



**Delivering Community Benefits through Procurement:**

**A Guidance Policy**

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### Community Benefits through Procurement

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## 1.0 Introduction

*"The first question that we should ask when developing any contract specification should be: 'Can we include a community benefit clause?'"* John Swinney, Cabinet Secretary for Finance and Sustainable Growth March 2010.

### 1.1 What are Community Benefits?

Community benefits is the term used to refer to a range of 'social issues' including targeted recruitment and training, equal opportunities considerations, supply chain initiatives, awareness raising programmes and community engagement activity which contribute more widely to sustainable procurement. Sustainable procurement can be defined as a process that achieves value for money on a whole life basis and generates benefits not only to the organisation, but also to society and the economy whilst minimising damage to the environment. Delivery of Community benefits is a critical element of sustainability as delivering community benefit can be defined as meeting the needs of all people in existing and future communities, promoting personal wellbeing, social cohesion and inclusion, and creating equal opportunity for all.

While a priority for all Public Sector Procurement remains the achievement of Best Value, this does not always mean accepting the lowest price. It means obtaining the optimum balance between price and quality in delivering our Councils stated outcomes. The Council is committed to the promotion of sustainable development, which includes delivery of social, economic and environmental outcomes. Procurement activity supports delivery of these outcomes.

The Councils Shared Procurement Service - the Tayside Procurement Consortium has delivered for the Councils an overarching Sustainable Procurement Policy which was developed in response to the Scottish Governments Sustainable Procurement Action Plan. The aim of our Sustainable Procurement Policy is to embed sustainability principles, (social, economic and environmental) into all procurement within our Councils. This Community Benefits Policy is derived from and compliments that Policy

Community benefits integrate environmental, social, and ethical aspirations into our purchasing decisions. Through delivering Community benefits, we can realise added value when carrying out purchases of supplies, services and works. Our budget can be spent in such a way that, while delivering the operationally required outcomes, this spend activity can also contribute to delivery of our wider goals.

Community Benefits can be included in a wide range of contracts and can cover a variety of areas. This policy focuses on the development of community benefits in the following areas

- **Supplier Development** including SME and social enterprises development activities and developing guidance to encourage local suppliers to compete for council contracts.
- **Employment and Skills Activity** ; (Targeted Recruitment and Training) including activities to secure new employment opportunities, share vacancies and secure work experience opportunities
- **Community and Awareness Raising Activity**; including development of awareness raising activity, community programmes and donation of materials

The sample documents in this policy have been developed to support community benefit activity secured from capital design, build and maintenance programmes as these are most likely to be considered in the first instance but can be amended to suite other kinds of contracts.

## **1.2 Background to Use of Community Benefits in the Scottish Public Sector**

The Scottish Government is clear that public sector organisations including local authorities should be using their procurement activity to leverage community benefits for the communities they serve. The Local Government in Scotland Act 2003 provides local authorities with the express power to deliver outcomes that it considers likely to achieve the well-being of the whole or any part of its area and/or all or some of the persons within that area. This provides the basis for the use of Community Benefit clauses where the activity is directly relevant to the product or service being procured and helps Council deliver its key policy objectives.

The Community Benefits in Public Procurement Report (February 2008) formalised guidance by advising that mandatory clauses can be incorporated into public contracts in compliance with legal, policy and value for money obligations. Specifically indicating that clauses can be legal if they comply with European Community Treaty Principles of equal treatment and proportionality.

This means that Community Benefits requirements can be legally added to 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. This means that terms such as *support for local labour* and *local business* cannot be included as mandatory elements but can be used for monitoring. These requirements must also be part of the core purpose of the contract and must provide benefit to the Council.

Given the current economic climate there is a need to consider how maximum benefits can be secured from this funding to deliver wider social and economic benefits. The introduction of a Community Benefits through Procurement Policy responds to national guidance and best practice from elsewhere in Scotland which has demonstrated that this approach delivers value for money without being detrimental to the delivery of services and projects

In addition to procurement strategy there is an expectation that Local Authorities particularly in the current climate should use their position as large procurers to contribute to the UK and Scottish Government's Welfare to Work agenda. This is highlighted in the Scottish Government's Youth Employment Strategy which directs public sector organisations to target their available resources at tackling youth unemployment and indicates that the proposed Sustainable Procurement Bill will 'legislate for systematic use of community benefit clauses in public contracts'.

