

BUY AND MAKE A DIFFERENCE



The Government is committed to improving the lives and work prospects of citizens and to taking actions on many fronts to support this commitment. For example, we want to create equality of opportunity for all and to work towards a world-class skills base by 2020.

With an annual expenditure of over £150 billion, public procurement has an important part to play in furthering the Government's agenda for tackling social issues. This short guide, with examples, shows how social issues can be legitimately addressed within the policy and legal framework governing public procurement, information on which is at the end of this guide. The guide illustrates the positive steps that procurers can take at the various stages of the process.

For more detailed guidance, please refer to *Social Issues in Purchasing*: www.ogc.gov.uk/documents/Social_Issues_in_Purchasing.pdf

For an overview of public procurement, please see *Introduction to Public Procurement*: www.ogc.gov.uk/documents/Introduction_to_Public_Procurement.pdf

Public procurers must ensure that their procurement activities meet legal obligations under the public sector equality duties (relating to disability, gender and race equality). A separate practical guide on what these duties mean for public procurement will be published in due course.

Central government has agreed a Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting, with trade unions and private and third sector employer organisations. Specific guidance on the implications of the Joint Statement for public procurers is currently being prepared.

The Government is uniquely placed to drive innovation through the use of public procurement. Innovative approaches and solutions through public procurement can also be used to achieve social outcomes and objectives. For more information, please consult the Office of Government Commerce (OGC)/Department for Innovation, Universities and Skills (DIUS) publication *Finding and Procuring Innovative Solutions*.

SOCIAL ISSUES AND WHAT THE GOVERNMENT BUYS

Though sometimes overlooked, by far the most important connection between procurement and social issues is to do with what the Government buys – hospitals and schools, healthcare, social care, training, prisons, school meals, and so on. Most people would probably agree that most of the things the public sector buys are for social purposes. Procuring goods and services that work well and are good value for money is what good procurement is all about.

This guide also covers the situation where social issues are relevant but not to the direct purpose of procurement, for example a contract condition about helping the workforce that would in turn enhance their performance and that of the contract.

ADDRESSING SOCIAL ISSUES IN PUBLIC PROCUREMENT

There is more or less scope to address social issues, depending on the stage of the public procurement process.

The stages are:

- pre-procurement – when identifying the need, approaches and considering the market
- when deciding the requirement – specification stage
- when selecting suppliers to invite to tender – selection stage
- when awarding the contract – award stage
- in the performance of the contract – contract conditions and relationship management

There is most scope to consider social issues at the earlier stages of the procurement process – when identifying the need, establishing the business case and defining the specification.

When looking at how social issues are relevant it may be helpful to speak to other organisations which specialise in this area, or bodies such as Trade Unions and the Equality and Human Rights Commission, which have researched case studies and other useful material that they are happy to share.

Example: Sustainable procurement policy

Contracting authority A has introduced a procurement policy which signals its commitment, among other things, to addressing diversity and fair employment practices through procurement, by taking appropriate action at each of the stages. Such policies have to be consistent with the legal framework governing public procurement, including relevance to individual procurements, as covered in detail in *Social Issues in Purchasing*.

IDENTIFYING THE NEED, CONSIDERING THE MARKET AND ENGAGING WITH IT

This is the stage at which there is most scope for taking social considerations into account. Social issues can be addressed both through what is bought, for example a service catering specifically for ethnic minorities, and indirectly, for example, by making the requirement easily accessible to small to medium-sized enterprises (SMEs) and Black Asian and Minority Ethnic (BAME) owned businesses.

Example: Promoting contract opportunities across the business community

Contracting authority B engages with all sections of the business community pre-procurement. It advertises its contracting opportunities widely and circulates them to community groups to encourage participation, including from those businesses providing employment to significant numbers of women and BAME groups.

Public procurement is always intended to fulfil a need and achieve defined benefits. In developing the business case, contracting authorities should take account of wider benefits including social ones, in accordance with the *Treasury Green Book*. A simple guide to the *Green Book* and whole-life costing, taking into account wider social benefits can be found at: www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_money_sustainability.cfm

Contracting authorities should consult stakeholders, including customers and interest groups, to help them understand what is needed. Authorities should also engage in a timely and effective way with suppliers to understand what the market can provide. They should consider which social issues or obligations are likely to be relevant to what they need to buy.

Example: Healthier school meals

Authority C wanted to promote healthier eating in schools. In identifying needs, the authority, with the help of the Soil Association and a nutritionist, developed menus that would avoid foods high in fats, sugar or salt and at the same time make the most of local and seasonal produce. To help develop the business case, prior to advertising the procurement the authority held an open meeting where potential suppliers could meet the authority, which helped it to assess the market and decide how best to bundle the requirement, for example into different categories of food. An advert was then placed in the *Official Journal of the European Union* and in the local press for good quality fresh and/or organic food. The advert also stated that Fair Trade options or equivalent would be welcomed.

