

INCLUDING SOCIAL OBJECTIVES IN PROCUREMENT DOCUMENTATION AND PROCESSES

GLOSSARY

Contractual Clause	<ul style="list-style-type: none"> • A section in a contract that specifies a legal requirement.
KPI	<ul style="list-style-type: none"> • Key Performance Indicator • Quantifiable measurements used to evaluate the success or otherwise of a project in achieving its strategic goals.
Request for Quotation (RFQ)**	<ul style="list-style-type: none"> • An RFQ is the invitation document sent to selected parties to offer a quote. • Following the receipt of quotes, an evaluation is conducted to select a successful supplier.
Provider	<ul style="list-style-type: none"> • The term “provider” indicates a party that has entered into a contract with a council and includes: <ul style="list-style-type: none"> ○ supplier of goods ○ supplier of services ○ contractor ○ consultant.
Selection/Evaluation Criteria	<ul style="list-style-type: none"> • Published criteria used to evaluate tenders or quotes to determine the best value for money offering. • Selection criteria are typically comprised of non-financial criteria (to assess the capability, capacity, experience, etc of potential providers), as well criteria relating to cost, commercial and risk factors.
Social Benefit Clauses	<ul style="list-style-type: none"> • Contractual provisions which fulfil a particular social aim.
Specifications	<ul style="list-style-type: none"> • All the technical or descriptive functional, operational, performance requirements or other characteristics of a deliverable provided by one of the parties under a contract. • The term “specifications” in this document includes: <ul style="list-style-type: none"> ○ project brief ○ brief of services ○ Key Performance Indicators (KPIs), which may form part of the specifications or be complementary thereto.
Request for Tender (RFT), tendering process**	<ul style="list-style-type: none"> • A RFT is the invitation document seeking offers (usually by public advertisement) from interested parties to submit a tender. • Following the receipt of tenders, an evaluation is conducted to select a successful tenderer(s). The end-to-end process is often referred to as the “tendering process”.

** Please contact your council procurement unit or refer to your procurement procedures for guidance.

1. SOCIAL PROCUREMENT DOCUMENTATION

1.1. General Conditions of Contract

Councils use various forms of General Conditions of Contract based either on their own unique document templates or those of the Australian standards.

The following are some of the current Australian Standard General Conditions of Contract with which numerous councils comply:

- AS4000 General Conditions of Contract which comprises general conditions of a contract suitable for a wide variety of construction and building contracts including civil, mechanical, electrical and other types of engineering contracts
- 4122-2000 General Conditions for the Engagement of Consultants
- AS4300 General Conditions of Contract for Design and Construction
- 4902 General Conditions of Contract for Design and Construction which specifies general conditions of contract suitable for the design and construct project procurement method.

Note: Please refer to your procurement department for the guidance of the General Conditions of Contract appropriate to your procurement.

1.2. Developing Social Procurement Specifications

Specifications clearly and accurately detail the essential requirements for goods, products or services in procurement documentation.

Specifications provide external parties with the basis for submitting an offer to council, and thus act as the foundation of the contract. The specifications become a critical contract management document to ensure that the provider delivers the contracted goods or services.

Regardless of the method used for the social procurement, the specification must clearly and accurately detail the social benefit requirement, as with other requirements in the specification.

Specifications should identify clearly defined benefits that are proportionate to the length, value and complexity of the contract.¹ It is important to consider the social aspects of procurement during the planning stage, to ensure that the social dimension is fully taken into account when requirements are being developed.

Questions² to address when developing the specifications include:

- Have you clearly identified all the potential social benefits that could be delivered as part of the performance of the contract while still being able to demonstrate value for money?
- Are the social requirements:
 - clearly drafted?
 - appropriate for the size and associated risk of the project?
 - sufficiently outcome-based to encourage a range of solutions?
 - equitable to all potential providers?
 - sufficiently flexible to allow for innovation?

