

WIRRAL COUNCIL

CABINET

4 NOVEMBER 2010

REPORT OF THE DIRECTOR OF FINANCE

COMMUNITY BENEFITS IN TENDERS

1. EXECUTIVE SUMMARY

- 1.1. This report seeks Cabinet approval of a Guidance Document for officers to facilitate the inclusion of Social and Community Benefits in Council Contracts.

2. BACKGROUND

- 2.1. The following Notice of Motion was agreed by Council on 19 April 2010:

‘Securing more goods and services from local companies and encouraging others to do the same’

- 2.2. Since its inception the Procurement Unit has promoted and supported initiatives to ensure Social and Community Benefits are included in all Council procurement activity. This includes the active encouragement of local Small, Medium Enterprises (SME’s) and the voluntary, community and faith sector to provide services to the Council.
- 2.3. After a full appraisal of existing available guidance within the procurement portfolio, the lack of guidance or a reference point for officers to promote engagement of local suppliers and service providers through a fully legally compliant tender process was apparent.

3. GUIDANCE PRINCIPLES

- 3.1. Traditional preferences given to large organisations capable of working at scale creates a challenge for smaller organisations, including new ownership models. For new start-ups, SME’s, mutuals and voluntary, community and faith sector organisations, much depends on the complexity, fairness and stability of the commissioning and procurement process. The following are some of the key principles to follow when seeking to engage with SME’s, mutuals and voluntary, community and faith sector organisations and to ensure that Social and Community Benefits are embedded within the Council commissioning and procurement activity:

- i) **Widening access to tender information:**

- Publicise opportunities, particularly lower value contracts using the eSourcing Portal as well as the website, in order to increase take up;
- Cascade information through other organisations such as Chambers of Trade and Commerce;
- Understanding the type of company that is capable of tendering for work and whether there are any SMEs/social enterprises/ mutuals who are capable of undertaking this work;

- Avoid over specifying the requirements and provide signposting and advice on how businesses can find out more about meeting pre-qualification requirements such as quality standards.

ii) **Building the capacity of local suppliers:**

- Invite local businesses to attend familiarisation or open days at the Council where they can find out about tender opportunities and talk to staff involved in the commissioning and procurement process;
- Provide training and support to social enterprises/mutuals on the development of public procurement tenders to enable them to benefit from the delivery of public services and for public services to benefit from being delivered through locally relevant social enterprises;
- Provide a contact point for suppliers for more information so that they can call someone and discuss the tender if they are unsure;
- Encourage and support consortia bids from social enterprises, mutuals and SMEs in the area so that local suppliers are in a position to tender for larger contracts.
- Design in protocols for targeted support for successful bidders from user-led organisations.

Considering the scale and size of contracts:

- Consider the removal of 'lower limit' clauses and division of services into smaller 'lots', whilst ensuring compliance with EU and UK legislation.
- Provide the environment for stable funding/finance arrangements.
- Does the contract really require the tender to be delivered by one main supplier, or would there be advantages in dividing the contract? This may provide opportunities to add value. Some contracts will be too large for smaller businesses by nature of the type of work involved. However, there are opportunities to encourage successful companies to sub contract smaller parts of the work as required to SMEs, mutuals and the voluntary sector. The Council will encourage this process by organising open days to provide opportunities for contractors and sub contractors to meet each other and by signposting contractors to possible sources of information about subcontractors that may be based locally.

iv) **The use of "community benefit" clauses:**

An example of the type of social benefit that this is often used to fulfil is in relation to supporting employment and training opportunities, particularly for people in the community who are furthest from the labour market.

