'contract clauses', what is generally meant is conditions or elements of a contract or framework that are written into both the tender documentation and the final signed contract. They are requirements that either:

- form part of the subject matter of the contract or framework (and therefore can be assessed as part of the contracting authority's decision on contract award); or
- are essential to the contract or framework and the way in which the contract or framework will be carried out, but are not core requirements of the contract or framework (and therefore cannot be assessed when awarding the contract).

For the most part, discussion of the use of contract clauses is based on the assumption that the clauses being used are 'core' and relevant to the subject matter of the contract or framework, and that therefore they can be incorporated into and taken into account as part of the tendering and contract/framework award processes. Jobs and skills clauses can be used, and be part of the award criteria, if they have been mentioned in contract notices and tender documents, they are transparent and without discrimination, and they are relevant to the subject matter of the contract.

If the clauses being used are not linked to the subject matter of the contract or framework, they cannot be taken into account when the contracting authority makes its decision over whom it will award the contract/framework to. You may wish to take this approach if you are unsure about whether the clauses you intend to include are core to the contract.

Public bodies usually set a value threshold over which they will routinely or on a case-by-case basis include contract clauses. This is commonly £1 million per annum (see supporting document 1, 'A model jobs and skills policy' for a more detailed model). You may also wish to develop a 'menu' of different outputs which can be negotiated with each contractor so that the placements or jobs they provide are relevant and suitable for both their business and your requirements.

See supporting document 10 (page 46) 'An example of value thresholds and work and training outputs' for a detailed example.

What about European law?

Full information about the legal framework relevant to contract clauses is available in the appendix (page 47). One of the key considerations is the value of the contract – this will indicate whether you need to go through the full European Union procurement process. The thresholds are £3.9 million for works, and £156,442 for services, although some contracts are exempt (which include healthcare, education and social services – called Part B services). Above these thresholds, the contract must be advertised via the European Union Official Journal (via an OJEU notice – see supporting document 9 for suggested wording to include in the notice).

It should be clear in the OJEU notice that there will be requirements around employment and training as part of the contract.

At PQQ (Pre-Qualification Questionnaire) stage you can look at the bidders' past experience and suitability in relevant areas, and may wish to ask questions along the following lines:

'Please give examples of your involvement in each of the following:

- generating employment and training opportunities for long-term unemployed people;
- providing training opportunities for young people and retaining them after the completion of training;

- promoting supply-chain opportunities to new and small enterprises;
 - the development of trade skills in your existing workforce; and
 - equal opportunities recruitment procedures.
- what was your exact involvement in each of the above activities?

Which of the examples you have cited have been more successful, and which have been less successful, and why?'

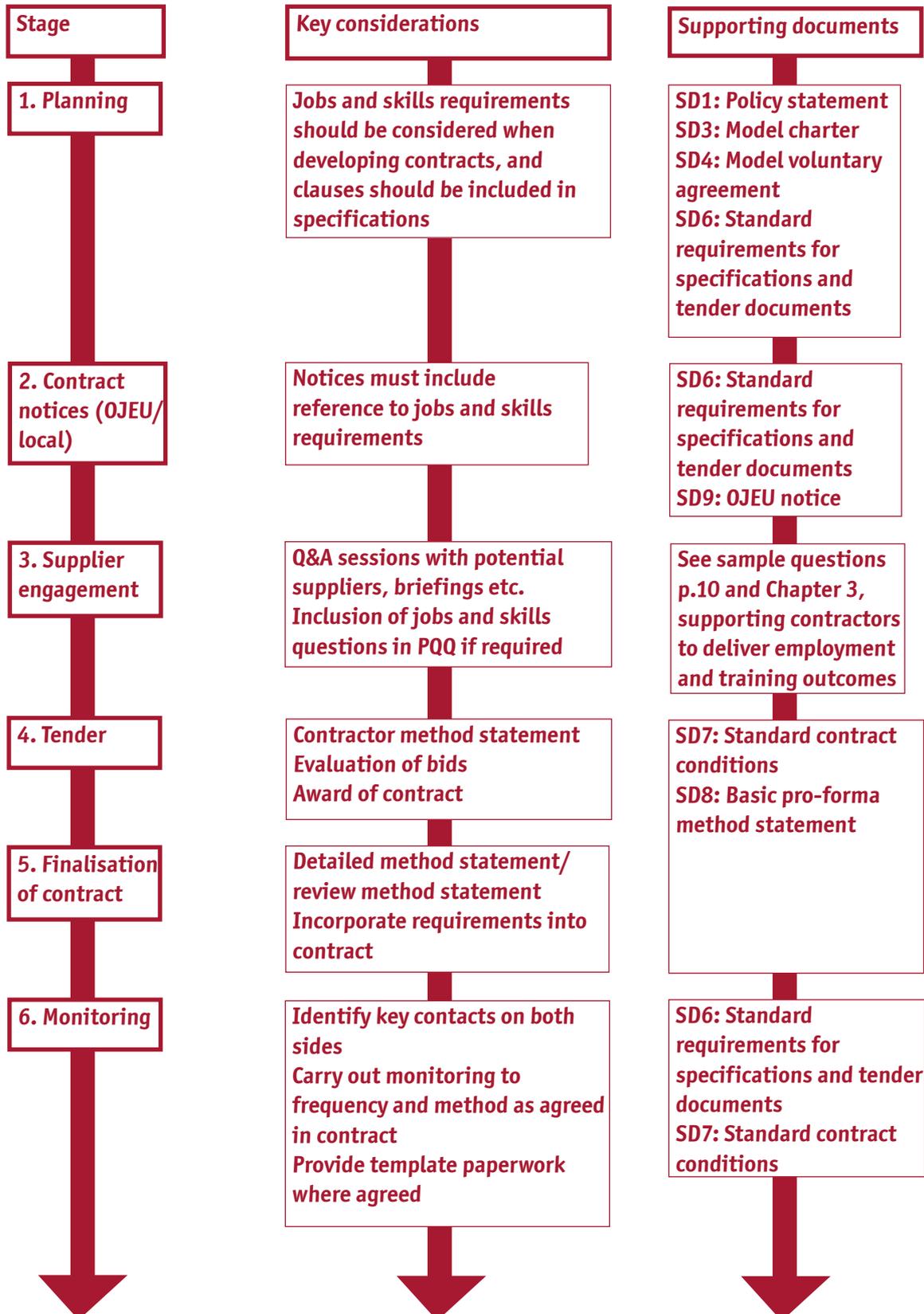
Do always bear in mind that any questions you ask at PQQ stage need to be compatible with the general EU principles of fairness, transparency, non-discrimination and proportionality.

However at ITT stage (Invitation to Tender) you can only evaluate the bidders' abilities to meet your employment and skills requirements when deciding who to award the contract to if the requirements are core to the primary subject matter of the contract.

For contracts under the value of £156,442 and for contracts that are exempt from being advertised in the European journal, only local notices are required when going out to tender. The local notice should also include any intention to include jobs and skills requirements as part of the subject of the contract.

Process Map

This map gives an indication of the key processes and requirements at each stage of the procurement process. Depending on your own internal procedures you may wish to adapt this to suit your needs.



Key factors for success

Some of the key factors underpinning the successful deployment of contract clauses relating to jobs and training are summarised below.

1. Incorporation into tender documents: For a bidder to be able to accurately bid for a contract, it must be clear in the tender documentation³ precisely what the bidder is being asked to bid for. Any reference to social requirements in the contract notice should be kept as broad as possible. Either of the following standard template wordings can be appropriate to a broad range of procurements:

“Under this [procurement/project] the [contractor/developer] is required to participate actively in the economic and social regeneration of the [locality of and surrounding the place of delivery for the procurement/project] [community served by the contracting authority]. Accordingly contract performance conditions may relate in particular to social and environmental considerations. Contract conditions will be detailed in the [invitation to tender/contract documents]”

“There may be conditions relating to environmental and social requirements of the contracting authority included in this contract. Contract conditions will be detailed in the invitation to tender”

2. Inclusion in pre-qualification stages: Assessment of the ability to perform or provide specified contract requirements concerning jobs and skills will most likely fit within the ‘technical or professional ability’ element of pre-qualification.

Pre-qualification and selection criteria can include social or environmental considerations, so long as these are compatible with the general EU principles of fairness, transparency, non-discrimination and proportionality (see Chapter 4 regarding EU legislation).

3. Market testing: Contracting authorities can consider discussing their requirements with potential bidders in advance of any tendering exercise. While the contracting authority must be careful not to discriminate between bidders when doing so, so long as any consultation and discussion is open and transparent this can be a useful way of market testing the capabilities of potential bidders and formulating challenging but realistic requirements.

4. Contractual obligations: It is important to emphasise that contract clauses are exactly that – contractual. To treat them as ‘added value’ or ‘optional extras’ will defeat the purpose and can risk being unlawful. While it can be helpful to discuss proposed social clauses with the marketplace before procurement, the contract clauses themselves should thereafter be set. To give contractors a choice over what clauses they comply with would taint the procurement process, as it is no longer clear what is being or has been procured. This does not mean that a certain amount of flexibility cannot be built into the contract however, for example the contracting authority could specify a set number of person-weeks of employment it wishes to be available to new recruits, without specifying whether these recruits are to be graduates, school leavers, or the long-term unemployed for example.

5. Measurable outputs and effective contract monitoring: Having measurable outputs from contracts is a vital element of ensuring that the contract conditions are legitimate. Contract clauses are at their most effective and have the greatest impact when they are specific, targeted and relevant. Good contract performance monitoring is clearly also key to the success of the desired requirements.

What this means in the context of jobs and skills is that it is not enough to state that the contracting authority wishes to stimulate job creation or training opportunities through a contract for this to be a contract condition; this would not be capable of being impartially or independently verified or measured.

This applies of course to all elements of the contract. However, while in many contracts the measurement of traditional outputs will be second nature, it is a factor that needs to be consciously thought about in the context of jobs and skills stimulation. The contracting authority needs to consider in advance what success looks like, and what will happen in the event of failure. Items such as frequency of reporting, key performance indicators, and the form in which the contractor will supply information should be agreed and written into contracts (see supporting documents 6 and 7 for more detail on the kinds of information you may wish to request from contractors).

6. Support: It will often be necessary for the contracting authority to provide its bidders, or chosen bidder, with some assistance in implementing

³ By which we mean everything from the OJEU contract notice or any other advert, through to the invitation to tender and draft contract

the desired social requirements. Support can be offered in a number of ways, and this type of assistance is entirely legitimate so long as it is provided to all the interested bidders in a fair and transparent way.

At tender stage perhaps the most important support to give to bidders is to provide them with either a statement or piece of guidance explaining the social requirements that are being included in the contract, and clear signposting to any advice and support that is available more generally.

7. A staggered approach: Especially in a long-term contract, it may be possible to include requirements that are incremental, slowly increasing the demands placed on the contractor or the weighting given to the requirements.

Template clauses

Contracting authorities may find it helpful to develop a bank of clauses from which they can draw, but be aware of the limitations of template clauses.

To be taken into consideration when awarding a contract, social requirements must be 'core' requirements that are relevant to the subject matter of the contract. The clauses should be drafted in the context of the particular contract in which they are to be used.

This is why it can be difficult to use standardised clauses. However, this should not stop a contracting authority from taking pre-existing requirements and clauses with which it is familiar and tailoring them to a contract it has in mind. Jobs and training requirements that have been used on one contract may easily be relevant to another, similar, contract, perhaps simply by modifying the requirements to allow for the different lengths and values of the contracts and the particular community the contract is intended to benefit.

