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## Bulky Waste Guidance: Sample Social Clauses

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# Sample Social Clauses to Encourage Community Benefits from Waste

### What are social clauses and community benefits? <sup>1</sup>

The UK Sustainable Development Strategy has set the challenge of making the UK an EU leader in sustainable procurement. Sustainability is intrinsically linked with the inclusion of social and environmental considerations at every layer of the public and third sectors, and therefore social clauses are vital to achieving this objective.

In the past, there has been confusion surrounding the term 'social clauses'. Rather than the narrow interpretation of social clauses simply being contractual clauses, the phrase is to be used in reference to any consideration of social issues at each stage of procurement (or commissioning). Social clauses are defined by the project board of the Social Clauses Project as:

"Relevant, legitimate and value for money aspects of a procurement lifecycle which fulfil a particular social aim. (This may include social requirements within the technical specification and award criteria of a contract, where they are relevant to the subject of the contract and compliant with public procurement legislation, as well as the UK's value for money policy (or equivalent commitment))".

There will often be far more apparent ways of achieving social improvements than through procurement. However, this should not prevent a concerted effort being made to integrate social considerations into the fabric of procurement.

The main focus of procurement is on 'value for money, having due regard to propriety and regularity,' (Government Accounting, Chapter 22). 'Value for money' refers to whether or not what is proposed in tenders is fit for purpose by reference to the 'whole-life cost' and the ability of proposals to meet what is required. Value for money (in EU procurement terms, the 'most economically advantageous tender' or MEAT) does not require an authority to select the lowest price available to it; the lowest price available does not necessarily represent the best value for money.

The following are some examples of paragraphs or clauses that can be inserted into relevant strategy documents, notices and contracts. As every tender process (and therefore the documentation) is different, these examples will need to be adapted to the local specification.

For a local authority to include social clauses appropriately within its commissioning and procurement processes, it must define its corporate social objectives. Local authority officers should be aware of those objectives in order to incorporate clauses and service conditions in the design of waste management contracts, which will contribute to their achievement.

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<sup>1</sup> Crown copyright: Office of the Third Sector as part of the Social Clauses Project 2008.

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## Bulky Waste Guidance: Sample Social Clauses

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The following text is an example, drawn from a Sustainable Community Strategy, which provides a policy underpinning the inclusion of supply-chain and other social issues in the local authority's (and its partners') procurement and agreements:

*'The Partners will continue to use all of their powers, wherever they can, to do anything they consider will promote or improve the well-being of the area. Steps to be taken include:*

- *maximising opportunities for small and medium-sized enterprises (SMEs) and third sector organisations (TSOs) based in or around the area where investment is taking place;*
- *representation for black and ethnic minority communities in employment at all levels that is equivalent to their representation in the local population; and*
- *developing a workforce that is highly skilled and well motivated and can truly meet the skill needs of the local economy.'*

### **OJEU Contract Notice**

A local authority must specify in any contract notice published in the OJEU the basis on which it will be awarding the contract. This means that, where the the authority wishes the main contractor to maximise the subcontract opportunities given to TSOs/SMEs, or to otherwise take into account any social considerations, it must mention this in the contract notice. The following text could be included at Section VI.3 of the Contract Notice, under the heading "Additional Information":

*"Under this procurement the contractor is required to participate actively in the economic and social regeneration of the [locality of and surrounding the place of delivery for the procurement] [community served by the contracting authority]. Accordingly contract performance conditions may relate in particular to social and environmental considerations. Contract conditions will be detailed in the [invitation to tender / contract documents]"*

OR

*"There may be conditions relating to environmental and social requirements of the contracting authority included in this contract. Contract conditions will be detailed in the invitation to tender"*

### **Pre-Qualification Questionnaire (PQQ)**

Assessment of the ability to perform or provide specified contract requirements concerning social issues, such as the accessibility of subcontracting opportunities for SMEs or TSOs, is most likely to fit within the technical or professional ability element of pre-qualification. Pre-qualification and selection criteria can include social or environmental consideration so long as these are compatible with the general EU principles of fairness, transparency, non-discrimination and proportionality. These criteria can include, for example, the proportion of the contract that the bidder intends to subcontract, or the bidder's experience of similar contracts over the preceding three years.

It should be noted that establishing a bidder's experience of similar contracts must come with a caveat. Bulky waste collections contracted out to SMEs/TSOs are still a relatively recent activity, and therefore stipulating x number of previous contract examples could limit the number, range and quality of responses, as well as limit the value for money opportunities this contracting process could elicit.

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## Bulky Waste Guidance: Sample Social Clauses

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Any selection criteria do, of course, have to be relevant to the contract. The following is an example of the questions that can be asked in relation to supply chain opportunities at pre-qualification stage. These can be scored in the pre-qualification/selection stage as part of the assessment of bidders' technical and professional ability to perform the contract. The scoring mechanism used should fit within the overall scoring used for the PQQ.