The use of community benefit clauses should be supported by strategic documents such as community plans. The sustainable community strategy paves the way to include community benefit clauses in contracts.

v) **Procurement: An important aspect of future economic strategy:**

Research has demonstrated that public sector procurement does play a role in contributing to how money circulates within local economies and its impact, whether large or small, cannot be underestimated or ignored in economic strategy. The Council should not regard procurement as simply a process to be managed, but should think about how to use the relationship between procurement and local economies to support Wirral businesses during the current recession in a way that is concomitant with EU and UK legislation.

vi) **Enabling the growth of new ownership models such as mutuals:**

- When public sector staff are looking to set up new enterprises to deliver public services, guaranteed contracts may not be long enough to incentivise them to take the risk of “spinning out”. Commissioners should be supported to value the potential of mutualisation and design services with individual or community ownership at a premium;
- A sense of direct involvement, participation and ownership distinguishes the community mutual model from other structures. Staff have a constitutional stake in management and ownership and there is inherent democratic accountability. Commissioners should be encouraged to value user and employee voices and look at opportunities for gaining social benefit from non-commercial options which can demonstrate the ethics of engagement.

4. LIST OF EXISTING ACTIVITIES

4.1. The Council is currently carrying out a number of initiatives to engage local enterprise, these include:

i) **Procurement Services Website:**

<http://www.wirral.gov.uk/my-services/business/tenders-and-contracts>

- Tendering Opportunities posted;
- How to do Business with the Council Guide;
- Contracts Register with all contract start/finish dates and values;
- Details about Constructionline membership;
- Contracts Procedure Rules explained;
- Contacts to other sub-regional tender opportunities.

ii) **Constructionline:**

On all construction tenders, under European thresholds (£3.9m), a minimum of three local suppliers are included in the list, taken from Constructionline, to be invited to tender.

iii) **Construction Employment Integrator:**

Adopted by the Council to support the ‘hard to reach’ unemployed to obtain training within Council contracts and to find employment in the construction industry.

- iv) **Local Labour Content** in Construction Contracts is requested from contractors.
- v) **The Procurement Team** and other Council officers are involved in delivering workshops/training days, in collaboration with Wirral Invest, to local companies to help them both compete and win Council and other Public Sector contracts. The following are examples of events which have taken place over the past year:

- 'Boost your Business' March 2009
- 'Wirral Business Fair' July 2009
- 'Improving your success with the Public Sector' November 2009
- 'Construction Forum' March 2010
- 'e Sourcing Workshop' June 2010
(This workshop introduced local SME's to the new electronic sourcing data base that will publish all Council tender opportunities over £10,000 – in accordance with the Glover Report)
- 'Wirral Business Fair' July 2010

Three more events are planned for this financial year, including programmes to support the voluntary sector in partnership with NHS Wirral.

5. PROPOSED GUIDANCE TO OFFICERS

- 5.1. In order to codify the guidance principles and initiatives highlighted above, the Procurement Unit has produced a handbook, which is attached to this report at Appendix 1, entitled: "**Incorporating Social and Community Benefits into Council Contracts. A Guide for Officers**".
- 5.2. If the guidance is approved by Cabinet, it is proposed to launch it as part of the ongoing training programme within the Council for all officers engaged within the commissioning and procurement process. This will ensure that the aim of '**Securing more goods and services from local companies and encouraging others to do the same**' is embedded into the procurement culture.

6. FINANCIAL IMPLICATIONS

- 6.1. The annual spend with local suppliers and contractors is approximately £28m which represents approximately 20% of the total expenditure on supplies and services. This figure will act as a benchmark after implementation of the 'Incorporating Social and Community Benefits Guide' to measure the impact of the Guidance.

7. EQUAL OPPORTUNITY IMPLICATIONS

- 7.1. There are none arising directly from this report. The Glover report indicates that electronic sourcing will improve access to supply opportunities to the Council for local suppliers, SME's and the voluntary, community and faith sector.

8. COMMUNITY SAFETY IMPLICATIONS

- 8.1. There are none arising directly from this report.

9. HUMAN RIGHTS IMPLICATIONS

9.1. There are none arising directly from this report.

10. LOCAL AGENDA 21 IMPLICATIONS

10.1. This process will significantly reduce the use of paper, envelopes, and transport emissions from the use of mailing services for printed documents.