Template clauses will also need to be modified or redrafted if the style and language of the wider contract demands it. Model jobs and skills contract clauses are included in supporting document 7 (Standard contract conditions).

Practical Limits: Parameters for application of the toolkit

While there is nothing that completely precludes jobs and skills from being relevant to any contract,

there will always be practical limits on what a local authority (and its contractors) can achieve. In terms of applying the framework strategically across the range of a local authority's activities (i.e. applying Approach 4), the following parameters may be worth considering:

1. Monetary value

The monetary value of the contract in question will have an impact on the degree to which jobs and training requirements are realisable. A contractor will only be able and willing to recruit or train staff to the extent that this is necessary for delivery of the contract and realistic within costs constraints – realistically, a contractor needs to make a profit, and will not deliver jobs and training requirements that cause it to suffer a loss.

2. Duration

Similarly, the duration of a contract will have an impact on what can be achieved within the time available. What might be feasible within the scope of a long-term contract may not be possible within a much shorter timescale. On short contracts (or those for a lower monetary value), however, there may instead be scope to consider 'softer' requirements, perhaps involving on the job training rather than additional recruitment, which can still have a tangible benefit.

3. Subject matter

While it is possible to contemplate jobs and training requirements in almost any context, it is nonetheless worth exercising a degree of realism concerning the subject matter of a contract and what requirements can be considered 'relevant' to it. Again, this illustrates the need to consider each and every contract or framework on its merits. What will be relevant to a large scale construction contract will not immediately be relevant to a small scale services or supply contract, for example.

Apprenticeships, for example, are an employment and training model found in many sectors, but not in all. The subject matter of the contract needs to be considered before it can be made clear whether a requirement that the contractor employs a specified number of apprentices would be relevant, let alone practically realisable.

See supporting document 2, a checklist for the use and relevance of jobs and skills contract clauses to individual contracts, page 25.

The climate for challenge

In terms of responding to both requests for information and feedback and, potentially, challenges to contract award decisions from unsuccessful bidders, contracting authorities should consider the following measures (which are good practice in any case):

- ensure that selection and award criteria are agreed in advance and are disclosed to bidders;
- ensure that scoring mechanisms are agreed in advance and disclosed to bidders, and are adhered to when selecting and evaluating bidders. Contracting authorities should also ensure that documentation is retained so that any requests for information and feedback can be responded to in full and within the relevant timescales; and
- wherever possible maintain a simple and straightforward selection and evaluation process. Overly and unnecessarily complex criteria and scoring mechanisms leave the greatest room for error and therefore for challenge.⁴

Approach 4: The strategic application of contract clauses

Approach 4 involves local authorities deliberately adopting a 'default' position that requires clauses specifying jobs and skills requirements to be routinely considered for their relevance to all stages of each and every commissioning and procurement process exercise undertaken.

Furthermore, such organisations commit to measure, on an ongoing basis, the percentage of contracts and the proportion of expenditure to which such clauses apply, in addition to tracking outputs and outcomes.

This strategic and systematic approach ensures that jobs and skills contract clauses are always considered. If they are found not to be relevant to the contracts under consideration, the procuring organisation can move sequentially to consider the use of a voluntary agreement and then, if this is not considered appropriate, to introduce or use an existing jobs and skills charter.

The speed with which each local authority can move to fully embed this strategic approach to procurement will undoubtedly be influenced in part by its nature and size, its existing procurement practices and

related policies and strategies. All these will need to be taken into account when developing bespoke applications of Approach 4.

Below are some of the key elements and processes that are likely to be critical to embedding jobs and skills requirements in procurement in line with Approach 4.

Approach 4: Key elements

- Adoption of a strategic procurement policy to require the procurement department to consider the relevance of contract clauses, voluntary agreements and charters to each and every contract (within agreed parameters).
- Assessment of the local authority's procuring power to affect change.
- Analysis of key worklessness issues and skill gaps impacting the geographical area covered by the local authority's remit.
- Adoption of a jobs and skills charter that sets out the organisation's strategic responsibilities and partnership priorities in relation to worklessness, jobs and skills.
- Estimation of specific numbers of jobs and skills outputs that could be required for each £1m million per annum of procurement spend by category: construction, capital assets, goods, services etc.
- Parameters set for the procurement department to focus upon e.g. contract length, monetary value, categories (see supporting document 2, the checklist for use and relevance of contract clauses).
- Specific jobs and skills requirements set out in the contract notice and, where appropriate, 'The Official Journal of the European Union (OJEU)'. See supporting document 9, 'OJEU contract notices'.
- Development of Pre-Qualifying Questionnaire (PQQ) specific to organisation, asking for information on contractors' approach to jobs and skills.
- Analysis of existing contracts to consider retrospectively applying Approach 1: Charters and Approach 2: Voluntary agreements. See supporting documents 3, 4 and 5.
- Development of monitoring arrangements and officer responsibilities.
- Annual review of the impact of the use of the framework and adjustments made. Learning points shared with other public sector partners.

⁴ The EU Remedies Directive has recently been implemented in England and Wales through the Public Contracts (Amendment) Regulations 2009, which amend the Public Contracts Regulations 2006. The impact of these changes remains to be seen, but it is likely that case law will develop over the coming months and years which will have an impact on the challenges that bidders make and contracting authorities receive. See Appendix for further information.

Chapter 3: Supporting contractors to deliver employment and training outcomes

This chapter explores the information and support that contractors may need, and the services they will need to access, in order to deliver employment and training outcomes.

One of the key barriers for procurers and prospective contractors alike is the commonly held assumption that jobs and skills requirements linked to contracts will result in a level of additional cost that will:

- undermine the ability of procurement teams to achieve value for money, and
- create insurmountable barriers for prospective bidders, thus leading to potential 'market failure'.

A key issue in the selection of the jobs and skills requirements is what relevant training and employment services are available locally, and how accessible and affordable they are. Clarity on the range of support services that exist and the access routes available to businesses seeking to offer training and employment opportunities will be critical to the successful deployment of social clauses.

In addition, information about funding available for a variety of training options will be essential.

It will also be essential that the procuring organisation offers prospective bidders information not only about the range of support which major delivery agencies such as Jobcentre Plus, the Skills Funding Agency and the National Apprenticeship Service can provide, but equally to supplement this with details of the additional and complementary support services that can be provided from within the locality or area covered by the proposed contract.

Requiring a prospective contractor to provide training and employment opportunities for which there is not a local supply chain or any funding available is likely to be ineffective, because the requirement will be too difficult to deliver or will be simply unaffordable if the full cost has to be borne by the contractor.

It is not only essential that such services exist, but also that they are brought to the attention of prospective contractors at the earliest possible pre-contracting stage; and that they can be easily

accessed and are responsive. The success of the approaches outlined in this toolkit will, to a great extent, rely on the goodwill of businesses to engage. The first point of contact is therefore critical. For example, email only contact points can be a disincentive if emails are not quickly responded to and there are no other forms of contact available.

In addition, businesses may be keen to see case study evidence of how these services have benefited companies of a similar size operating in the same or similar markets. They are likely to want information in manageable bite-sized chunks, which is up-to-date, accurate and refreshed each time a new employment and training initiative is announced.

Contract implementation and management

A key element of the successful implementation of social clauses is a champion for the community benefits or employment and training requirements who knows what can be expected and routinely supports the work of the procurement team, the contractors and the community benefits 'supply chain' to ensure that the requirements are met. The decision to include employment and training requirements (and what to include and at what scale) will rest with the officers of the client body. The key issue in obtaining leverage over works contracts is therefore the support of the client officers.

This will take time to achieve and needs to be approached systematically, prioritising:

- the purchasers with the largest annual expenditure on appropriate works;
- the contracts and frameworks that are most suitable for trainees and new entrants;
- 'term contracts' since these can provide longevity; and
- contracts and frameworks that have the closest policy fit e.g. neighbourhood regeneration and housing.

It can take time to access the right person and win their support. It will be necessary to address legitimate concerns about the potential impact on cost, quality, timetables, and contract monitoring and management. It will be important for the champion to focus efforts on the most willing participants, and then use success with these partners to obtain the interest of others.

Mutual benefit is an important outcome for most purchasers. This might include addressing their concerns about the availability of skills to carry out and then maintain their works, or the opportunity to achieve additional policy outcomes at no additional cost to their budgets.



Chapter 4: The legal framework

Introduction

This chapter focuses on the legal powers to act that are conferred upon local authorities. It is important for local authorities to consider their particular powers and justification for action on jobs and skills.

In many cases, the barriers that people often assume prevent the inclusion of jobs and skills requirements in procurement and contracts simply do not exist, while a number of those that do exist are not, in fact, insurmountable.

Many public bodies have broader powers than they are aware of, and as a result could be more adventurous than they have been in the past. As this chapter seeks to emphasise, legal barriers are far less imposing than is often perceived. In fact, the major barriers to including jobs and skills requirements in procurement exercises are grounded in organisational culture, structure and capacity, and the crucial issues of leadership and political will.

The legal structure for public procurement in England

The full legislative structure for public procurement and, within that, the incorporation of social requirements, is extensive, and will vary between public bodies, depending on what laws apply to them. It is not intended that the full legislative framework will be set out here, as for the most part it is set out in other guidance that is freely available. However, it is worth briefly highlighting the main factors that govern this area of public sector activity.

Local authorities using this framework should refer to the detailed guidance and templates contained within the Part Two of this toolkit and the detailed guidance on European legal requirements in the appendix. Office of Government Commerce (OGC) guidance regarding the EU rules and UK government procurement policy is available online: www.ogc.gov.uk/procurement_policy_and_practice/procurement_policy_and_application_of_eu_rules.asp

The powers of local authorities to act

The key points that local authorities will need to consider are:

- local authorities may only use those powers conferred upon them by statute, and may use those powers only for the purposes contemplated by the statute;
- core to a local authority's ability to achieve social goals is the well-being power, set out in section 2(1) Local Government Act 2000, which states that local authorities: *"have power to do anything which they consider is likely to achieve any one or more of the following objects:*
 - *the promotion or improvement of the economic well-being of their area;*
 - *the promotion or improvement of the social well-being of their area; and*
 - *the promotion or improvement of the environmental well-being of their area."*
- the well-being power does not enable a local authority to do anything that they are unable to do by virtue of any prohibition, restriction or limitation of their powers contained elsewhere in statute i.e. it does not override any specific restriction; the "best value" regime remains in force for local authorities, and provides the statutory basis upon which local authorities must plan, review and manage their performance.

European legal requirements

Public bodies wishing to include jobs and skills requirements in their procurements by way of contract clauses will need to do so taking into account the law that governs procurement processes discussed below.

There are fewer legal restraints on charters (Approach 1) than there are on contract clauses (fewer legal remedies if things go wrong, as well). Voluntary agreements (Approach 2) should be undertaken with a degree of caution, taking into account the need of the public body to comply with procurement law and general EU law principles where appropriate.

The summary below provides the key elements of the EU procurement rules. A more detailed discussion of the legal requirements for using social clauses can be found in the appendix.

EU procurement law

Much of the legislation governing public procurement derives from European Union law, which is based on the fundamental principles of:

- equal treatment and non-discrimination;
- transparency;
- proportionality; and
- mutual recognition.