The approach outlined in this policy has been developed from following the advice provided by the Scottish Government and good practice examples from across Scotland including other local authorities and Clyde Gateway. At a local level, the Council has developed some expertise in the area of securing community benefit from public sector procurement through major infrastructure projects including Dundee House, the Gardyne College Redevelopment, and the New Olympia development.

### **1.3 Implementation of the Policy**

The Council spends a significant amount of public expenditure on capital projects and supplies, goods and services each year. This policy intends to ensure that maximum benefit can be ascertained from all this spend activity to deliver wider social, environmental and economic benefits.

The implementation of this Policy requires an assessment to be undertaken for each contract to determine where Community Benefits can be achieved and what aspect of community benefit activity is most appropriate for that specific contract. The inclusion of community benefit criteria in emerging standard documentation for procurement should help to ensure that outcomes are consistently implemented across particular kinds of contracts.

As discussed The inclusion of community benefits activity should continue to evidence Best Value (balance between price and quality), should be relevant to the product or service being procured and should support the Council in delivery of its key policy objectives.

For example the Single Outcome Agreement includes a commitment to provide more and better employment opportunities for our people. To support this outcome, it would be appropriate to include targeted recruitment and training clauses which could require the employment of new entrants into the labor market.

The intension of this policy is that consideration of community benefit becomes a mainstream part of the tendering process, along side other core considerations. The councils priorities along with the Local Government in Scotland Act 2003, provides local authorities with the express power to deliver outcomes that it considers likely to achieve the well-being of the whole or any part of its area and/or all or some of the persons within that area, This provides the basis for the use of Community Benefit clauses where suitable and legally permissible in all Council procurement exercises.

Use of Community Benefit clauses will be progressed on a case by case basis and used where suitable and permissible within current procurement legislation. The responsibility for including community benefit activity within appropriate commissions will be the responsibility of the project manager but in recognition of the specialist nature of community benefit activity support will be provided by the Central Procurement team.

### **1.4 Communication of the Policy**

Communication initiatives will include:

- Creating easy-to-find Community Benefits sections on the Councils' intranet site and the external website;
- Updating this policy on a regular basis or when circumstances determine is required

Training, awareness and consultation initiatives will include:

- Availability of Community Benefits training for staff with a significant input into the procurement process;

- Nominated contact point for help and assistance in implementing Community Benefits.

## 1.5 Aims & Targets

The aims of this policy are to:

- Ensure that in all relevant procurement processes, the officers responsible identify how best value can be achieved in the incorporation of Community Benefits.
- In specifying Community Benefits the Council is setting quantifiable and achievable outcomes.
- Ensure alignment with the National Policies and Best Practice Guidance.

The following specific areas are covered by the policy. Other elements of community benefits may apply to specific contracts and should be applied on a case by case basis.

### Supplier Development

Supplier Development is the term used to describe a range of activities which are designed to support Small to Medium Enterprises (SMEs) and Social Enterprises to develop and grow their businesses and be in a position to compete for Council and other contracts.

An SME is defined as a company that is a small or medium-sized company and is not a member of a large group. An SME has a turnover of up to 50m Euro per annum and has no more than 250 employees. The majority of private and social enterprise business operating in the Dundee area would be described as SMEs. The long term sustainable development of our SME base is vital. The Council recognises the need to support the development of the SME sector by developing a procurement approach which maximises their exposure to procurement opportunities.

A Social Enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that social purpose rather than being driven by profit for shareholders and owners. Social Enterprise is a business model which offers a combination of market efficiency and social and environmental justice. The Council supports the Scottish Government's policy on Social Enterprises and agrees that Social Enterprises have a valuable role to play in helping to create a strong, sustainable and socially inclusive economy in Tayside.

The Council is also concerned with measuring the impact of its procurement activity on the local economy. While inclusion of mandatory clauses which specifically supported local contractors would be in breach of the European Community Treaty Principles of equal treatment inclusion of monitoring requirements which measure the impact of procurement activity on local contractors in permissible. For these purposes local is defined as 35 miles from the Council head offices.