11. PLANNING IMPLICATIONS

11.1. There are none arising directly from this report.

12. MEMBER SUPPORT IMPLICATIONS

12.1. There are none arising directly from this report.

13. BACKGROUND PAPERS

13.1. Glover Report – Accelerating the SME economic engine: through transparent, simple and strategic procurement, November 2008.

14. RECOMMENDATION

14.1. That Cabinet approve the “Incorporating Social and Community Benefits into Council Contracts. A Guide for Officers”.

IAN COLEMAN
DIRECTOR OF FINANCE

FNCE/157/10

Wirral Council

Corporate Procurement

DRAFT

**Incorporating Social and Community Benefits
into Council Contracts
A
Guide for Officers**

November 2010

Contents

Page Number

- 1. Introduction**
- 2. Definition**
- 3. Context**
- 4. The Use of Community Clauses**
- 5. Practical Steps**
- 6. Conclusions**

Appendix A – Case Law

1. Introduction

The following 'Notice of Motion' was agreed by Council on 19 April 2010:

'Securing more goods and services from local companies and encouraging others to do the same'

The Council's Corporate Procurement Strategy: Key Priorities and Action Plan (v) states:

*'Realising **social, environmental and community benefits** through our procurement activities, by developing socially responsible specifications, building social, environmental and community benefits into the evaluation process where appropriate and legal to do so, and working with suppliers and contractors post contract award to explore opportunities for bringing such benefits to the local community, including the introduction of the Construction Employment Integrator.'*

This guide is intended for use by Officers to ensure that the above objectives are routinely embedded within all of the commissioning and procurement activity of the Council.

2. Definition

- 2.1. It is possible for a "Social" or "Community" issues (henceforth called "Community Benefits") to be a core requirement of a procurement and consistent with both the Council, UK and EU Procurement Regulations.
- 2.2. A Community Benefit clause may be included in the contract specification and used as tender evaluation criteria provided:-
 - (a) it is **relevant** to the product or service being procured; there cannot be a 'blanket' requirement;
 - (b) it can be properly **measured, monitored** and **verified** (numerical targets are the easiest to monitor);
 - (c) it contributes to the delivery of Best Value and is supported by strategic documents and as such helps Wirral Council deliver its **key policy objectives**.

3. Context

3.1. Community Benefit clauses are one of a range of “Social Clauses” that can be legally included in public contracts as part of the procurement process. They allow social and environmental considerations to be ***included in the contract specification and used in the selection and award procedures***. The clauses should provide added social value. For instance, a contract which will lead to new employment could ensure that the long-term unemployed from the local community are employed.

3.2 The following ‘hierarchy’ of terms is helpful in explaining how a Procurement Strategy links in to the use of practical clauses in tender documentation:-

1. ***“Sustainable Procurement” is a way of delivering the Council's sustainable development objective.*** Sustainable procurement has traditionally been concerned with environmental issues, but there is now greater awareness of the need to extend this to social and local economy issues. The Sustainable Procurement Task Force's definition of sustainable procurement is: *“a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment”*



2. ***“Social Issues” are part of the still wider concern of “Sustainable Procurement”.*** Social Issues in the context of procurement includes core labour standards, disabled access, disability, gender and race equality, employment and training issues, fair trade, and support for SMEs, Mutuels, including social enterprises, black and ethnic minority enterprises and women and disabled-owned businesses



3. ***“Community Benefits” is one element in a wider range of “Social Issues”.*** Community Benefits include not only targeted recruitment & training, but also equal opportunities, training for the existing workforce, supply-chain initiatives, community consultation, 'considerate contractor' schemes, contributions to education, the promotion of social enterprises, mutuels and resources for community initiatives



4. ***Targeted recruitment and training (TR&T) is one element in a wider range of Community Benefits.*** Targeted Recruitment & Training (TR&T) outcomes are viewed as key Community Benefits with clear scope for use in public sector contracts.

