



Health and
Social Care

HSC Social Clauses

Engagement Exercise

13/03/2014

Purpose of the workshop

To gather perspectives of the Local Commissioning Group (LCG) members in relation to the use of social clauses in HSC procurement and the added social value/benefits that social clauses could bring to the community.

Definition: NI Public Procurement

Public Procurement in Northern Ireland is bound:

- Legislatively – Public Contract Regulations, 2006 (Amended 2009, 2011)
- Policy – NI Public Procurement Policy, Version 9

The NI Public Procurement Policy sets out the Northern Ireland Executive's definition of Public Procurement as:

“...the process of the acquisition, usually by means of a contractual arrangement after public competition of goods, services, works and other supplied by the Public Service”.

Definition: Best Value For Money

The NI Public Procurement Policy details what the Executive determines the concept of Best Value For Money” to be:

“the most advantageous combination of cost, quality and sustainability to meet customer requirements”.

- **Cost** – whole life cost
- **Quality** – specification is fit for purpose and sufficient to meet the customer’s requirements
- **Sustainability** – economic, social and environmental benefits

This definition enables public bodies to compile a procurement specification which includes social, economic and environmental policy objectives with the procurement process.

Source: NI Public Procurement Policy (Version 9)

Principles: NI Public Procurement

The Northern Ireland Executive has agreed 12 guiding principles that govern the administration of all public procurement in Northern Ireland.

1. Accountability
2. Competitive Supply
3. Consistency
4. Effectiveness
5. Efficiency
6. Fair-dealing
7. Integration
8. Integrity
9. Informed decision-making
10. Legality
11. Responsiveness
12. Transparency

Source: NI Public Procurement Policy (Version 9)

Programme for Government

The Programme for Government for Northern Ireland (2011-2015) states that the Northern Ireland Executive will include;

‘Social Clauses in all public procurement contracts for supplies, services and construction’.

This will be done through:

- Developing a Procurement Guidance Note on social clauses
- Modify the Procurement Board Strategic Plan to incorporate targets for the implementation of social clauses by Departments

Source: NI Programme for Government 2011-2014, Page 54

Procurement Guidance Note (PGN) 01/13: Integrating Social Considerations into Contracts

In November 2013, CPD issued PGN 01/13 which outlines the benefit of including social considerations in public procurement.

This document advises that social considerations can be incorporated into contracts by either:

- linking them to the ‘subject matter’ of the contract as part of the award criteria; or
- by using ‘contract performance clauses’

However, PGN 01/13 highlights:

“The delivery of social considerations in contracts is not well established. To select Contractors based on their previous experience of delivering social considerations is likely to limit competition. It is recommended that selection on the basis of previous experience of social considerations is not undertaken at this time.”

** Expert procurement and legal advice is advised as early as possible in the deliberations on social considerations given the complex legal framework for public procurement.*

DHSSPS Procurement Strategy

A DHSSPS procurement strategy is in development, which includes targets for inclusion of social clauses in contracts.

A Social Care Procurement guide is also under development which will complement the strategy.

This guidance will include the development of a set of values and principles for Social Care that reflect the unique nature of this provision of services 'to the person'.

HSC Social Clauses Group

In November 2013 a HSC Social Clauses Group was established consisting of representatives from;
HSCB, PHA, HSC Trusts, BSO and DHSSPS

Purpose of the group:

- Consider how HSC organisations can use social clauses
- What they will look like in HSC Procurement
- Share guidance and practical advice re social clauses for staff involved in the process

Definition of a Social Clause

The Northern Ireland Assembly have noted that a social clause is:

‘a requirement within procurement contracts or processes which allow the contract to provide added social value through fulfilling a particular social aim’.

For example;

A contract which will lead to new employment could ensure that the long term unemployed from the local community are employed.

Northern Ireland Assembly (2009) Research Paper-Social Clauses in Public Contracts

What can social clauses do?

- Enforce the requirement for measurable outcomes and outputs by the successful service provider through the inclusion of social clauses in organisations business objectives and tender specification (when relevant to subject matter)
- They can be used in tandem with other approaches, e.g. To include measurable requirements in a specific contract as a means of implementing legislation
- Help secure value for money by providing additional benefits to the community alongside the contracted service
- Enables the awarded organisation to innovatively deliver on the social clauses to achieve these outcomes



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Social clauses are not

Social clauses are a method of defining additional community benefits that a service can provide alongside the agreed outcomes and outputs of the actual service (that will be agreed in the contract). They are **NOT** designed to:

Disadvantage one organisation / sector over another

The Public Contract Regulations 2006 legislation requires Contracting Authorities to uphold:

- EU Treaty Principles of: Equal treatment, Non-discrimination, Mutual Recognition, Transparency and Proportionality
- EU Freedoms: Movement of People, Goods and Services; and Establishment

Therefore social clauses **cannot** favour:

- Local providers over incoming (outside the locality, region or nation) providers
- Any sector (Community, Voluntary or Social Economy Enterprise) over another (Private)

CPD Sample Performance Clauses

The Central Procurement Directorate (CPD) has agreed a set of standard performance clauses which if adopted by all HSC organisations will demonstrate good practice in HSC Public Procurement.