The EU procurement rules operate principally at three levels:

- a requirement to advertise across the EU certain contracts for works, goods and services (achieved by placing a contract notice in the Official Journal of the EU); (see page 10 for value thresholds over which contracts must be advertised, and supporting document 9: 'OJEU Contract Notice');
- encouraging the use of technical standards which are of application across the EU, or the recognition of standards in force in another state where these are of a similar standard to those in force in the UK; and
- requiring the use of objective and open criteria for evaluating tenders and selecting contractors.

The EU procurement rules cover a wide range of bodies and contracts. 'Contracting authorities', the term used in the rules, includes local authorities.

Third sector organisations, particularly if funded by public money, will often count as contracting authorities. A good example is the New Deal for Communities partnerships. These were third sector organisations but were financed by government and subject to supervision by government, so counted as contracting authorities.

Justifying the use of social clauses under EU law The Consolidated Directive

The Consolidated Directive, a piece of European legislation from 2006, brought together existing law covering works, supplies and services into one single piece of legislation. As stated in the Office of Government (OGC) guidance "Social Issues in Purchasing"⁵, the Consolidated Directive, "makes explicit the scope to take social and environmental issues into account at the relevant phases of the procurement process".

⁵ www.ogc.gov.uk/social_issues_in_purchasing_skills.asp

Article 26 of the Consolidated Directive has this express provision:

"Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations."

It is possible to include recruitment and training requirements in public procurement provided that the drafting and the process does not disadvantage non-local bidders, for example by requiring them to have knowledge of the local labour market, or a local base, or to use local material.

Environmental and (by implication) social requirements that address a policy objective of the purchaser are permissible: they do not need to provide an economic benefit to the purchaser itself, and contracting authorities are entitled to include environmental (and, by implication, social) considerations in their award criteria. These need not be purely economic in nature.

The requirements do, however, need to be linked to the subject matter of the contract, comply with all the fundamental principles of community law, in particular the principle of non-discrimination, should not confer an unrestricted freedom of choice on the authority, and should be expressly mentioned in the contract documents or tender notice:

- where sub-criteria are used as part of the assessment of tenders, these must be disclosed to bidders. The duty on a contracting authority to act in a transparent way includes the need to sufficiently disclose contract award criteria and weightings in advance, including setting out detailed criteria and sub-criteria where these are used;
- unless the cost of the relevant goods or services is fixed, it would be very difficult to reach any objective determination of what is the 'most economically advantageous tender', without an indication of price in relation to which non-price elements can be taken into account;
- tendering instructions and award criteria should be certain and unambiguous; and
- all requirements must be capable of measurement and verification.

Relevance to the subject matter of the contract

As we have seen, the requirements do need to be relevant to the subject matter of the contract if they are to be assessed when awarding the contract.

A social or environmental requirement cannot artificially be attached to a contract or framework to which it bears no connection, and be deemed to be part of the subject matter of the contract. But where a contracting authority uses common sense and acts reasonably and proportionately, it remains within its control what the subject matter of its contracts should be.

For example, a contracting authority can choose to define the subject matter of its contract or framework as 'construction and related training and skills development' or 'socially sustainable construction', rather than simply the construction of a building. It may be felt that it is the construction of the building which is the essential core to the subject matter of the contract, but linked to this is the need to target the recruitment and training elements of that construction project.

Legal obligations and policy decisions

Broadly speaking, social requirements can be split into two categories:

- those that the contracting authority imposes as a result of a legal obligation with which it must comply (such as health and safety regulations or equalities); and
- those that the contracting authority chooses to impose as a result of policy decisions.

Where a requirement is not being included as a result of a legal obligation on the contracting authority, the contracting authority will require a policy mandate for including the requirement.

This is one important aspect of the legislative framework; a contracting authority cannot legitimately include employment and training requirements in a contract where they have no policy remit for doing so.

For further details of the EU legislative framework, see appendix on page 47.



Part two: Supporting documents

Throughout these supporting documents, text in italics contains guidance on the use of the template wording. Text in [square brackets] may be relevant to some contracts but not others or should be completed according to the requirements of the individual contract.

All of the model documents and clauses are designed to be amended to suit the needs of individual boroughs and contracts. They are not set in stone,

you will not use all of them for any one project or contract and you will need to amend and edit them to fit your purposes. **We strongly recommend that you work closely with your own legal team to ensure that they are satisfied with the clauses and requirements that you plan to use. London Councils accepts no responsibility for any loss or damage resulting from the use of this toolkit.**

Supporting document	Page
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Approach	Relevant supporting documents
1. Charters	1, 3
2. Voluntary agreements	1, 4, 5, 10
3. Specific use of contract clauses	2, 6, 7, 8, 9, 10
4. Strategic application of contract clauses	2, 6, 7, 8, 9, 10

Supporting document 1: A model jobs and skills procurement policy

Procurement policy framework for jobs and skills – harnessing Birmingham City Council’s buying power to achieve outcomes on jobs and skills

Policy context

Employment and skills

The West Midlands faces an output gap currently estimated at £15-16 billion, 20 per cent of which can be ascribed to economic exclusion (worklessness) – the failure to use the talent and potential of all of the people in the region.

In response, the West Midlands Economic Inclusion Panel (EIP) was established and funded by Advantage West Midlands. The panel brings together senior leaders from across the public, voluntary and private sectors to consider new ways to tackle this challenge. As a result, the EIP has set out an ambitious strategy for harnessing public sector buying power in achieving outcomes on jobs and skills – the West Midlands Procurement Framework for Jobs and Skills, which was launched in March 2010.

For Birmingham, tackling unemployment, worklessness and skill enhancement is a key priority for the wider regeneration of the city and surrounding areas, as set out in the Local Area Agreement (LAA 2008/11) and the City Region of Birmingham, Coventry and Black Country Multi Area Agreement (MAA) on Employment and Skills 2010-2013. Unless sufficient people with the relevant skills are available to take up job opportunities, the growth of the local economy will be limited, affecting the prosperity of the whole of Birmingham, not just those out of work.

Sustainable procurement

The Sustainable Community Strategy, Birmingham 2026 – Our vision for the future states that “we must make better use of public sector procurement, ensuring that our purchasing power supports the local economy in an environmentally and socially friendly way”.

The Birmingham Sustainable Procurement Compact, a collective agreement by members of Birmingham’s

Strategic Partnership, Be Birmingham, supports this vision, to use the procurement of goods and services as an instrument to achieve sustainable communities.

Birmingham City Council (BCC) has embraced this concept and recognises its spending power is significant enough to be used as an influential tool in encouraging sustainable practices and delivering community benefits across all procurement and commissioning activities. The Birmingham Procurement and Commissioning Strategy 2008/11 (P&CS), ‘Responsible procurement’ section sets out the approach to embedding sustainable procurement practices. The P&CS can be found on the council’s website.

BCC has adopted the best practice model produced by the Sustainable Procurement Task Force – The Flexible Framework, a matrix for organisations to measure their progress on sustainable procurement. The framework includes five progressive levels – Foundation, Embed, Practice, Enhance and Lead. BCC achieved Foundation Level 1 in March 2009 and the Council has committed to achieving Practice Level 3 of the Flexible Framework by 2011.⁶

Procurement policy frameworks for jobs and skills

Social and economic issues are part of the wider concern of sustainable procurement, and targeted recruitment and training is one element in a wider range of community benefits.

Harnessing BCC’s procurement resources to align and achieve outcomes on employment and skills is identified as a key action within BCC’s employment and skills strategy and action plan framework, contributing to LAA and MAA outcomes on jobs and skills.

The BCC Procurement Policy Framework for Jobs and Skills is based on the West Midlands Procurement Framework for Jobs and Skills. It builds on best practice nationally, within the West Midlands, and from existing examples in BCC, where targeted recruitment and training outcomes have already been deployed in contract clauses, embedded within voluntary agreements or highlighted in formal jobs and skills charters.

⁶ See Chapter 3 of the Action Plan of the Sustainable Procurement Taskforce, 2006, for further details of the Flexible Framework: www.defra.gov.uk/sustainable/documents/full-document.pdf

These include the Birmingham Municipal Housing, the Library of Birmingham, New Street Gateway and the Birmingham Construction Partnership.

The implementation of this policy will ensure this approach is now embedded as a core consideration throughout the procurement and commissioning processes. By adopting this strategic approach BCC will be positioned at the cutting edge of the public sector response to the West Midlands Procurement Framework, as a key enabler of locally driven, sustainable economic growth that benefits local people and local supply chains.

The recession has clearly reduced the number and type of jobs that are available to our residents, with further, disproportionate impact on the most disadvantaged groups. This policy will secure greater access to jobs and training opportunities for local people, especially those that are disadvantaged in the labour market.

BCC Procurement Policy Framework for Jobs and Skills

The policy framework aims to harness public sector buying power to achieve outcomes on jobs and skills, as outlined in the Local Area Agreement and Multi Area Agreement, within the relevant legal and policy frameworks.

The purpose of this policy is to provide an effective lever in tackling worklessness and skill levels by embedding within BCC a requirement to consider

at every stage of the procurement process the contractual relevance of clauses that stipulate a commitment to Targeted Recruitment and Training initiatives, including apprenticeships.

To achieve this, it commits to harnessing BCC buying power to increase access to jobs and skills opportunities for local people by:

- considering what recruitment and training, sub-contract and supply chain opportunities could be obtained from relevant contracts;
- at the commissioning stage, including work experience, training, equal opportunities, recruitment requirements and supply chain opportunities in its contract specification, where it considers this appropriate;
- including other social and environmental matters in its contract specifications, where it considers this to be appropriate; and
- including these as part of the 'core requirements' that are considered at all stages of the selection, contract award, contract management and monitoring process.

This does not mean jobs and skills clauses will be applied to all contracts, but that they will be considered within the framework identified below, the threshold value of contracts, and within relevant legal and policy frameworks.

To support implementation of this policy BCC is adopting the following framework:

<p>Strategic approach <i>The strategic application of contract clauses to the end-to-end Procurement System</i></p>		
The specific use of Contract Clauses	Voluntary Agreements	Jobs and Skills Charters

The strategic approach: Jobs and skills outcomes are embedded as a core consideration throughout the city council's procurement and commissioning processes.

The strategic and systematic approach ensures that jobs and skills contract clauses are **always** considered first, with the city council adopting a 'default' position. This requires clauses specifying jobs and skills requirements to be routinely **considered** for their relevance to all stages of the commissioning and procurement process and each and every procurement exercise undertaken, within the threshold values.

If contract clauses are considered not to be relevant to the contracts under consideration, the procuring department must seek exemption from their strategic director and cabinet member, and report decision(s) to Procurement Cabinet Committee. If exemption is approved the procuring department can move sequentially to consider the use of a voluntary agreement and then, if this is not considered appropriate, to introduce the jobs and skills charter.

There are three methods to secure contractor support for Targeted Recruitment and Training initiatives in securing greater access to jobs and skills opportunities for local people, which underpin the strategic approach:

- **The specific use of contract clauses:** City council directorates include jobs and skills requirements within specific procurement exercises, leading to a contractually agreed set of outputs and outcomes.
- **Voluntary agreements:** the City council works with their existing contractors to secure commitments to specific jobs and skills outcomes over a specified time period, with support provided to contractors by a range of public sector agencies. This approach can be used retrospectively with longstanding contractors and in the middle of long-term contracts.
- **Charters:** the City council shares its strategic priorities and goals (specifically around jobs and skills) with current and prospective contractors and encourages the adoption of exemplar behaviours and practices and look to develop new customer-supplier relationships.