Example: Engaging the community and encouraging participation by the voluntary and community sector

Engaging with the community as customers for the regeneration of a housing estate enabled their needs and experiences to be reflected in the requirement. Early dialogue with a range of suppliers before developing the business case showed that a local voluntary and community sector (VCS) body had previously implemented a similar project on a neighbouring estate and had succeeded in achieving considerable community buy-in. By engaging with potential suppliers including the VCS at this stage, contracting authority D established a good understanding of the capacity and potential of the market. The authority then took steps to promote the requirement to a range of suppliers including the VCS.

Authorities should also consider whether it would be appropriate on the basis of their user requirement and specification to reserve a contract for organisations providing supported employment opportunities to disabled people.

Further details on reserving contracts can be found at: www.ogc.gov.uk/documents/supported_factories_and_businesses.pdf

SPECIFICATION STAGE

Social considerations can be included in specifications where they are directly relevant to the subject matter of the contract.

Core requirements are essential parts of a contract, reflected in both the specifications and in the conditions of the contract. A social issue can be a core requirement and reflected in the specifications, provided it is central to the subject of the procurement and consistent with the public procurement Regulations.

Example: Fluency in ethnic minority languages

In an ethnically diverse area, contracting authority E wanted to ensure that information about its services was accessible to all racial groups. To address this issue, the authority chose to outsource a helpdesk to provide assistance to those people with little or no proficiency in English. It therefore included requirements for staff working on the helpdesk to be fluent in languages other than English.

It is also possible to describe specifications in terms of performance/functional requirements and to specify production processes provided, in both cases, that they are relevant; if in doubt, seek legal advice. Any social requirements reflected in the specification should be transparent and should not discriminate against suppliers such as SMEs or those from outside the UK.

Example: Body armour suitable for men and women, including those from ethnic minorities

In a police service procurement for the supply of body armour, the specification requires the contractor to accommodate different requirements of men and women, including different requirements of ethnic minority men and women.

Example: Procuring an employment agency contract that requires measures to attract women into the fire and emergency service

A local fire and emergency service procures an external agency to promote employment with the service and to carry out the initial stages of recruitment. Women are significantly under-represented at every level within the service. The specification requires the contractor to take various steps permitted under the Sex Discrimination Act to increase the proportion of applications from women.

Example: Mobile information centre to reach traveller families

A procurement to operate mobile neighbourhood information centres included a requirement to reach traveller families and encourage them to make more use of local services.

SELECTION STAGE

This is the point at which suppliers are selected for the next stage of the procurement process, for example, Invitation to Tender.

The public procurement Regulations contain an exhaustive list of references or evidence that potential suppliers can be required to provide in order to demonstrate their technical capability in relation to the nature, quantity and purpose of the contract in question.

If a contract requires specific know-how in the 'social' field, specific experience may be used as a criterion to prove the suitability of potential suppliers with regard to technical and/or professional ability. Contracting authorities can ask potential suppliers for relevant evidence of technical and/or professional ability, for example, language skills or cultural awareness.

Where relevant, contracting authorities can also consider potential suppliers' track record for delivering similar contracts. Thus, candidates can be rejected on grounds of grave professional misconduct, which might include, for example, a serious breach of equality legislation.

Example: Workforce skills as a selection criterion

At selection stage, in assessing contractors' capability to deliver its contracts, public sector transport authority F uses skills criteria relevant to the subject of each contract, case by case. Potential suppliers which cannot demonstrate the adequacy of their recruitment and training, as relevant to the suppliers' technical or professional ability to deliver a contract in question, are excluded.

Example: Pre-qualification conditions

In an example of what not to do, a group of contracting authorities, G, has developed a common standard for equalities in public procurement, which is used to decide who to invite to tender or put on their approved lists. Firms are asked to meet various criteria including identifying and addressing imbalances in job applicants and employees according to gender, ethnicity and disability. As the criteria are unlikely to be relevant to every procurement, the standard should not be imposed in blanket fashion, which would run the risk of legal challenge.

AWARD STAGE

A contract should be awarded to the tenderer offering the best value for money – that is, the optimum combination of whole-life costs and quality to meet the authority’s requirements. Value for money in this context equates to the ‘most economically advantageous’ for the contracting authority (not wider), in the parlance of the UK Regulations implementing the EU Procurement Directives.

The Regulations list a number of criteria, by way of example, that contracting authorities can use to identify which tender would be the most economically advantageous. These award criteria include price, delivery or performance dates, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, after-sales service and technical assistance.

Criteria involving social considerations may be used to determine the most economically advantageous tender where they provide an economic advantage for the contracting authority that is linked to the product or service which is the subject matter of the contract.

Where there are two or more bids which are equal on value for money grounds, it is possible to use ‘additional social award criteria’ to determine between them; legal advice should be sought first, as it is very rare for bids to be equal in this way.

Example: Social award criteria

In a procurement to establish a centre to provide minimum literacy qualifications to adults, contracting authority H included award criteria related to support for those having difficulty keeping up.