Comment [a1]: this needs clarified

Supplier development activity aims to

- Support the development of the local business sector by maximising their exposure to contracts opportunities – use of Public Contracts Scotland
- Provide a business development approach which provides suppliers with access to supplier development expertise

- Support SME's to increase their commitment to workforce training and development
- Make contracts accessible to local SMEs and social enterprises by, for example, breaking down larger contracts ,using a geographical lotting approach
- Encouraging the development of supplier consortia
- Increase level of spend in communities where major infrastructure works are located or impacted

Specific Activities and clauses which can be used to promote supplier development include

- Promoting the use of the Quick Quote function on Public Contract Scotland (PCS) for all lower value procurement activity below a threshold recommended at £50K and requesting that one of the quotes is secured from a local contractor
- Consider including for complex or capital programmes a monitoring requirement for contractors to report on the percentage of spend which is allocated to local subcontractors. This is particularly relevant in large capital programmes where lead contractors are often managing agents.
- Consider including for complex or capital contracts the requirement to advertise contract award and subcontract opportunities on PCS below a specific threshold recommended at £50K. This would be supported through the delivery of workshops to local SME and Social Enterprise Contractors to ensure that they are registered and have created profile on Public Contracts Scotland.
- To require successful contractors to contribute to the City Councils Supplier Development Programme and encourage mentoring opportunities for subcontractors as required.

The sample documents are attached which have been developed to support community benefit activity secured from capital programmes, these can be adapted to other kinds of contracts.

### **Supported Businesses**

In addition to measures in place to support businesses in general, Article 19 of the EU public procurement directive requires the Council to reserve at least one public contracts for supported businesses. This is enacted in Scotland by Regulation 7 of the Public Contracts (Scotland) Regulations 2012. This in practice allows us to restrict the tendering process for goods or services to supported businesses only. This policy aims to ensure that we reserve at least one contract for supported businesses and fulfil our social objectives in helping more disabled people into work.

### **Employment and Skills Activity**

Employment and skills activity refers to the range of measures which are put in place to secure additional employment and training opportunities for local people. This directly links to the Single Outcome Agreements commitment to provide more and better employment opportunities for our people.

This is particularly relevant in the current climate. The recently published Youth Employment Strategy identifies the importance of infrastructure investment in

supporting economic development with its potential to provide employment opportunities for people of all ages at a time when we face significant labour market challenges. The policy urges 'Using community benefit clauses to support employability and targeted recruitment and training through public sector contracts, with an increasing focus on supporting young people'; and advises of the government's intention to legislate for the systematic use of community benefit clauses within public procurement in its forthcoming Sustainable Procurement Bill.

As with the activity related to local contractors the Council is concerned with measuring the impact of its procurement activity on local employment rates. While inclusion of mandatory clauses which specifically require companies to employ local labour would be in breach of the European Community Treaty Principles of equal treatment inclusion of monitoring requirements which measure the impact of procurement activity on local labour rates and the requirement to advertise opportunities locally and work with local employability providers is permissible. For monitoring purposes local is defined as the furthest TPC Council location in miles from the TPC Office.

Specific activities and clauses which can be used to support employment and training are provided. These will not be suitable for all contracts and are more likely to be relevant to capital and service contracts

- The inclusion of for complex or capital programmes a monitoring requirement for contractors to report on the percentage of local labour employed on site. This is particularly relevant in large capital programmes where lead contractors are often managing agents.
- The inclusion of targets for minimum numbers of new employment starts secured through the contract. New starts would be defined as someone who had been previously unemployed, an apprentice or a leaver from a recognised training programme - not someone coming directly from another job.
- The inclusion of minimum starts for new apprentices and measure engagement of existing apprenticeships. Note that given the duration of apprenticeships this will only be appropriate for some contracts.
- The inclusion of a requirement to share the details of new recruitment requirements with Jobcentre Plus or other employability provider. For construction contracts a Construction Skills Bank has been developed to match unemployed people to the opportunities created. Contractors would be monitored on the opportunities registered and filled through employment partners.
- The inclusion of the requirement to provide a minimum number of school and other work experience placements provided to candidates on the Get Ready for Work, Job Centre Work Experience and other programmes (where appropriate). Not all contractors will be able to support this element but each should be assessed.