These social clauses should demonstrate sustainability (economic, social and environmental benefits) and be deliver through;

- Being linked to the performance of the contract
- Relevant to the subject matter of the contract (and appropriate to the size/term of the contract)
- Must not confer unrestricted freedom of choice on Departments;
- Must be set out in the contract notice and tender documentation and;
- Compliance with fundamental principles of EU law

CPD Sample Performance Clauses

Central Procurement Directorate (CPD) has developed a set of Sample Performance Clauses that represent the minimum that could be achieved.

Economic:

- Audit accounts
- Access to subcontracting opportunities
- Charging and Invoicing
- Payment of subcontractors
- Fair Treatment of Suppliers

Environmental :

- Yet to be issued.

Social:

- Equal Opportunity
- Health and Safety
- Essential Skills Training
- Employment / Work Experience Opportunities
- Apprenticeship Opportunities
- Student Work Placement Opportunities
- DEL Supported Trainees

Draft Performance Indicators – Social Care Service Contracts

The Public Health Agency has developed a number of draft performance management indicators which may be considered in contracts, including;

1. Contracted services must deliver services from facilities appropriate and accessible to clients in the geographical area of the contract
2. Providers must actively engage with the community and other organisations to ensure any benefits from working collaboratively can be realised
3. Actively promote the involvement of volunteers in the organisation and provide evidence of learning and development opportunities that have been provided to volunteers recruited

The Western Health and Social Care Trust have included a social clauses in one of their larger social care contracts;

'The provider will facilitate two four week placements (or a combination of longer term placements which are equivalent) per £100,000 to young people throughout the duration of the contract period to provide work experience opportunities.'

Beyond Social Clauses – The Community Benefits Model

The Community Benefits Model has been adopted in Wales and requires tenderers to submit a Community Benefits Plan detailing how they would deliver “Community Benefits” through the contract. The CBP would not be evaluated and scored as part of the tender process. This approach is in addition to the use of Social Clauses within the contract terms.

Pros:

- Plans could compliment the key social requirements a Contracting Authority would be expecting providers to deliver as set out in the contract terms and conditions
- Provides an opportunity to HSCNI to deliver greater innovation
- Additional achievable social value to local communities alongside the contracted service

Cons:

- Legal implications of applying such an approach within the public procurement environment of the region

Social Value creating Community Benefits

Social value is discussed with regard to the delivery of community outcomes. 'Communities' is meant in a broad sense to include all sectors of an area touched by commissioning, whether that is people in certain groups, social enterprises, or businesses. By using social value to describe community benefits, commissioners can specify measurable outcomes that can be used as evaluation criteria in the procurement process, and as part of contract compliance.

Source: NICVA and Centre for Economic Empowerment: Social Clauses in Northern Ireland: A Research Paper (2013), Page 9

Options - Where might we go

- 1) Agree a set of standard social clauses which demonstrate good practice which are complimented by enhanced contract specific social clauses. These social clauses would be included at pre-procurement stage and become Terms and Conditions of the contract.
- 2) Adopt a community benefits plan approach, that requires providers to consider and identify what community benefit their contract will deliver, and submit this with their tender application documents. Whilst not considered at the contract award stage is expected that the social value identified will be delivered and become part of the contract objectives for the successful provider
- 3) Develop criteria in the selection/award criteria section of the tender, related to the service objectives, relative to social value that will be considered/scored as part of the award of contract (Further assessment will be required re legal considerations)
- 4) Other options?

Any option chosen must be subject to legal review

Public Procurement Awareness Sessions

The Public Health Agency (PHA) held a number of Procurement Awareness Sessions which were open to prospective providers/tenderers who may have been interested in applying for future PHA tender awards.

Information is now available from these sessions on;

- Information and Guidance on who can apply, consortium bids, submissions, scoring, grant aid funding
- Contact information for further advice and support
- Frequently Asked Questions

Public Health Agency website - <http://www.publichealth.hscni.net/contracts>

For more information

Contact:

Maurice Leeson

Children's Services Planning Professional Advisor
Health and Social Care Board

Email: Maurice.leeson@hscni.net

Telephone: 028 9055 3972