Threshold values

The following threshold values have been agreed for the initial implementation of this policy:

- all **new** service and construction contracts that are (i) framework contracts, or (ii) for an annual value of more than £1 million will be subject to the full

application of the policy – i.e. that jobs and skills contract clauses are **always** considered first

- all goods/product supply contracts for a value of more than £1 million will be subject to a jobs and skills charter
- all existing service and construction contracts that are (i) framework contracts or (ii) have an annual value more than £5 million will be subject to negotiated voluntary agreements
- all existing service and construction contracts that are (i) framework contracts or (ii) have an annual value of £1-5 million will be subject to a jobs and skills charter.

The threshold values will be considered and revised on a periodic basis, as part of the ongoing review of this policy.

Costs and benefits

Costs

When procuring any new contract it is important to get the best value possible. However the 'lowest cost' does not always mean the best value and it is standard practice when awarding contracts to consider quality along with price.

The balance between cost and quality will differ depending on the subject and also over time. It is important to be realistic and aware that requiring contractors to recruit new staff from non-traditional routes, to guarantee a certain level of training for new staff or take on apprentices, may place an additional financial cost on the contractor.

The contractor has three options: to either absorb the cost (which may be possible if the targets are relatively low compared to the overall contract value); to pass the cost on to the council; or it may be possible for contractors to draw on government initiatives such as the Young Person's Guarantee for training staff and taking on apprentices. This will help reduce the additional cost greatly. Informing contractors of the availability of any support, and offering to assist them access it, will reduce the additional cost that might have been passed on to the council.

In order to evaluate the additional costs attributed to the inclusion of jobs/training, the tender process must require the costs to be identified as part of the tender submission.

Assessing the additional cost that this brings and determining if it presents good value for money within the overall contract and its contribution to a key corporate priority on jobs and skills will be essential in demonstrating excellent use of resources.

For large contracts, and with sectors experienced at Targeted Recruitment and Training, soft market testing prior to contract advertising will indicate the likely price increase that the additional requirements will incur. Procuring departments will then be in a position to determine if this additional price provides good value for money.

Benefits

There will be significant benefits to the city, to employers and to individuals through adoption of this policy.

Helping people find sustainable employment will lead to a reduction in BCC's payments of housing and council tax benefits, fewer requests for free school meals, reduced pressures on welfare rights and debt advice services, fewer demands on health services, and increased spend by those in sustainable jobs to support Birmingham's economy.

Bespoke recruitment packages tailored to the needs of individual contractors makes business sense, with reduced recruitment and retention costs for employers. Contractors committed to this policy will be able to access a wide range of support to provide their recruitment and skills solutions. This will include a flexible recruitment package tailored to individual contractors needs, delivered through BCC's Employment Access Team (EAT), and access to support services delivered through major delivery agencies including Job Centre Plus, and the National Apprenticeship Service.

Work can also provide the best form of welfare for the majority of working people, increase personal health, enhance engagement in communities and support social cohesion.

Policy implementation

To support the implementation of this policy framework:

- a toolkit for BCC officers has been developed containing model documents, including template jobs and skills clauses, process map, roles and responsibilities and signposting for advice and support. This can be accessed on line, and provides detailed information on legal and policy matters (agreed by BCC solicitors), and issues to be considered when implementing the framework.
- awareness raising and training in the implementation of the policy will be provided to staff.
- the BCC Employment Access Team (EAT) will provide a flexible recruitment and skills package tailored to the individual needs of contractors. A supply side information leaflet to inform prospective contractors on local training, job matching and supply development opportunities can be accessed via the EAT.
- the 'Building Jobs in Birmingham' project will co-ordinate the supply side (people with experience, motivation and skills) and the demand side (alignment of projects and labour needs) of activities within the city to maximise opportunities for Birmingham's residents. A multi-agency and managed approach will bring coherence to the planning and delivery of services.
- find-it-in-birmingham website designed to facilitate local sourcing, with a free-of-charge online information service for businesses with a Birmingham postcode, allowing SMEs in the region to access council-initiated and private-sector business opportunities. The creation of this website will help BCC to identify supply chain opportunities, increase their transparency and create jobs and training, supporting local enterprise.

Supporting document 2: Checklist for the use and relevance of jobs and skills contract clauses to individual contracts

These are the questions that a procuring officer or team should be asking when considering including jobs and skills as contractual requirements on a particular contract.

<p>1</p>	<p>Do we have the necessary legal powers? Consider both powers to procure, and powers to include social issues in procurement (see page 17 for further information). If YES proceed to question 2 If NO consider alternative routes to achieve jobs and skills benefits, for example voluntary agreements</p>	<p>Yes /No</p>
<p>2</p>	<p>Do we have the necessary policy and strategy in place? (a) Have we adopted specific policies that enable social and economic issues to be reflected and implemented in the contract, especially in its specification? (b) Is there a more general policy in place which justifies the contractual approach to jobs and skills? In answering (b), consider your internal policies and also whether the use of contract clauses in this contract fall within the Sustainable Community Strategy objective for the areas? If the answer to (a) or (b) is YES, proceed to question 3. If the answer to both (a) and (b) is NO, consider alternative routes to achieve jobs and skills benefits in this contract.</p>	<p>Yes /No Yes /No</p>
<p>3</p>	<p>Do we want to assess the jobs and skills requirements as part of the evaluation process when we award the contract? If YES, the requirements must be relevant to the subject matter of the contract. Proceed to question 4. If NO, you can still include the contract clauses, but must not take them into consideration when choosing who to award the contract to. Proceed to question 5.</p>	<p>Yes /No</p>

<p>4</p>	<p>Are the contract clauses relevant to the subject matter of the contract?</p> <p>Remember: the contracting authority chooses what to procure (so long as this is within your powers and policies). This can include social and environmental aims and requirements.</p> <p>You need to decide in the circumstances whether or not there is a sufficient link between the contract's subject matter and the jobs and skills requirements to argue that the requirements are core to the contract: this will be the case where you have written them into the contract specification.</p> <p>If YES, you can include the jobs and skills requirements in your contract award criteria and assess the bidders' tenders against those requirements. Proceed to question 5.</p> <p>If NO, you can still include the contract clauses in your contract, but cannot take them into consideration when deciding to whom you will award the contract. Proceed to question 5.</p>	<p>Yes /No</p>
<p>5</p>	<p>Are your requirements proportionate?</p> <p>Your requirements need to be proportionate to the contract in question.</p> <p>(a) Are the requirements realistic given the length of the contract?</p> <p>(b) Are the requirements realistic given the monetary value of the contract?</p> <p>(c) Are the requirements in proportion with the amount of manpower required on the contract?</p> <p>(d) Are you aware that the marketplace for the contract has the necessary experience or expertise to comply with your requirements?</p> <p>If YES to all of (a) to (d), then your requirements are in proportion with the contract and should be realistic / achievable.</p> <p>If NO to one or all of (a) to (d), your requirements may not be realistic or proportionate to the contract. Consider redrafting your requirements so they are more appropriate. There is plenty of expertise and guidance available to assist in this.</p>	<p>Yes /No</p> <p>Yes /No</p> <p>Yes /No</p> <p>Yes /No</p>

Approach 1: Charters

Supporting document 3: A model charter for jobs and skills

This charter sets out our commitment to work jointly, openly, collaboratively and constructively with all our existing contractors and all future bidders for contracts tendered by *[insert name of tendering body]* to maximise access to jobs and skills opportunities for local unemployed people and our respective workforces.

By signing this charter we are committing to working together to maximise:

- access for local unemployed people to all jobs and skills opportunities that flow from the contracts we approve and manage, including opportunities created within *[insert name of tendering body]* each contractor's organisation and their sub-contracting and supply chains;
- access to appropriate skills and training for all those working directly or indirectly on delivering such contracts within *[insert name of tendering body]*, each contractor's organisation and their subcontracting and supply chains, to ensure delivery of the contract outcomes we seek and our aim to *[Insert relevant legal, strategic or policy goal, for example to tackle worklessness, increase well-being, or the overall quality of services provided to customers etc].*

We will therefore commit jointly to taking the following actions:

- **advertising all future vacancies and recruitment exercises via Jobcentre Plus** (in addition to any other recruitment channels we may jointly agree to use) to maximise the potential labour pool and ensure local unemployed people have access to the job opportunities available.
- **make full use of the National Apprenticeship Service** as a primary means to increase the number of apprentice opportunities within our respective organisations and supply chains. Advertising all apprenticeship vacancies on the national website Apprenticeship Vacancies Online.
- **make full use of internship and work experience programmes** to offer graduate and non-graduate work experience opportunities to unemployed graduates and young school and college leavers.

In addition *[insert name of tendering body]* will:

- ensure bidders are made aware, at the earliest possible opportunity, of the range of targeted recruitment and training support services, subsidies and skills funding available, **at no additional cost to the employer**, to help large medium and small businesses recruit and train their workforce;
- facilitate early discussions between chosen contractors and local providers of targeted recruitment and training services, to ensure a bespoke recruitment and training 'offer' is designed **for and with** our chosen contractors.

All our current and prospective contractors will be encouraged to sign up to this charter and, by sharing in a committed approach to cost effective recruitment and training, they will help to secure the economic and social benefits we strive to achieve, enhance their reputation for Corporate Social Responsibility, increase the skills of their workforce, and reduce staff turnover. *[Insert references here to any strategic level agreements the tendering organisation has with contractors and also any relevant policy frameworks, relating for example to sustainable procurement and equality and diversity].*

Measuring progress

Together, we will seek to reduce unemployment and raise the skills level of our local workforce. Working in partnership, we will promote local employment opportunities and where possible, we will encourage and facilitate learning and development of our local workforce. We will also encourage our sub-contractors to endorse this philosophy throughout the supply chain network.

Whilst this charter is not a legally binding document, we will regularly measure our progress against the commitments made, set out in the following table.

Measures of progress/indicators of success

Measure	Indicator
Number and percentage of contractors formally signed up to the charter	Baseline of current contractors On and off-flows of contractors
Proportion of contracts to which the charter applies in terms of - capital - goods - services	Set baseline Complete annual check
Proportion of committed annual expenditure to which the charter applies in terms of - capital - good - services	Baseline and annual check the organisation's 'buying power'
Job opportunities identified	Vacancies advertised via JCP Targeting training and recruitment exercises delivered Local unemployed people placed in jobs
Contractors/sub-contractors signed up to - graduate schemes - non-graduate internships/work experience - delivering apprenticeships	Numbers of - young people offered work experience - graduates employed/graduate internships/work experience - non-graduate internships/work experience - new apprentices - courses delivered/skills and qualifications gained

Approach 2: Voluntary agreements

Supporting document 4: A model voluntary agreement

Birmingham City Council Construction Partnership

Key points

- Birmingham City Council, Development directorate, Urban Design
- partnering of long-term Capital Building Works Programme
- all City Council Capital construction above £100,000 covering education, leisure, housing, office portfolio, etc
- Five years extendable to seven (currently in year six)
- Approx £800 million.

Background

Given that more than 80 per cent of the work within construction on major projects is undertaken through sub contract SMEs, Birmingham City Council (BCC) knew it was important to specify within the contract conditions their requirements for sourcing to come via a supply chain of businesses or individuals from the local region, and equally the provision of training opportunities.

This particular approach to provide 'pointers' of where they expected their contractor partners to develop the supply chain was significant to ensure that the regional economy benefited from the significant spend through this framework agreement. Without this direction, the industry would typically source sub contractors on a range of factors which did not include local employment and training opportunities.

Summary

The partnership is estimated to have created approx 200 jobs directly with the three main partners and in excess of 1,000 which sit within the 61 integrated supply chain companies and others used on a regular basis. Also the partnership to date has provided in the region of 200 training opportunities with some specific training-led regeneration construction projects such as the 'The Pump' developed jointly with the Princes Trust.