Employment and Training outcomes will not be an appropriate measure for all contracts. Bench marks for capital contracts based on industry recognised guidance developed by Construction Skills is available in the attached documents. Contracts which cannot support the creation of employment opportunities should be considered for work experience opportunities.

## **Community and Awareness Raising Activity**

Community Development and Awareness Raising is used to describe a wide range of additional benefits which can be secured from contracts which provide benefit to the wider community.

These can be wide ranging and contract specific with specific activities and clauses including

- The inclusion of delivery or participation in a minimum stated number of curriculum support activities which could include participation in Enterprise Education programmes, site visits, pupil mentoring, talks and training workshops delivered to schools or other learners or CV workshops. There is a particular opportunity with schools activity to make this relevant to the contract being delivered.
- The inclusion of a provision of specialist support clause can be provided as an option in any contract, with the contractors given a percentage spend target to donate their time and services to participate in curriculum support activities or donate time to community groups. For example design or marketing companies could be asked to support a community group or social enterprise on an agreed project i.e. an architectural company could donate drawings to a project or a marketing company could provide marketing and design assistance to a social enterprise or charity. The projects requiring assistance need to be specific and relevant to the commission.
- Contractors can be asked to donate relevant materials for example with capital programmes contractors will be asked to designate areas on site for the collection of donated and recyclable goods which can be provided to identify partners for training or social enterprise activity.

### **1.6 How much do Community Benefits cost?**

Although procuring Community Benefits has resource implications the clauses do not necessarily have to add cost to the contract. You should ensure that there are minimal cost impacts for the contract by requiring only Community Benefits that are appropriate to the size of the contract and the expertise of the contractors. Best Value can be achieved by obtaining the optimum balance between price and quality and despite the short term resource implications; the longer socio-economic term benefit can be significant. As community benefit provision becomes more commonplace in Scotland the costs of provision are reducing. Through ensuring that the Community Benefits we ask for are appropriate to the size of the contract, the fiscal impact can be managed

There is a resource requirement for the council in terms of implementing the system and making staff and contractors aware of their responsibilities. Additional resource will be required to support specific elements of the process including assessment of activity, coordination of the employability support infrastructure, providing advice and guidance to contractors and on-going monitoring of contractors progress and compliance particularly for larger more complex contracts. The ongoing monitoring of activity is of vital importance to ensure compliance with community benefits elements of contracts is achieved.

### **1.7 Applicability**

This Policy is applicable to all Council employees across all Services who:

- Make or authorise purchases;
- Specify goods/services/works;
- Write or evaluate tenders, quotations and other related documents;
- Evaluate suppliers and manage their performance;
- Provide advice and guidance to others.

The scope of this policy covers the **purchase of all goods and services** including construction, education, catering and social care procurement activities where possible and of perceived benefit.

## 2.0 Policy Overview

### 2.1 Structure of the Policy

The Procurement team are responsible for this Procurement policy. The team have a support role in promoting and facilitating Community Benefits across the Councils. In this role the team will provide co-ordination and support in managing and developing suppliers and in providing training and guidance across the Council.

### 2.2 Responsibilities

It is clear from experience across Scotland that simply specifying requirements and leaving contractors to deliver the outcomes does not work. A robust delivery and monitoring process must be put in place to ensure that the community benefit outcomes agreed in any contract are actually delivered.

It is vitally important to set out who will be responsible for the specifying, implementing and monitoring of the community benefits specified. Without this clarity of role there is high risk that the outcome will not be delivered.

Officers responsible for the activity (for example Budget holders, project managers, or subject matter experts) and a member of the procurement team should take responsibility for determining the level of community benefits achievable. These officers shall ensure that the desired outcomes are clear, realistic and measurable. The specification shall contain clearly defined benefits or outcomes that are proportionate to the length, value and complexity of the contract.