¹ Investment Strategy Northern Ireland (2010) *Delivering Social Benefits through Public Procurement: A Toolkit*

² Scottish Procurement Directorate (2007) *Social Issues in Public Procurement, A Guidance Note*, Scottish Directorate, Scottish Procurement Policy Note SPPN 6/2007

- not too onerous for potential providers?
- readily comparable for the purposes of the evaluation?

In addition, given that social procurement is a relatively new area for both councils and providers, the specifications should identify the assistance that the council will give to the provider in delivering the social benefits (for example, links to employment agencies).

It is essential that the specifications must:

- be clear
- be straightforward
- be accurate in defining the expectations of the providers for the service outputs and the functional and performance requirements for goods³
- not restrict competition
- not preclude innovation.

Properly prepared specifications assist providers to:

- understand the procurement
- enable them to respond effectively and undertake their contractual obligations
- bid on a level playing field
- ensure that responses can be readily evaluated.

2. TENDER EVALUATION CRITERIA

2.1 Overview

Evaluation selection criteria must clearly articulate those social outcomes that will form the basis of evaluation and awarding of the tender.

2.2 Principles for developing social procurement selection criteria:

- Selection criteria upon which the evaluation will be based must be linked to the subject of the contract. If a social procurement requirement is:
 - **core** (for example, forms the substance of the contract), then the social selection criteria⁴ will form part of the assessment to determine which bid offers the best overall value for money
 - **secondary** (for example, not related to the primary purpose of the contract), then careful consideration should be given as to whether to include social requirement in the selection criteria.
- Selection criteria must be specific and objectively quantifiable.
- Selection criteria must be transparent. Failure to do so, for example by making the criteria too complex or drafting them poorly, can result in confusion for the providers.

Australian courts have found that, where a government entity presents certain terms⁵ to the market as the basis on which it will make a procurement decision, it must comply with those terms. If the

³ "Good Practice Guidelines: Specification Writing", Victorian Government Procurement Group Department of Treasury and Finance, March 2009

⁴ and specifications, procurement documentation and contractual clauses

government fails to do so, unsuccessful tenderers may be able to successfully challenge the resulting contract.

To minimise this risk, local governments wishing to include social benefit considerations in their procurements must ensure that the inclusion, or potential inclusion, of these considerations is *clearly articulated in the request for tender/quote documentation*.

3. KEY PERFORMANCE INDICATORS

3.1. Overview

Key Performance Indicators (KPIs) are quantifiable measurements used to evaluate the success or otherwise of a project in achieving its strategic goals. KPIs are often included in a contract as a specific responsibility of the provider.

3.2. Social Procurement KPIs

The key performance indicators must necessarily be tailored to the outcomes sought. For example, many employment and training targets are framed in terms of “person-weeks of work” rather than jobs or qualifications, as these are easier to quantify.⁶

Mechanisms for quantifying social procurement targets may include:

- a specified number of members of the target disadvantaged group to be appointed as employees, apprentices or trainees
- a specified number of weeks of engagement of members of the target disadvantaged group
- a specified number of weeks that a employee, apprentice or trainee is appointed to the project
- a specified number of vacancies filled by members of the disadvantaged target group
- a percentage of the total cost of the contract devoted to socially beneficial outcomes.

Social procurement KPIs that may appear in a construction tender is provided below:

- people recruited over a specified time
- apprentices recruited
- trainees recruited
- vacancies advertised
- work opportunities for social benefit suppliers
- work experience opportunities
- local small-to-medium sized enterprises assessed as potential providers.

3.3. KPI Social Procurement Measurement

Unmeasurable outcomes significantly diminish the likelihood of the project succeeding.

For example, if a council indicates that it requires a provider “to provide opportunities for employees to develop essential skills”:

⁵ *Hughes Aircraft Systems International v Air Services Australia* (1997) 76 FCR 151; *Cubic Transportation System Inc v State of New South Wales & 2 Ors* [2002] NSWSC 656

⁶ “Delivering Social Benefits through Public Procurement: A Toolkit 2010” Investment Strategy Northern Ireland

- what does an “opportunity” entail?
- what is an “essential skill”?
- how can this required outcome be monitored effectively?