The employment and training numbers were not specifically sought but were correlated in relation to

the spend and the opportunities presented by the range of projects delivered. This approach has been highly successful and the Birmingham Construction Partnership has been recognised via a number of national and regional industry awards for its work in developing and promoting the local supply chain. The partnership itself is also recognised by the Office of Government Commerce (OGC) as a national exemplar.

The methodology of working through major contractors provides the opportunity for Birmingham City Council to deliver a wide range of projects with the capacity of large players in the industry, who in themselves have provided significant support to develop SMEs within the supply chain. This has also helped create both directly and indirectly a significant number of local jobs and training opportunities with the ability to sustain this employment over the life of the partnership.

A combination of all approaches has been used, given that this is a collaborative partnering contract. Specific contract clauses were included at the outset with the intention that they would be developed further, and specific commitments and voluntary/charter agreements would be developed throughout the life of the partnership. It is worth noting that this approach has proved highly successful and the contractor partners involved have contributed significantly to not only the aspirations of the city council but to developing these in a meaningful and practical way to deliver the outcomes required.

Application

Key performance indicators were included in the contract and form part of the basis for allocation of projects throughout the life of the framework. Included within a significant number of strategic partnership level indicators is a particular indicator measuring policy development and implementation, which includes commitment to development and implementation of key areas such as training, equal opportunities, provision of local labour, sustainability and environment. This has been used to drive the overarching proactive approach from contractors to supporting BCC in these areas.

In addition, the achievement of the targets set within the KPIs are clearly stated as contributing to the authority's objective of improving the performance of council services and flourishing neighbourhoods. The city council's corporate plan forms part of the tender documentation and contractors are requested to indicate how they would support the council plans throughout the duration of the framework.

Sample text

"The contractor will develop a supply chain in consultation with the employer and jointly with the other contracting partners. The contractor will work with the employer to encourage the selection of LOCAL companies. The employer will require the contractor to monitor the use of local companies and report regularly. The supply chain will support the city council's diverse workforce policies."

"The contractor will have policies that enable the improvement of working conditions, workforce skills, development opportunities for the workforce and health and safety in the workplace and fundamentally open up employment opportunities to all sectors of our community."

Local employment:

"The employer is committed to supporting local employment and helping local businesses and increasing the volume of work they undertake with the city council. The employer encourages the contractor and its supply chain to directly employ local labour. It is a requirement that the workforce will represent the diversity of the population both in gender and race."

"The employer is currently developing a code of practice for employment and training. It is expected that the contractor will sign up to the code before acceptance of tenders. The principles of the code will include:

- contractors to have and implement an equal opportunities policy in recruitment, employment and service delivery;
- local people having access to all the vacancies created through the partnership and vacancies being advertised locally;
- employee status training taking place particularly for people who are being supported by government funded social inclusion programmes;
- the contractor will monitor progress on a weekly basis. The contractor is encouraged to implement

the respect for people toolkits which enable them to measure their own performance in continuous improvement."

Training:

"For all trades the contractor and their supply chain will follow the principles of rethinking construction - respect for people. The contractor will also sign up to the employer's code of practice for employment and training, which is currently being developed. This will include the following principles:

- promoting education and life long learning;
- the contractor stating the number of employed status trainee positions being offered within the partnership, specifying trade area and a commitment to accredited training both on and off site;
- the contractor monitoring progress on a weekly basis. The contractor is encouraged to implement the respect for people tool kits which enable them to measure their own performance in continuous improvement. The contractor will offer apprenticeships or similar formal long term training programmes, for trades, itself and via its sub-contractors. This will include training for under represented groups."

Conclusion

One of the key lessons emanating from this procurement has been the collaboration achieved with contractor partners. Providing a continuous flow of projects has provided the foundation to invest in the development of an integrated supply chain which supports regional businesses, local employment and training opportunities. The size of the framework has made BCC a highly significant customer to these contractors who have been prepared to develop and innovate in a range of areas to push the boundaries and change the culture within the industry.

This has assisted in support for both equality and diversity agendas and corporate social responsibility involving significant investment back into local communities. Again, the partnership and this procurement methodology has been recognised on the national stage and has been utilised in a number of governmental studies and other best practice publications.

Supporting document 5: Non-contractual or voluntary agreements

Supporting document 5 includes a protocol to obtain jobs and skills commitments from contractors on a voluntary basis when the contract has already been let. This could be used as part of Approach 2 of the framework.

This supporting document includes requirements that:

- are appropriate for the type and scale of works/services/supplies being delivered;
- are required to address the needs in the target community;
- can be supported by the supply-side agencies;
- can effectively be monitored and followed-up.

The notes from supporting documents 6, 7 and 9 can be used in connection with this document, and the method statement contained in supporting document 8 can be used. For long contracts annual method statements can also be required. Text in square brackets may be relevant to some agreements and not others, and should be added to, amended or deleted according to your needs.

Recruitment and training protocol

The parties to this agreement are:

The client

Name
Authorised signatory
Date
Print name
Position
Tel
Email

The contractor

Name
Address
Authorised signatory
Date
Print name
Position
Tel
Email

⁷ Net costs are total costs less grants and nil-cost services obtained, and after deducting the value of trainee productivity

⁸ The contractor is expected to cover the cost of the training requirements to the fullest extent possible by accessing public sector and industry funding and by effectively managing the works so as to achieve good productivity from the trainees.

⁹ A trainee could be registered as an apprentice with an industry recognised body (who can be counted as a 'new entrant' for up to [] weeks) or a person that has a trainee contract or a contract of employment of self-employment that are not apprentices (who can be counted as a 'new entrant' for up to [] weeks). [Insert figures].

1 Introduction

The Client has established policies on [sustainable development / social inclusion / economic and social regeneration / equal opportunities] and wishes to obtain the support of the Contractor in the achievement of these through the delivery of the jobs, skills and supply-chain activities set out below. It is recognised that the support of the Contractor is [on a voluntary basis] [an extension to the current contracts and that reasonable net costs⁷ will be payable by the Employer through the open book arrangements].

2 The requirements

The Contractor agrees to submit within four weeks of the date of the Protocol [and each twelve months thereafter] a recruitment and training method statement, using the attached pro-forma, setting out how the outcomes set out below will be achieved [without cost to the Employer⁸] [~~delete and amend Question 12 in the method statement if the Employer has an open book contract and is able to cover the cost of the training and employment requirements~~]. Prior to completing the method statement the Contractor will hold discussions with [] [enter the name of the chosen agency or intermediary] and other supply-side organisations identified by the Client.

2.1 New entrant trainees

[insert number] person-weeks of employment to be provided for a new entrant trainee recruited from a source agreed by the Client, for each £[1 million] in contract value, taking into account the following:

2.1.1 a person-week is the equivalent to one person being employed for five days [as part of this contract] [either on the development site or on other sites with the agreement of the Client];

2.2.1 a new entrant trainee⁹ is a school or college leaver, or an adult that has not been employed in the industry during the previous six months and

who is undertaking training towards a qualification recognised by the industry or the Client.
(Questions 1 and 2 in the method statement relate)

2.2 Recruitment

Every vacancy on site, including those with subcontractors, will be notified to agencies named by the Client [at least three working days before recruitment from other sources], and candidates identified by these agencies will have an equality of opportunity in the selection process.
(Question 3 in the method statement relates)

2.3 Unwaged work experience

The equivalent of [insert number] person-weeks per £[1m] in contract value will be made available as unwaged work experience opportunities. Both parties acknowledge that some of these may not be utilised.
(Question 2 in the method statement relates)

2.4 Workforce training

The Contractor will use reasonable endeavours to assist employees to achieve [full CSCS registration and NVQ Level 2] or equivalent and higher levels of qualification. Arrangements for on-site training, assessment and recording will be provided.
(Question 6 in the method statement relates)

2.5 Training plan

When requested by the trainee or their training organisation, a training plan will be maintained for each 'new trainee', using a pro-forma where this is provided. The training plan will be available for inspection by the Client and its agents at any reasonable time.

2.6 Skills Forums

The Contractor will support the work of [insert the relevant industry training forum] established in the locality of the [contract/services/supplies/works].

2.7 Remuneration

Trainees and recruits will be paid in accordance with industry norms, taking into account national minimum wages, and have terms and conditions of employment that are at least equivalent to those provided to workers that have equivalent skills and experience.

The Contractor will use reasonable endeavours to increase the remuneration of trainees in line with their experience and productivity.

2.8 Supply-chain opportunities

When requested by the Client, the Contractor will:

2.8.1 take reasonable steps to participate in initiatives to identify and nurture additional supply-chain organisations based in or around the area where the [development is] [works/services/supplies are] taking place;

2.8.2 include supply-chain opportunities on the [Insert name] website [Insert web address] at least 7 working days before invitations to submit a tender or price are issued;

2.8.3 give consideration to firms registered with [], especially those located in and around the area where the development is taking place, when issuing invitations to tender or price for contract opportunities.

2.9 Monitoring and verification information

Within four weeks of completion of each [4/13/26] week period following acceptance of the method statement by the Client the Contractor will provide a recruitment and training performance statement setting out in relation to the period and the contract to date:

2.9.1 the number of weeks' employment provided to each new entrant trainee, including those [on sites] [in locations] outside of the contract where this has been necessary to provide continuity of employment and training and where this has been agreed with the Client;

2.9.2 the number of new entrant trainees retained in employment after the completion of their period as a 'new entrant trainee';

2.9.3 a schedule showing for the Contractor and each subcontractor:

2.9.3.1 the number of personnel starting [on site] [on the contract] in the period and cumulatively since the acceptance of the method statement;

2.9.3.2 the number of vacancies notified to agencies named by the Client;

2.9.3.3 the number of people engaged on site in any capacity that have their main residence in one of the following postcode areas: [] [enter the relevant 3 or 4 digit postcodes] or

[the postcodes of the main residence of all people engaged on site / on the contract in any capacity].

2.9.4 a schedule listing the firms invited to tender or price for subcontracts and supply contracts under 2.8 above and indicating which of these were successful;

2.9.5 the total value of subcontracts and supplies contracts that have been awarded to firms with a [] [enter the relevant 3 or 4 digit postcodes] postcode or [the postcodes of all subcontractors and suppliers and the value of the contracts awarded to each].

For verification purposes the following documentation will be required by the Client:

2.9.6 a trainee recruitment notification signed by the trainee (to permit the provision of personal data to the Client for contract monitoring purposes);

2.9.7 a trainee transfer notification where a trainee is moved between [sites / services / contract], or between employers engaged in the [development / contract]; and

2.9.8 a trainee completion or termination notification.

3 Contractor and subcontractor compliance

The Contractor will develop a working method that will deliver the recruitment and training requirements and supply chain opportunities and related monitoring and verification data, and obtain the full co-operation of subcontractors and suppliers in delivering these requirements.

4 Support

The agreement of a recruitment and training protocol does not comprise or imply any promise on the part of the Client or their agents to provide suitable trainees or labour. Any action taken by the Client or its agents to broker relationships between the Contractor and local individuals/firms/agencies does not imply that the Client or its agents consider the individual/firm/agency as suitable for engagement by the Contractor.

All recruitment, supervision and discipline responsibilities rest with the Contractor and subcontractors. Within this context the Client will work with local agencies to help facilitate the achievement of the recruitment and training requirements.