4. Use of Community Clauses

- 4.1. Community Benefit clauses are most suited to works and services contracts.
- 4.2. The EU says that community benefit clauses (or social and environmental clauses) can be included in contracts, provided that suppliers who are **not** local are **not** disadvantaged or discriminated against and the contract complies with government procurement policy and Best Value.
- 4.3. Community benefit clauses **should be supported by strategic documents such as Community Plans**. We should therefore be clear about its role in social and economic development in our Best Performance Plan/Community Plan. This helps create an audit trail that legally links best value and procurement.
- 4.4. Wirral should be able to use procurement to help deliver some of its core policy objectives. Our procurement activities should contribute to the economic, social and environmental well being of the authority. Wirral's **Sustainable Community Strategy** paves the way for us to include community benefits which will deliver:-
 - A strong local economy for Wirral;
 - Safer, stronger communities in all parts of the borough;
 - The best possible health and well being for all families and individuals;
 - Excellent life chances for children and young people;
 - A high quality living and working environment;
 - Sustainable, appropriate housing for all.
- 4.5. To be included in any evaluation process, Community Benefit requirements must be part of the core purpose of the contract and included as a core part of the contract specification. For example, in a Construction contract, training and recruitment may be included as part of the specification and award criteria. For example. employment of a certain % of young trainees or % of unemployed people (so the "Community Benefit" = targeted recruitment and training). This would be acceptable providing, for example, that we did not specify that they must be **local** people, which would be discriminatory as the 'local' element would not accord with EU Treaty principles.

For example, an award criterion based on the percentage of **local** people employed

We must not discriminate e.g. we should state or imply that Community Benefits can be achieved from **anywhere** in Europe; or when specifying benefits with a local impact we must enable **any** bidder to comply;

The one word we definitely must **not** use is "Local". For example, reference must not be made to the "use of local businesses" or the "use of local long-term unemployed".

It may be a good idea to write in relevant "Recitals" from the EU Consolidated Directives verbatim into the ITT documents. This will provide the policy context for the community benefits within which the procurement is taking place.

We can insert relevant community/social criteria either as a benchmark to compare socially responsible offers with each other, or as a way of introducing a social element and giving it a certain weighting.

- 4.6. As obvious as it sounds, any clause must actually provide a benefit.

Clauses must be included in the OJEU contract notice if the clause is to be included in the contract.

An overriding principle is that EU Regulations do not permit favourable treatment to be given to suppliers from particular countries, local business, SMEs, Mutuels, voluntary, community and faith sector organisations etc in the evaluation and award of business. All EU member states are viewed as a single market and there should be no discrimination on the basis of location. However, measures to remove barriers to their participation and improving access to tendering opportunities and information can be used. These are highlighted in **Section 5**.

The European Commission has identified three categories of “social consideration”:-

1. measures that will ensure compliance with fundamental rights and the principle of equality of treatment and non discrimination;
2. measures that will ensure compliance with national legislation on social affairs and Community directives in the social field;
3. measures for the integration of disadvantaged or unemployed people with a view to combating unemployment and social exclusion.

(Introduction - Interpretative Communication October 2001)

In February 2005 the Office for Government Commerce published its “Efficiency Programme: Sustainable Procurement statement”. It explains:

“Sustainable procurement refers to all “policy-through procurement” issues – where public procurement is seen as a lever to achieve wider policy objectives. These include: environmental or “green” issues; the creation of jobs and wealth in regeneration areas; opportunities for Small and Medium Enterprises (SMEs) and Ethnic Minority Businesses (EMBs); fair trade and the inclusion of developing countries; adult basic skills; disability, race and gender equality; innovation; and the promotion of ongoing and contestable supplier markets. These issues are sometimes also known as “exogenous issues”.

5. Practical Steps

5.1. Examples of community benefits include:

- Social benefits - targeting recruitment at the long term unemployed, accessibility for disabled users to resources, monitoring ethnicity within organisations;
- Economic benefits - encouraging bids from SMEs*(see below), Mutuels *, BMEs and voluntary, community and faith sector organisations;
- Environmental benefits - use of sustainable materials, use of low emission vehicles, local supplies reducing food miles.