CONTRACT CONDITIONS AND RELATIONSHIP MANAGEMENT

1. Contract conditions and social clauses

The term ‘social clauses’ refers to special conditions relating to the performance of a contract, which address social issues.

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with European Community law and are indicated in the contract notice or

specifications. Contract conditions must relate to the performance of the contract in question. They should be relevant and able to be met by whoever wins the tender from the time at which the contract starts.

They should not be disguised technical specifications or selection or award criteria. If, for example, particular skills or qualifications are needed for a contract, these should be considered at the selection stage; additional training, not essential for a contract, by suppliers can be agreed on a voluntary basis once the contract has been awarded.

Contract conditions must not discriminate directly or indirectly against national or non-national tenderers. Contract conditions that require changes to the organisation, structure or policy of a supplier established in another Member State might be considered discriminatory or a barrier to free trade. Value for money should be maintained – contract conditions should be supported by the benefits they accrue set against the cost of achieving them. Care should be taken to avoid the imposition of blanket clauses on suppliers, which could be regarded as burdensome and might deter suppliers from competing for government work.

Contracting authorities have a wide range of possibilities for determining the contractual clauses on social issues. They may in particular be intended to favour on-site vocational training, the employment of people experiencing difficulty in achieving integration or the fight against unemployment.

Example: Targeted recruitment and training

In a works procurement for the construction of a new community centre, authority I included a contract clause that: “ten per cent of the person-weeks required to complete all of the works is to be delivered by new entrants that have an apprenticeship, trainee or employment contract with the contractor or a subcontractor and are engaged in a training programme that is accepted by the employer.”

In this example, ten per cent is acceptably proportionate; 50 per cent would not be. Costs and benefits need to be weighed up case by case.

2. Relationship management with suppliers

There may be opportunities post-award for contracting authorities to work outside the formal procurement process, on a voluntary basis, to promote the importance of social issues such as equality and adult skills to their suppliers and supply chain.

This can be an effective means of influencing suppliers’ culture, and helping to ensure that it fits with the contracting authority’s own set of values and needs.

FURTHER READING

For detailed guidance, see the OGC’s Social Issues in Purchasing at: www.ogc.gov.uk/documents/Social_Issues_in_Purchasing.pdf

The European Commission has also published an Interpretative Communication on social issues in procurement at: eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0566en01.pdf

For detailed guidance on innovative procurement, please see: [www.ogc.gov.uk/documents/Finding_and_Procuring_Innovative_Solutions_\(3\).pdf](http://www.ogc.gov.uk/documents/Finding_and_Procuring_Innovative_Solutions_(3).pdf)

FURTHER ENQUIRIES

Questions on this guidance should be addressed in the first instance to the OGC Service Desk on Tel: **0845 000 4999** or by Email to: servicedesk@ogc.gsi.gov.uk



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Expert public procurement consultancy for Buyers and Suppliers at your service



PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The PASS service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

PASS CONSULTANCY

BIP's *Procurement Advice and Support Service (PASS)* provides organisations with access to experts in public procurement practices and procedures, thus helping you to develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

The PASS consultancy's mission is to help you to deliver the best in government procurement through:

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training

PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

PASS ONLINE GUIDANCE

The PASS service provides online guidances on all aspects of the public procurement process and legal requirements: www.bipsolutions.com/html/briefing.php

PASS – EFFECTIVE DISPUTE MANAGEMENT

Contractual and procurement-related disputes are time-consuming, expensive and unpleasant. They can destroy client/contractor relationships, can add substantially to the cost of the contract, and can nullify some or all of its benefits or advantages. They can also have an impact on value for money. It is therefore in everyone's interest to work at avoiding disputes in the first place. Inevitably, however, disputes do occur and when they do the importance of a fast, efficient and cost-effective Alternative Dispute Resolution (ADR) procedure cannot be overstated. If a dispute arises, it is important to manage it actively and positively and at the right level in order to encourage early and effective settlement. Unnecessary delays and inefficiency can lead to rapid deterioration in relations and entrenchment of opinions. ADR through PADRE mediation involves the use of a trusted expert third party and is an effective alternative to litigation. PADRE mediation is provided by experts in contracting and public procurement. If you would like more details on how PADRE can help your organisation and become your mediation service of choice, telephone the PASS team on **0845 270 7055** or email pass@bipsolutions.com.

PASS HEALTH CHECK

The PASS service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed *PASS Mark Health Check Outcome Highlight Report (OHR)* that outlines areas of strength as well as those requiring further attention, and provides an outline *Project Initiation Document (PID)* designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

PASS IN-HOUSE PRESENTATIONS

PASS consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: pass@bipsolutions.com



The *PASS Mark Health Check* is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

For further information on the **PASS** service, contact our **PASS Team** on **0845 270 7055**, email pass@bipsolutions.com or visit www.bipsolutions.com/pass/