Approaches 3 and 4: Model jobs and skills clauses

Supporting document 6: Standard requirements for specification and tender documents for standalone contracts

Supporting document 6 includes draft wording suitable for use in specifications or in an invitation to tender, especially where the model contract clauses are being used. Where the model contract clauses are being modified to suit the particular needs of the contract in question, equivalent modifications should be made to this text.

Text in italics is commentary/guidance and does not form part of the requirements. Text in square brackets should be amended /added/deleted according to the requirements of the particular contract.

1 Introduction

In pursuance of the information provided in the OJEU Contract Notice that the Contractor will be required to actively participate in the economic and social regeneration goals of the Contracting Authority, the Contractor shall deliver the jobs, skills and supply-chain requirements as set out below.

OR

It is the Contracting Authority's intention that the delivery of the contract will assist in the achievement of its policies on [sustainable development/social inclusion/economic and social regeneration/equal opportunities] as set out in [the relevant policy documents]. Accordingly, and in pursuance of the information provided in the OJEU Contract Notice, the Contractor will be required to deliver the jobs, skills and supply-chain requirements as set out below.

2 The requirements

Bidders are required to submit a targeted recruitment and training method statement with each valid tender, using the attached pro-forma [see *Supporting document 8*], setting out how the following outcomes will be achieved [in a way which is cost-neutral to the Employer]¹⁰.

¹⁰ The contractor(s) appointed will be expected to cover the cost of the requirements by accessing public sector and industry funding and by effectively managing the works so as to achieve good productivity from the trainees. If the cost neutral option is not chosen – i.e. if the Contracting Authority is able/willing to cover the cost of the requirements – delete and amend question 12 in the method statement.

¹¹ The Contracting Authority will expect transport to alternative sites to be provided where sites are not within 5 miles of the site where the trainee is initially engaged

2.1 New entrant trainees

Select the requirements from the clauses below choosing those that:

- are relevant in type and scale to the contract;
- meet the needs of the target community;
- can be supported by 'supply-side' agencies; and
- can be effectively monitored and followed-up.

To ensure early attention is given to the jobs and skills requirements, the method statement should be requested with the tender. If jobs and skills are not part of the award decision (i.e. if the requirements are not relevant to the subject matter of the contract), the method statement can be requested but must be disregarded until after the award of the contract.

The text differentiates between new entrant trainees that are registered with a training body as apprentices, and other trainees. The former may be counted towards the new trainee target for a longer period e.g. 104 week rather than (say) 26 or 52 weeks for 'other trainees'. The exact balance should be decided by the Contracting Authority, with the requirements being considered in context.

2.1.1 A minimum of [] Person-weeks of employment must be provided for a new entrant trainee recruited from a source agreed by the Contracting Authority, for each £[1m] in contract value, taking into account the following:

2.1.1.1 a Person-week is the equivalent to one person being employed [on this contract] for five days [either on the development site or on other sites (with the agreement of the Contracting Authority)];¹¹

2.1.1.2 a new entrant trainee¹² is a school or college leaver, or an adult that has not been employed in the [Insert relevant industry] industry during the previous six months, and who is undertaking training towards a qualification recognised in the [industry/sector], or another qualification recognised by the Contracting Authority;

2.1.1.3 a new entrant trainee that is registered as an apprentice can be counted towards the target for a maximum of [] weeks and a non-apprentice 'other trainee' can be counted for a maximum of [] weeks;

2.1.2 Reasonable efforts should be made to retain persons that have been notified to the Contracting Authority as a new entrant trainee after the maximum periods listed above.

(Questions 1, 2, 3 and 4 in the method statement relate)

The term "new entrant" trainee is widely defined and this provision is intended to be the main 'requirement' that will achieve social inclusion. Through the method statement the contractor will set out what mix of new entrant trainees they expect to recruit (for example, by trade) and whether these are apprentices or other trainees. Their decision can be influenced through the provision of an information sheet on trainee supply and funding (sent out with the ITT) and through a briefing session. Further clarification can be sought post-award to better align the opportunities with the target community and the available training supply.

The target is set here as Person-weeks per £1m in contract value. This can of course be re-worked, for example to set the target as Person-weeks per unit of housing or square metres of commercial development, where these are known and this is considered easier to measure.

2.2 Recruitment

The first of these paragraphs provides opportunities for skilled/experienced and job-ready workers. People that don't fit this description should go through a pre-recruitment programme and be 'new trainees'.

2.2.1 Every vacancy on site, including those with subcontractors, is to be notified to agencies named by the Contracting Authority [at least three working days before recruitment from other sources], and candidates identified by these agencies are to have an equality of opportunity in the selection process.

(Question 3 in the method statement relates)

2.3 Unwaged work experience

This provides the opportunity for students to obtain some work experience, for unpaid work-trials or short-term paid work experience. Again, this can be re-worked to set the target as Person-weeks per unit of housing or square metres of commercial development where the latter are known and this is considered easier to measure.

The equivalent of [] person-weeks per £[1m] in contract value is to be made available as unwaged work experience opportunities for people provided by an organisation that has [undertaken appropriate pre-site preparation and a risk assessment] [been agreed between the Contractor and the Contracting Authority].

It is understood that, in reality, some of these weeks may not be utilised.

(Question 2 in the method statement relates)

2.4 Workforce training

This can be used to ensure opportunities for continued training for 'new trainees' and to help achieve a fully accredited workforce. It can facilitate the work of bodies such as sector skills councils to engage with employers and maximise in-service training.

The Contractor will be expected to take action to assist employees to achieve appropriate [CSCS registration and NVQ Level 2]¹³ or equivalent and higher levels of qualification. Arrangements for on-site training, assessment, and recording are to be provided.

(Question 6 in the method statement relates)

¹² A trainee could be registered as an apprentice with an industry recognised body (who can be counted as a 'new entrant' for up to [] weeks) or a person that has a trainee contract or a contract of employment or self-employment but who is not an apprentice (who can be counted as a 'new entrant' for up to [] weeks). [Insert required figures]

¹³ The appropriate qualifications will vary depending on the subject matter of the contract, and appropriate details should be inserted here

2.5 Training Plan

When requested by the trainee or their training organisation, a training plan is to be maintained for each new trainee. Any training plan must be made available for inspection by the Contracting Authority and its agents at any reasonable time.

This is a provision that a training provider or trainee can activate if it is needed and the plan will be used.

2.6 Skills Forums

The Contractor will be required to support the work of [insert the relevant industry training forum] established in the locality of the contract.

2.7 Remuneration

Trainees and recruits must, as a minimum, be paid in accordance with industry norms and must have terms and conditions of employment that are at least equivalent to those provided to employees that have equivalent skills and experience.

Contractors are encouraged to increase the remuneration of trainees in line with their experience and productivity, in accordance with practices that are in place in relation to other employees.

This is included to ensure equal treatment between existing trainees and new trainees, and to maximise retention by ensuring that trainees are rewarded as their productivity increases.

2.8 Supply-chain opportunities

2.8.1 When requested by the Contracting Authority, the Contractor will participate in initiatives to identify and nurture additional supply-chain organisations based in or around the area where the contract is taking place.

2.8.2 All supply-chain opportunities including those at the tender stage are to be posted on websites specified by the Contracting Authority at least seven working days before invitations to submit a tender or price are issued, and reasonable consideration shall be given to firms registered with agencies specified by the Contracting Authority, when issuing invitations to tender or price for contract opportunities.

The first of these paragraphs allows the Contracting Authority to introduce a specific initiative after award of the contract. The second facilitates

company inter-trading. The impact of these post-award initiatives will be limited where the contractor has made a commitment to their supply-chain before the contract was awarded.

Since the requirements can be delivered by any contractor post-award and are not included in the contract award process, their inclusion should not disadvantage any bidder.

2.9 Monitoring and verification information

Monitoring information should be aligned with the requirements selected under paragraphs 2.1-2.5 above. Some possible requirements are set out below. The timetable for reporting is also important: the earlier and more frequent the reports, the earlier the contractor will focus on the jobs, skills and supply-chain requirements.

However, progress-chasing and responding to monitoring information requires resources from the client side, and scarcity of this resource may determine what is asked for. The client should not request information that cannot (or will not) be used/analysed.

It is important to be able to verify key outcomes, e.g. weeks of employment for new entrant trainees. The suggested notifications relating to the latter will facilitate this and if appropriate classifications are included on the pro-forma notification will allow the Contracting Authority to monitor trainee outcomes by ethnicity, gender, area of residence etc.

Where there will be a large number of trainees the recording and analysis could require a database system. The Contracting Authority will need to consider whether the necessary support systems are available.

Within 4 weeks of completion of each Quarter following implementation, the contractor will be expected to provide the Contracting Authority with a performance statement setting out in relation to the Quarter and the contract to date:

2.9.1 the number of weeks' employment provided to each new entrant trainee, including those outside of the contract where this has been necessary to provide continuity of employment and training and where this has been agreed with the Contracting Authority;

2.9.2 the number of new entrant trainees retained in employment after the completion of their period as a 'new entrant trainee';

2.9.3 a schedule showing for the Contractor and each subcontractor:

2.9.3.1 the number of personnel starting on site in the period and cumulatively;

2.9.3.2 the number of vacancies notified to agencies named by the Contracting Authority;

2.9.3.3 the number of people engaged on site in any capacity that have their main residence in one of the following postcode areas [] [enter the relevant 3 or 4 digit postcodes] or [the postcodes of all people engaged on site in any capacity].

2.9.4 a schedule listing the organisations invited to tender or price for subcontracts and supply contracts as a result of paragraph 2.8 above and indicating which of these were successful;

2.9.5 the total value of subcontracts and supplies contracts that have been awarded to firms with a [] [enter the relevant 3 or 4 digit postcodes] post-code or [the post codes of all subcontractors and suppliers and the value of the contracts awarded to each]. For verification purposes the following documentation will be required by the Contracting Authority using pro-forma documentation provided:

2.9.6 a trainee recruitment notification signed by the trainee (to permit the provision of personal data to the Contracting Authority for contract monitoring purposes);

2.9.7 a trainee transfer notification where a trainee is moved between sites or contracts, or between employers engaged in the [development/services/supplies/works]; and

2.9.8 a trainee completion or termination notification.

3 Contractor and subcontractor compliance

It shall be the Contractor's responsibility to develop a working method that will deliver the jobs and skills requirements and supply-chain opportunities and related monitoring and verification data, and

to obtain the full cooperation of contractors and subcontractors in delivering these requirements.

This text is included to emphasise that it is the contractor's responsibility to deliver outcomes through their supply-chain. It is part of their job to work out how to do this.

4 Support

The inclusion of jobs and skills requirements does not comprise or imply any promise on the part of the Contracting Authority or their agents to provide suitable trainees or labour. Any action taken by these bodies or their agents to broker relationships between the contractor and local individuals/ firms/ agencies does not imply that they or their agents consider the individual/firm/agency as suitable for engagement by the contractor.

All recruitment, supervision and discipline responsibilities rest with the contractor and subcontractors. Within this context the Contracting Authority will work with local agencies to help facilitate the achievement of the recruitment and training requirements.

This text is included to protect the Contracting Authority from possible claims arising from their role as an intermediary between the Contractor and the supply-side (employment, training and business development agencies).

5 Targeted Recruitment and Training method statement

Bidders are required to submit a completed Targeted Recruitment and Training Method Statement, [using the Supporting document 8], with each valid tender. [A revised method statement may be required before commencement on site and each 12 months thereafter].