If it is the desired outcome, remember to incorporate into the contract any specific contractual commitments made by the provider in its tender employment opportunities and/or education, training, and apprenticeship opportunities. **For example, to meet the obligation regarding community responsibilities it is a requirement that the provider recruits xx long-term unemployed person/s, either directly or through the supply chain, for each \$500,000 of project value.**

4. SOCIAL BENEFIT CLAUSES

4.1. Purpose of a Social Benefit Clause

Governments may impose public policy conditions in contracts in order to encourage certain behaviour by providers which is not strictly necessary to fulfil the contract.⁷

This can occur either by:

- the inclusion of terms in the contract which deliver a wider social benefit
or
- the government refusing to deal with companies that do not comply with certain policy-related preconditions, usually imposed as part of the tendering process.

These public policy provisions are known as:

- social benefit clauses
- community benefit clauses
- extraneous purpose clauses (as they specify requirements which are additional (extraneous) to the core purposes of the contract).

4.2. Outcomes of Social Benefit Clauses

Social benefit clauses for council procurement documentation, particularly tenders and contracts, may specify:

- employment requirements (for example, requiring the hiring of long-term unemployed, newly arrived migrants, members of the Indigenous community or disadvantaged groups, such as youth at risk and youth disengaged from learning and/or the community)
- the engagement of local businesses
- the engagement of social benefit suppliers
- compliance with anti-discrimination principles and environmental requirements.

4.3. Timing of Social Benefit Clauses

Social benefit clauses/requirements must be communicated to providers at the very early start of the process:

- during any pre-tender activities (for example, pre-tender briefings)
- when drafting the specifications/brief of services, to ensure that the social dimension is fully taken into account when requirements are being developed

⁷ Seddon, N. (2004) “Government Contracts – Federal State and Local” 3rd Edition, The Federation Press

- in the response templates, which should include social performance indicators if the social procurement requirements are core to the contract
- in the draft contract
- at the advertising stage, to consider how the target audience can be advised of the requirements and how to respond to them
- following contract award, at which point council officers can work co-operatively with providers to ensure the effective implementation of the social procurement requirements.

By integrating the social policy requirements at an early stage:

- the council can meet the transparency requirements of the procurement process
- providers have the opportunity to test the requirement (for example, during the industry briefing and procurement question-and-answer period) and make an informed decision as to whether to submit a bid.

4.4. Drafting Social Benefit Clauses

4.4.1. Planning

The two critical factors in determining how the clauses are to be drafted are:

- whether the social procurement requirement constitutes the core of the contract (for example, seeking a social benefit supplier) or a secondary component (for example, seeking to include training for a number of unemployed people as part of the execution of the contract); or what the social benefits are to be achieved
- whether the benefits being sought may affect or even jeopardise other key issues like the project timetable or value for money.

4.4.2. Tailoring Social Benefit Clauses

There are no standard one-size-fits-all social benefit clauses or templates⁸, as social benefit clauses must:

- be tailored to the procurement sought in a specific contract
- be weighted or evaluated in relation to the overall deliverables
- align with the performance of the specific contract
- be assessed on whether their inclusion represents value for money.

However, some general guidance can be provided, as below.

4.4.3. Clarity

When including social benefit clauses in its procurement documentation, a council should:

- clearly identify the council's intended social outcomes to enable potential providers to determine their capacity to deliver the outcomes in their tender bid
- carefully and clearly detail the council's expectations of the potential providers, including all measurable deliverables.