5.2. Link to selecting SMEs *

Wirral wants to do business with SMEs that provide quality goods, works and services at a cost that provides the best overall value. We cannot guarantee any supplier future business or discriminate in favour of Wirral SMEs during any procurement. However, we would like to break down any barriers that SMEs may be experiencing in doing business with us:-

- Put response times in specification e.g. must be able to attend urgent meetings on site at 1 hour’s notice;
- Advertise all tender opportunities on our website;
- Hold ‘Meet the Buyer’ type events to encourage local participation;
- In addition to The Chest, consider additional option to advertise locally;

- Engage the community and encourage participation by the voluntary, community and faith sector;
- Inform local companies (who may have previously expressed an interest) to look out for upcoming opportunities on our website, and to register on The Chest;
- Split requirement into Lots wherever possible so as to encourage smaller suppliers to tender for specific elements more in keeping with their capacity;
- Keep financial standing requirements proportional to the contract – do we really need 3 years full accounts for a contract worth £50,000?

5.3. **Mutualisation / Mutuels**

- This term refers to the increased use of mutual organisations to provide services under contract to local authorities.
- Mutual organisations are those whose members have joined together with a common purpose to provide a shared service of mutual benefit. They are legally constituted in a number of ways. Mutual business structures include co-operatives, building societies and other employee-owned businesses.
- The Council will encourage and support the creation of mutuels or cooperatives, where practical, to provide value for money council services.
- In doing so, consideration will be given to the removal of 'lower limit' clauses and division of services into smaller 'lots', whilst ensuring compliance with EU and UK legislation.
- The Council will endeavour to provide an environment for stable funding/finance arrangements, for mutuels, through its commissioning and procurement activity.

5.4. **Community benefits could include opportunities to:**

- lower unemployment and provide good quality jobs;
- create economically successful areas;
- develop safer and stronger communities;
- develop healthy communities;
- provide good facilities for young and old;
- Not for profit organisations supported;
- Community organisations in receipt of resources (this could be by using a village hall for example);
- Members of the local community involved in the management of the tender;
- Collaborative working with voluntary, community and faith sector organisations;
- Volunteers involved;
- Volunteers trained;
- Added value– complementary services being delivered to the community in parallel to the contract (this could be the organisation is already delivering a parenting programme funded by a charitable trust that will complement and enhance the contract).

5.5. **Local Employment**

Whilst on one hand it may be acceptable for Wirral to maximise local employment, and have this as a policy statement, as far as EU tendering is concerned we have to be careful not to discriminate against businesses outside of our area. So careful consideration needs to be given as to how we translate a policy of, say, 'local jobs' into a non-discriminatory contract requirement e.g. targeted recruitment and training.

Examples of promoting "Employment Opportunities" could be:-

- promotion of youth employment;
- promotion of employment of persons from disadvantaged groups;

- promotion of employment opportunities for the long-term unemployed;
- promotion of employment for old-age unemployed (older workers).

5.6. OJEU Notice

The inclusion of social requirements in contract conditions must be mentioned in any OJEU notice. The following model wording is suggested (this would typically go in the section "other information") and lets us reserve the right to take account of social and environmental issues in the award of the contract:-

"Under this procurement exercise the contractor will be required to support the authority's economic and social regeneration objectives. Accordingly, contract performance conditions may relate in particular to social and environmental considerations."

Where recruitment is included as a requirement of the contract, the CPV for "labour recruitment and the provision of personnel services", CPV 74500000-4, should be included in the list of CPV codes given in the OJEU Notice.

5.7. Pre-Qualification Questionnaire

Where recruitment and training is included as a requirement of the contract the following questions can be asked and scored in the section of the PQQ that assesses technical capacity and ability. Note, however, that any PQQ questions relating to Community Benefit clauses should concentrate on experience/capacity and not actual proposals (which are evaluated in the tender document):-

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

- *generating employment and training opportunities for long-term unemployed people;*
- *providing training opportunities;*
- *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?"