OR

Prior to the signing of the contract [and each twelve months thereafter] the preferred contractor will be required to complete a Targeted Recruitment and Training Method Statement, using the pro-forma attached, to the satisfaction of the Contracting Authority. Prior to completing the method statement, bidders are advised to obtain

14 To ensure a level playing field between bidders it is important to provide an information sheet giving details of training, job-matching and business development agencies that would be available to work with the appointed contractor to help them deliver the requirements. The information should include funding that could be accessed by the contractor. A briefing session with each bidder can help ensure equal access to the information and an appropriate focus on the requirements.

the Training Information Sheet from [].¹⁴ This will give information on local training and resources. All of these will operate using an appropriate equal opportunities policy.

To ensure early attention to the requirements the method statement should normally be received with the tender.

If the requirements do not form part of the contract award criteria, this method statement should be disregarded until after the award of the contract. Otherwise it can be scored and given a weighting as part of the award process.

Where the jobs and skills do not form part of the award criteria and there are concerns about demonstrating that jobs and skills information has been disregarded in the award stage, then the method statement can be required once a preferred bidder has been chosen (if relevant) or once the contract award decision has been made. In this case the second of the first two paragraphs should be used.

Optional wording is provided where the method statement is to be renewed on an annual basis e.g. where the contract runs for many years.



Supporting document 7: Standard contract conditions

The following contract clauses are designed to be used alongside the other model documents contained in this Toolkit – i.e. the wording for use in OJEU contract notices (Supporting document 9) and specifications, and the template pro-forma method statement (Supporting document 8). Users will therefore wish to tailor these clauses to fit with any alternative resources that are being used – for example, if the contracting authority wishes to include different questions in the method statement.

These contract clauses are appropriate for use in most forms of contract when the contracting authority has incorporated reference to such requirements in its OJEU contract notice, and has used the relevant model documents included in this toolkit. Should the contracting authority be contemplating a framework agreement, these contract clauses could be modified

and extended to provide a system whereby the contractor(s) provide a method statement for individual call-off contracts under that framework. In this context, please refer to Supporting document 8, the pro-forma method statement.

Readers should remember that these model clauses represent only one of the courses of action/sets of requirements that are available to them. There may be other community benefits that can be achieved through a contract that have not specifically been referred to in these model clauses.

Throughout these model documents, text in italics contains guidance on the use of the template wording. Text in [square brackets] may be relevant to some contracts but not others.

1 Definitions and interpretations

Apprentice	A person registered as an apprentice and taking a framework which complies with the SASE ¹⁵
New entrant	A person who is - leaving an educational establishment or training provider - a non-employed person that is seeking employment that includes training towards a qualification recognised in the [] industry or - a mix of these
Other trainees	People who are not apprentices or new entrants but - have a contract of employment or - are self-employed and are undergoing work-related training as a result.
Person-week	The equivalent of one person being employed for five days either on the development site or through a mix of work on the development site and elsewhere
Quarter	A period of thirteen weeks
Recruitment and training method statement	The statement referred to in clause 2.1 and in the form set out in Schedule [] [include Supporting Document 8, pro-forma method statement]
Targeted recruitment and training performance statement	The statement referred to in clause 2.3.6, which shall be in such form as the Contractor and the Client shall agree
Trainee	An Apprentice, New Entrant or Other Trainee

¹⁵ From April 2011, only apprenticeship frameworks which comply with the Specification of Apprenticeship Standards for England will be officially recognised as an apprenticeship. For more information see www.apprenticeships.org.uk/About-Us/SASE.aspx

2 Creating training and employment opportunities

2.1 The Contractor shall actively participate in the potential for economic and social regeneration which results from this Agreement and shall deliver the requirements set out in the Contractor's Recruitment and Training Method Statement.

2.2 The Recruitment and Training Method Statement may be modified at any time by mutual agreement between the parties.

2.3 The Recruitment and Training Method Statement shall include the following outcomes:

2.3.1 A minimum of [78] Person-weeks of employment to be provided for a Trainee recruited from a source agreed by the Client, for each [£1m] in contract value provided:

2.3.1.1 Apprentices may be counted for up to [104] weeks of employment;

2.3.1.2 New Entrants and Other Trainees may be counted for up to [52] weeks of employment.

2.3.2 Recruitment

Every vacancy on site, including those with subcontractors, is to be notified to those agencies set out in Schedule [] to this Agreement, and candidates identified by those agencies are to have an equality of opportunity in the selection process.

2.3.3 Unwaged work experience

The equivalent of [5] Person-weeks per £[1m] in contract value is to be made available as unwaged work experience opportunities. Some of these may not be utilised.

2.3.4 Remuneration

All Trainees shall be paid in accordance with [industry/sector] norms and shall have terms and conditions of employment that are at least equivalent to those provided to staff and employees that have equivalent skills and experience.

The Contractor is encouraged to increase the remuneration of Trainees in line with their experience and productivity in accordance with the practices applied to all other employees of the Contractor.

2.3.5 Supply-chain opportunities

When requested by the Client, the Contractor shall participate in initiatives to identify and nurture

organisations based in or around the area where the [Services/Supplies are to be provided] [development is taking place] that could contribute to the supply chain.

2.3.6 Monitoring and verification information

Within four weeks of completion of each Quarter the Contractor shall provide the Client with a Targeted Recruitment and Training Performance Statement setting out in relation to the Quarter and cumulatively for the Contract Period up to the end of the Quarter:

2.3.6.1 the numbers of weeks' employment provided to each Trainee [including those employed outside the development site where this is necessary to provide the New Entrant, Apprentice or Other Trainee with continuous employment and training and has been agreed with the Client];

2.3.6.2 a schedule showing for the Contractor and each subcontractor:

- the number of personnel starting on site in the Quarter and cumulatively for the Contract Period up to the end of that Quarter;
- the number of vacancies notified to agencies named by the Client in Schedule [];
- the postcodes of all people engaged [on site] [in providing the Services / Supplies] in any capacity, including the number that have their main residence in one of the following postcode areas [] [enter the relevant 3/4 digit postcodes – these will be the locations which the Client hopes/anticipates will benefit from these requirements].

2.3.6.3 a schedule listing the firms invited to tender or price for subcontracts and supply contracts under 2.3.6.2 above and indicating which of these were successful;

2.3.6.4 the total value of subcontracts and supplies contracts that have been awarded to firms with a [] [enter the relevant 3/4 digit postcode(s)] postcode.

2.3.6.5 a trainee recruitment notification signed by the Trainee permitting the provision of personal data to the Client for contract monitoring purposes;

2.3.6.6 a trainee transfer notification where a Trainee is moved between sites, or between employers engaged in the development;

2.3.6.7 a Trainee completion or termination notification.

2.4 Contractor and subcontractor compliance

It is the Contractor's responsibility to develop a working method that will deliver the targeted recruitment and training requirements and supply-chain opportunities and related monitoring and verification data, and obtain the full cooperation of subcontractors and suppliers in delivering these requirements.

2.5 Support

The inclusion of recruitment and training requirements does not comprise or imply any promise on the part of the Client or their agents to provide suitable trainees or labour. Any action taken by these bodies or their agents to broker relationships

between the Contractor and local individuals/firms/agencies does not imply that they or their agents consider the individual/firm/agency as suitable for engagement by the Contractor. All recruitment, supervision and discipline responsibilities rest with the Contractor and its subcontractors. Within this context the Client will work with local agencies to help facilitate the achievement of the recruitment and training requirements.

[The contract clauses should be added to the draft contract, along with the appropriate schedules to which the clauses refer:

- *Schedule [] – Creation of Training and Employment Opportunities- Recruitment and Training Method Statement. This schedule will be developed by reference to the Bidder's proposals – see Supporting Document 8 for a template pro forma method statement that can be used.*
- *Schedule [] – Agencies notified by the Client pursuant to clause 2.3.2.]*



Supporting document 8: Basic pro-forma method statement

This is a model method statement for bidders to submit with tenders. This can help to ensure that bidders all submit the same information and can therefore be compared and assessed accurately when applying the award criteria if this is appropriate to the contract.

Targeted Recruitment and Training method statement

Title of contract:

Bidder:

Contact name:

Position:

Telephone number(s):

Email address:

I confirm that this method statement sets out the actions that will be undertaken to ensure the achievement of the Contracting Authority's jobs, skills and supply chain requirements. It is recognised that delivery of these requirements will be a contract condition [and will be assessed as part of the decision to award the contract].

Signed

Print name

Date

Ensure that information is provided in each of the following sections. This document must be submitted as part of each valid tender. Bidders are recommended to obtain information on training and job-matching resources available within the area from [] [enter the contact details of suitable providers].

1 Numbers of new entrant trainees

Please complete Table 1

Table 1 allows the Contracting Authority to check that the requirements will be delivered through a suitable mix of trades/occupations and a mix of apprentices and 'other trainees'. Clarification may be sought if the selected mix will not maximise opportunities or be easily delivered through the supply-side organisations. This table can be tailored to meet the needs of the contract.

Table 1 Person-weeks to be delivered by new entrant trainees

Trade/occupation	Total person-weeks and number of trainees		Total trainee weeks - apprentices and others	
	Apprentices	Other trainees		
	Person-weeks	Number	Person-weeks	Number

Person-week is the equivalent of one person working for five days either on site, or through a mix of on-site work and off-site training. To provide continuity of training and employment this can include time on other sites with the agreement of the Employer.

Number - enter here the number of trainees that will be recruited to deliver the p/wks.

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 [] 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 [] weeks.

2 Work experience opportunities

Please show in Table 2 the number of person-weeks that will be offered as work experience opportunities.

It is understood that, while offered and available, some of these opportunities may not be utilised.

The total in Table 2 should at least reflect the requirements set out in paragraph 2.3 in supporting document 5.

Table 2 Unwaged work experience opportunities

Occupation/activity	Person-weeks
Total	

The answers to questions 3-9 should demonstrate that the contractor has understood the requirements, and read the information provided or signposted by the Contracting Authority. The answers should satisfy good practice as interpreted by the Contracting Authority and any supply-side organisations the Contracting Authority is using.

Innovations and 'added value' may be included in answers to Question 11.

3 Recruitment

What arrangements will you make to recruit apprentices and other trainees from agreed sources?

4 Support for trainees

What arrangements will you make to provide mentoring and support for trainees and work placements to ensure maximum retention and achievement of industry accreditation?

5 Retention of trainees

What steps will you take to maximise the number of new entrant trainees that are retained after the completion of the time they can be counted as 'new entrant trainees', and what percentage of new entrant trainee starts would you hope to retain at this stage?

6 Training initiatives

What training initiatives would you seek to utilise, and with which organisations, to maximise achievement of the jobs and skills requirements?
What arrangements will be made for work place recording and assessment?

7 Notification of vacancies

What arrangements will you make to notify all vacancies to agencies named by the Contracting Authority and provide time for applications from these sources to be considered?

8 Contractors and subcontractors

How will you obtain the co-operation of subcontractors and suppliers to ensure the delivery of the jobs and skills requirements?

9 Information

How will you ensure that personal information on each 'new entrant trainee' can be provided to the Contracting Authority?

10 Management

Who will be responsible for the delivery of the jobs and skills requirements [on site and/or for the contract(s)]?

11 Other information

Please provide here any additional information on how you would approach the implementation of the jobs and skills requirements, including any innovative ideas.

12 Costs

Please complete Table 3 in relation to the resources required to deliver the jobs and skills requirements.