⁸ Office of the Third Sector (2008) *Social Clauses Project: Report of the Social Clauses Project*

4.4.4. Social Procurement Benefits and Outcomes

Procurement specifications must contain clearly defined benefits and outcomes that are proportionate to the length, value and complexity of the contract. Clearly specified benefits ensure that:

- providers understand the outcomes the council is seeking
- councils are able to evaluate the providers' offers clearly and comparatively.

4.5. Examples of Social Benefit Questions in Procurement Documentation

Target questions may be developed for prospective tenders. The following are examples of social benefit questions in tender response templates.

- **Demonstrate how your organisation will contractually commit to providing employment opportunities and/or education, training, and apprenticeship opportunities in the municipality.**
- **Describe the steps that you organisation will undertake to ensure that long-term unemployed individuals will be recruited to the project and provide a timeframe for this activity relative to the project time frame.**
- **Provide details on how your organisation will secure employment opportunities for <insert> number of unemployed young people using all reasonable endeavours to recruit them from those individuals who access the training places. (The provider must provide details on how they will ensure that each individual has a high quality experience, thereby increasing their chances of gaining and sustaining a job.)**

SUPPORTING CASE STUDIES

CASE STUDY SOCIAL OBJECTIVE REQUIREMENT REVITALISING CENTRAL DANDENONG INITIATIVE
<p>The Revitalising Central Dandenong Initiative included a requirement within the development bid documents and infrastructure tenders requesting tenderers to demonstrate their intention to integrate local persons, apprentices, trainees and long term unemployed into the labour market when they respond to RFTs on specific works.</p> <p>Pre-Qualification Tender: Tenderers admitted to the Pre-qualified Panel were required to demonstrate their intention to integrate local persons, apprenticeships, trainees and long term unemployed into the labour market when they respond to RFTs on specific works.</p> <p>Tender Documentation: In response to RFTs on specific works, tenderers have been required to demonstrate training and employment requirements that provide for local people, including apprentices and/or trainees to be engaged for the duration of each contract. Tenderers were required to submit as part of their response to a RFT a Delivery Plan, to show how they will implement employment and training opportunities, including management and monitoring arrangements.</p> <p>Targets: Specific targets were determined at the outset of the procurement process and the key performance indicators in the specifications and the procurement response template.</p>

**CASE STUDY
SOCIAL BENEFIT CLAUSE
FIFE COUNCIL CONTRACT FOR WINDOWS**

The Fife Council in Scotland included a social benefit clause in its RFT for windows.

The RFT requested that suppliers: 'provide details of what social benefits you could bring to this contract with the "sustainability" method statement page of this tender document'.

As a result of this inclusion, the contract resulted in:

- 40 jobs
- an apprenticeship scheme
- a classroom and training facility support for the annual intake of five apprentices per year
- a partnering opportunity for building services employees
- a program of donations as a percentage of contract profits to charities of Fife Councils choice.

**CASE STUDY
SOCIAL PROCUREMENT EMPLOYMENT AND TRAINING CLAUSE
PUBLIC HOUSING TENANT EMPLOYMENT CLAUSE**

With the inclusion of social clauses in contracts, the Department of Human Services (DHS) has awarded contracts on the condition that positive social impacts are delivered to the community. The DHS Housing Division adds social clauses into many of its contracts, stating that contractors employ a certain number of public housing tenants (exact numbers vary according to contract size) as a key deliverable. This clause covers a range of contracts, from basic services such as cleaning, landscaping and security, to more complex services such as construction.

The Public Tenant Employment Program (PTEP), a program funded by the Victorian Government, provides recruitment services to assist contractors with this task. The PTEP has been a cost-effective strategy for DHS, having resulted in almost 650 jobs and more than 1,300 training opportunities for public housing tenants over the past five years. The PTEP clause specifies that a percentage of the workforce delivering the contract is public housing tenants. The proportion varies depending on the type of works and is generally below 10%.

The PTEP clause has provided tenants with a pathway out of poverty, lowered the turnover of tenants due to stable employment and provided tenants with training opportunities they would not have otherwise received.