Typically the management of subsequent delivery of benefits shall be the responsibility of the officer managing the contract (typically the budget holder, project manager or subject matter expert). However it is recognised that to support the development and implementation of the policy and thereafter to support larger more complex programmes the provision of a specialist resource may be required to

- support officers managing contracts to develop community benefit approaches to key contracts.
- to coordinate the employment and training infrastructure required to support successful delivery of key contracts
- to support appointed contractors to understand their responsibilities and put systems in place to achieve their contract requirements.

- to support the effective monitoring of key contracts to ensure that community benefit requirements are being delivered

### **2.3 Summary of Legal Issues**

Councils can require Community Benefits as long as they operate within the relevant legislative framework. There are a number of ways to incorporate social considerations into a tender process; however attention to the following is critical:

1. Procurement can be used to achieve social and environmental requirements as long as the process complies with the Public Contracts (Scotland) Regulations 2012. This includes a duty to specify the requirements in the contract notice published in the Official Journal of the European Union (OJEU).
2. The principles of equal treatment and transparency must be observed. Community Benefit requirements in contracts must be objective and should not favor local suppliers or restrict employment and training to UK nationals. For example, public bodies cannot express a preference for jobseekers from a particular locality to receive training or employment or require sub-contracts to be placed with local SMEs. As wide a variety of suppliers as possible should be able to compete for the contract.
3. Tenders can only be assessed on clearly stated evaluation criteria. When determining criteria weighting pertaining to Community Benefits you need to consider carefully;
  - a. How will the successful bidder be monitored to ensure that they comply with any minimum requirements and how do you ensure these benefits are actually sustained for the contract duration.
  - b. Implications of performance failure.
  - c. Consider whether the Community Benefit is a core requirement. This must be reflected in the evaluation weighting - What is requested must be:
    - i) Related to the subject matter of the contract and does not deter bidders.
    - ii) Be linked to relevant Council Policies, Aims and Values.
    - iii) Transparent and non discriminatory.

Further advice on all of the above is available from the Procurement team in conjunction with Legal Services.

### **2.4 Model Clauses and Template Documentation**

Standard clauses have been drafted for inclusion into tender documentation along with the necessary conditions of contract.

The documents used as a result of this policy have been developed to support community benefit activity secured from capital design, build and maintenance programmes but can be amended to suite other kinds of contracts. Contact should be made with the Procurement team in the first instance.

The approach requires tenderers to agree to support a range of measures at the tender stage with minimum contributions rates identified from a series of benchmarks identified by Construction Skills approach which provides suggested contractual minimum dependant on the scale and type of project. This along with linked method statements go on to form the Community Benefits Plan which forms the basis of contract monitoring and is enforceable.

### 3.0 Monitoring and Reporting

#### 3.1 Council Monitoring

Monitoring and reporting requirements for the contract should be proportionate and relative to the activity.

- The number of elements should not be excessive.
- They should be simple and straightforward.
- They should be approved by all partners.
- They should be measured in a way that is reliable and transparent.
- The targets should be realistic and achievable.

The process outlined in the attached sample tender documentation will support with developing monitoring criteria. It requests that tenderers agree to support a range of measures at the tender stage with minimum contributions rates identified for contracts from a series of benchmarks which provides suggested contractual minimum dependant on the scale and type of project. This along with a linked method statements can be used to form the Community Benefits Plan which forms the basis of contract monitoring and is enforceable. The sample documentation can be used for all capital contracts would be considered including design, build and repair and maintenance contracts and can be adapted to other types of contracts.

A further issue to consider is how the monitoring data can be verified, especially in the context of the Data Protection Act which may limit the personal information that an employer can provide to the Council.

#### 3.2 Reporting

Progress on the delivery of Community Benefits will be reported to a regular basis to the appropriate committee:

##### Other Reporting

The Procurement team is required to submit regular reports to [Procurement Scotland](#) (the Scottish Government's Centre of Procurement Expertise) detailing progress against a number of procurement-related [Best Practice Indicators](#) (BPIs) a number of which relate to Community Benefits. Specific requirements are detailed in the table below.

Key Performance Area	Key Performance Indicator
To procure goods and services in a lawful and ethical manner which encourages participation, collaboration and sustainable economic growth.	<ul style="list-style-type: none"> <li>• % spend with SMEs;</li> <li>• % third sector suppliers with a formal contracted agreement.</li> </ul>