Table 3 Summary of resources

Cost item	£	Basis of calculation
Management and administration		
Training costs		
Additional site costs Mentoring and support activities		
Total cost		
Sources of funding and other resources		
Grants (eg - from Construction Skills)		
Trainee productivity Services from other external agencies		
Total of additional resources		
Net cost		Difference between Total cost and Total of additional resources. (This should be NIL) [remove bracketed text if a net cost is required]

Question 12 can be:

- removed if no cost information is required by the Contracting Authority;
- used to ensure a cost-neutral approach;
- amended so that a net cost is shown.

Supporting document 9: OJEU contract notices

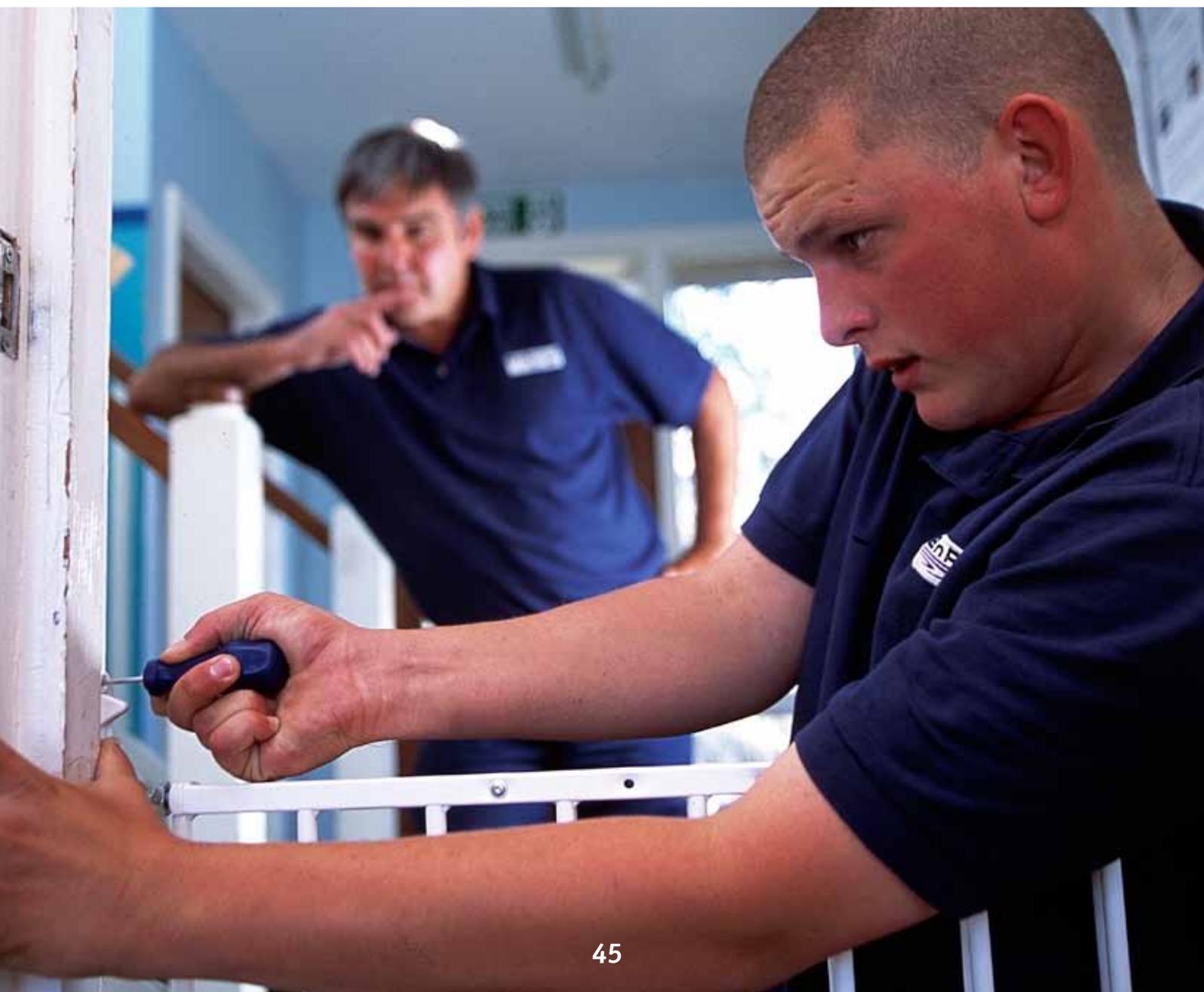
The following paragraphs are template wording that can be inserted into the 'Additional Information' section of a contract notice being published in the Official Journal of the European Union ('OJEU').

This wording is intentionally broad – while it is possible to narrow the scope of a contract after a contract notice has been published, it will generally not be possible to broaden its scope. This model wording allows contracting authorities the opportunity to allow for contract award decisions to include consideration of social and economic factors, and the contracting authority can be more specific about its requirements in the contract documents (see supporting documents 6 and 7).

“Under this [procurement / project] the [contractor / developer / supplier / service provider] is required to participate actively in the economic and social regeneration of the [locality of and surrounding the place of delivery for the procurement / project] [community served by the contracting authority]. Accordingly contract performance conditions may relate in particular to social and environmental considerations.”

OR

“Conditions relating to environmental and social requirements of the contracting authority may be included in this contract.”



Supporting document 10: An example of contract value thresholds and employment and training outputs

GLA group responsible procurement team

To maximise the value of GLA's project spend, there are Strategic Labour Needs and Training (SLNT) requirements within GLA group contracts that seek to ensure suppliers:

- train and develop their workforce to ensure capability/competency
- offer training, employment and skills opportunities to London communities, particularly in relation to disadvantaged groups

SLNT is implemented through:

- embedding SLNT requirements within new contracts
- assisting new and existing suppliers access funding and support to delivery skills and employment requirements through the Supplier Skills Team

Value thresholds

SLNT requirements are introduced to contracts above these values:

- at least £1 million value – consultancy or service contracts
- at least £3 million value – construction/manufacturing contracts

These values translate into one employment or training requirement from the contractor.

One requirement can result in any of the following outputs:

- taster position (100 days)
- graduate position
- placement position (200 days)
- worklessness job start
- apprenticeship
- workforce development
- education engagement

The GLA group's priorities are worklessness job starts and apprenticeships, so at least 50 per cent of the outputs which the contractor provides must be one of these two options.

Appendix

EU legislative framework - detailed guidance

Much of the legislation governing the use of competitive processes by public authorities in their procurement derives from European Union law, which is based on the fundamental principles of:

- equal treatment and non-discrimination: giving everyone the same chance to win the contract irrespective of their nationality or whether they are familiar to the contracting authority or not;
- transparency: stating requirements and award criteria up front and sticking to them;
- proportionality: setting requirements with reference to the needs of the contract in question;
- mutual recognition: giving equal validity to qualifications and technical standards of other member states, where appropriate.

These principles are intended to remove barriers to trade between the member states and create a free internal market within the EU by facilitating organisations from all over the EU to bid for the same public contracts. These aims are balanced increasingly with other objectives including the protection of the environment, combating social exclusion and deprivation, and consumer protection.

The EU public procurement legal framework consists of:

- certain provisions of the Community Treaties, most importantly Articles 28 (free movement of goods), 43 (freedom of establishment) and 49 (freedom to provide services) of the EC Treaty; and
- EU Procurement Directives which regulate award procedures with regard to contracts above a certain value. These are implemented in England and Wales by way of statutory instrument laying down regulations governing the procurement of works, goods and services. In particular, Directive 2004/18/EC, often referred to as the 'Consolidated Directive' because it replaced three separate directives on works, supplies and services, was implemented by the Public Contracts Regulations 2006 on 31st January 2006.

The EU procurement rules operate principally at three levels:

- requirements for the advertising across the European Union of contracts for works, goods and services (this is done by placing a contract notice in the Official Journal of the European Union);
- the encouragement of the use of technical standards and approvals which are of application across the EU or the recognition of technical standards and approvals in force in another Member State where these are of a similar standard to those in force in the UK; and
- requirements for objective and open criteria for evaluating tenders and selecting contractors.

The EU procurement rules cover a wide range of bodies and contracts. 'Contracting authorities', the term used in the rules, includes central government departments, local authorities and non-departmental public bodies, but also 'bodies governed by public law', a term which covers organisations established to meet needs in the general interest, not having an industrial or commercial character, and which are either:

- financed wholly or mainly by another contracting authority;
- subject to management supervision by another contracting authority; or
- more than half the board of directors or members of which is appointed for another contracting authority.

The justification for using social clauses under EU Law and Case Law

The Consolidated Directive

As stated in the Office of Government Commerce (OGC) guidance *Social Issues in Purchasing*¹⁶, the Consolidated Directive "makes explicit the scope to take social and environmental issues into account at the relevant phases of the procurement process". The Consolidated Directive says much more on the subject of social and environmental considerations than its preceding directives, both in its non-binding but influential recitals and its articles.

¹⁶ Office of Government Commerce, *Social Issues in Purchasing*, 2009, available at www.ogc.gov.uk/sustainability_social_issues_in_purchasing.asp

Recital 1 of the Consolidated Directive states: *“This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with [Treaty Obligations]”.*

There are recitals which support other environmental and social issues, such as sheltered workshops, including eco-labels in specifications and the involvement of small and medium-sized undertakings in the public contracts procurement market. In addition, there are articles which govern sheltered workshops and environmental requirements. Most specifically in the context of this paper, Recital 33 states:

“Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment.

“For instance, mention may be made, amongst other things, of the requirements – applicable during performance of the contract – to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.”

In Recital 46 there is the following acknowledgement: *“In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract.*

“Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs – defined in the specifications of the contract – of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.”

Article 26 of the Consolidated Directive has this express provision:

“Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.”

This is translated in the Public Contracts Regulations 2006 by Regulation 39 which states:

(1) A contracting authority may stipulate conditions relating to the performance of a public contract, provided that those conditions are compatible with Community law and are indicated in:

- (a) the contract notice and the contract documents; or
- (b) the contract documents.

(2) The conditions referred to in paragraph (1) may, in particular, include social and environmental considerations.

Case Law

There have been some important European cases concerning social clauses in public contracts which have had a bearing on the Consolidated Directive and which continue to develop the shape of the law as it is interpreted by the courts.

Not all the cases are easy to reconcile with each other or with current European Commission guidance but they do establish some important principles that are relevant to the inclusion of Targeted Recruitment and Training and other social matters in procurement by contracting authorities, including:

- it is possible to include Targeted Recruitment and Training requirements in public procurement provided that the drafting and the process does not disadvantage non-local bidders, for example by requiring them to have local labour market knowledge, or a local base, or use local material;

- environmental and (by implication) social requirements that address a policy objective of the purchaser are permissible: they do not need to provide an economic benefit to the purchaser; and
- all requirements must be capable of measurement and verification.

The Remedies Directive

The EU Remedies Directive has recently been implemented in England and Wales through the Public Contracts (Amendment) Regulations 2009, which amend the Public Contracts Regulations 2006.

The changes strengthen the legal review procedures that are available for breaches of the laws governing the award of public contracts, and increase the range of remedies available.

The changes include, amongst other things:

- the automatic suspension of a contract award procedure whenever legal proceedings are started in respect of a contract award decision;
- changes to the standstill period such that a new obligation is imposed to release the reasons for the award decision at the start of standstill, rather than upon request (as was previously the case);
- a new obligation to allow extra time for tenderers to receive the standstill notice in situations where the notice is sent using non-electronic means;
- a new UK-specific obligation for authorities to notify participants of their elimination from a procurement exercise, which makes the previously ambiguous and arguably implied notification obligations in the regulations clearer and explicit.



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