5.8. Specification

Clauses should be included in the Community Benefits section of a specification. The specification must be considered on a case by case basis. Some key considerations to take into account are as follows:-

Requirements Relevant to the Specific Contract

What requirements are relevant to this specific contract, taking account of:

- the nature of the works or services to be delivered;
- the scale and duration of the contracts;
- the policy priorities and the need for the opportunities that could be provided;
- the most appropriate way to describe and measure the requirement;
- specifying a clear minimum requirement in the tender documentation and contract so that tenderers all bid on an equal basis;

- proportionality, i.e. ensuring the burden placed on the supplier is proportionate to the potential community benefit.

5.9. Collecting Community Benefits Information in the Tender

What information is required from the bidders at each stage of the award process and how will this be evaluated? It is easier to compare bids if information is provided in a standard format. Community Benefit provisions in the tender must be judged only on objective and measurable outcomes. Authorities must only collect information that will be used in evaluating the tender.

Chapter 6, National Procurement Strategy for Local Government:-

“Under the Local Government Act 2000, councils are required to prepare a community plan (Community Strategy as defined in the Act) and have powers to promote the economic, social and environmental wellbeing of their communities. Provided that there is compliance with EU public procurement regulations and Best Value, councils can work with suppliers to realise “community benefits” of this kind through their procurement activities”.

“Councils should invite bidders for partnerships to include in their offers optional, priced proposals relating to the delivery of specified community benefits (economic, social and environmental) that are relevant to the contract and that add value to the council’s community plan. This might include employment, training and enterprise opportunities in the locality and local multiplier effects. Impacts upon voluntary sector partners and the sustainability and equality issues of the area may also be factored into priced proposals where relevant to the contract”.

(Above shaded areas are mentioned in Wirral’s Corporate Procurement Strategy 2010 (App C))

6. Conclusions

- 6.1. Rather than being an obstacle to the inclusion of Community Clauses, the EU is showing increasing interest in writing guidance outlining the benefits of socially responsible procurement.
- 6.2. It is accepted in government that within the procurement field there is a need for a cultural change – that procurement professionals are not aware that they are able to, or are unfamiliar with, how to consider the wider social policy aspects in specific procurement exercises. A lot of us simply don’t know that we are able to think about some of these issues within the procurement framework, and have bought the myth that somehow it is not legal.
- 6.3. With regards how to action the inclusion of social clauses, it is accepted that there are technical difficulties. For instance, when faced with two procurement proposals, each proposing different social benefits, how can they be to be compared and scored?
- 6.4. Two potential barriers to the use of such clauses can be foreseen. Firstly, there is the cultural challenge required from procurement professionals. Secondly there is the technical challenge of how to value important potential social impacts that do not have market values.

Departments engaged within the commissioning and procurement process should seek the support of Corporate Procurement for further advice.

Case Law

The case law around social considerations in procurement and European legislation goes back some way. For example:

- *Beentjes* (1987): The European Court of Justice decreed that it was lawful to include contract conditions that related to a particular area because these were mentioned in the OJEC notice. This demonstrates that social considerations should be included in any OJEU notice.
- *Nord-Pas-de-Calais*: If two bids are scored equally on the basis of being most economically advantageous, then secondary requirements (e.g. some social factors) could 'tip the balance'. In practice, however, two bids rarely (if ever) score exactly equally.
- *Finnish Buses* (2002): A tender specified a requirement for low emission standards. The court agreed that, because this standard had been adopted for benefit of whole population, it was permissible. This demonstrates how including social consideration in policy is vital.
- *EVN* (2003): During a procurement process for electricity, it was stated that a certain percentage must be from a renewable source. This was impossible to deliver through the grid and so was struck down by the courts. The conclusion is that elements must only be specified if they can be properly monitored and verified.
- *Interpretative Communications: Environmental (July 2001), Social (October 2001)*: These described how environmental and social issues could be included in requirements for technical capacity, although they were overtaken by *Finnish Buses* case law. They emphasise that purchasers should not deal with specifications based on locality.