### *Supply-chain Opportunities<sup>2</sup>*

1. *Please give examples of your involvement in each of the following:*
  - a. *promoting opportunities to form part of the supply chain to organisations you have not previously subcontracted to;*
  - b. *promoting opportunities to form part of the supply chain for contracts like this one to SMEs and TSOs; and*
  - c. *equal opportunities recruitment and subcontracting / supply chain procedures.*
2. *What was your exact involvement in each of the above activities?*
3. *Which of the examples you have cited have been more successful, and which have been less successful, and why? What action was taken to improve the success of the different activities?*

## **Specification for Inclusion with an Invitation to Tender**

The information on the following pages is a suggested specification which sets out the supply chain opportunities the local authority wishes the contractor achieve. The specification provides the detailed requirements for the contract that will be entered into, including any desired community benefits. This suggested approach is based on the contractor submitting a method statement setting out how it believes it will achieve the specification, making it possible to compare bidders' proposals easily, and to record the chosen bidders' commitment.

This text could be included in, or modified for inclusion in, the specification that a local authority distributes to bidders at tender stage. By requiring attention to be given to "New" subcontractors, the local authority can measure the impact of the clauses and determine whether the contractor is using its existing suppliers and subcontractors or truly considering other options. By defining "Social Enterprises", "Social Firms" (both of which can otherwise be misconstrued or misunderstood) and the umbrella term "TSO", the local authority can be specific about the organisations it wishes to target, and the contractor is clear about the objectives. It is assumed that other types of organisation do not require more technical or specific definition.

### *Definitions*

*[Note: once the contract is let, New Subcontractors become Subcontractor in terms of the definitions and the contract. The information below provides a list of definitions that can be used in tender and contract documents.]*

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<sup>2</sup> See Glossary section which can be accessed through the main Bulky Waste Guidance webpage.



## Bulky Waste Guidance: Sample Social Clauses

- *Social Firms;*
- *cooperatives; and*
- *industrial and provident societies.*

### *Introduction*

*In pursuance of the information provided in the Contract Notice that the Contractor is required to actively participate in the economic and social regeneration of the locality, the chosen Contractor will be expected to deliver the supply chain requirements set out below.*

### *Supply Chain Opportunities Method Statement*

*Bidders are required to submit a Supply Chain Opportunities Method Statement with each valid tender using the proforma set out at Appendix [ ], setting out how the supply chain outcomes set out in this specification will be achieved at minimum net cost to the Council.*

*Prior to completing the Supply Chain Opportunities Method Statement bidders are advised to obtain information on local training, job-matching and supplier development organisations and resources from [ ] (insert details of the relevant person within the Council who can provide this information). All of these will operate an appropriate equal opportunities policy.*

### *Supply Chain Opportunities*

*The chosen Contractor will be expected to:*

- *work with [ ] (add name and contact details of an appropriate support organisation) or a suitable alternative organisation agreed by the Council to develop a programme of activities and support so as to maximise the provision of information on subcontract and supply opportunities to potential suppliers and subcontractors [with a [ ] postcode], including in particular SMEs and TSOs, and to maximise the number and competitiveness of bids in response to these opportunities;*
- *notify all subcontract and supply opportunities to [ ] (insert an appropriate portal that the Council wishes the Contractor to use) and include a minimum of 2 (two) organisations from the list held by [ ] on each list of organisations invited to tender or submit a price for works, services or supplies where suitable organisations exist;*
- *one week prior to each [monthly contract review meeting] provide to the Council a report setting out for the most recent Quarter:*
  - *the names and contact details of organisations [with a [ ] postcode] that have been invited to tender or submit a price for subcontract and supply work;*
  - *the names of those that have been awarded supplies contracts and subcontracts; and*
  - *the total value of these contracts.*

### *Opportunities for New Subcontractors*

*The chosen Contractor shall be expected to:*

- *use reasonable endeavours to ensure that [for example 10% (ten percent)] of the value of the contract is delivered by New Subcontractors;*

## Bulky Waste Guidance: Sample Social Clauses

- one week prior to each [monthly contract review meeting] to provide a report setting out for the latest Quarter:
  - a list of the names and contact details for New Subcontractors identified above;
  - the names of those New Subcontractors that have been awarded a contract; and
  - the total value of work awarded to New Subcontractors.

### *Contractor and Subcontractor Compliance*

*It will be the Contractor's responsibility to develop a working method that will deliver the supply-chain opportunities and related monitoring and verification data, and obtain the full cooperation of its suppliers and Subcontractors (including any New Subcontractors) in delivering these requirements.*

### *Support*

*The inclusion of supply-chain requirements does not comprise or imply any promise on the part of the Council or its agents to provide suitable organisations to act as New Subcontractors. Any action taken to broker relationships between the Contractor and local businesses or agencies does not imply that the Council considers the business or agency as suitable for engagement by the Contractor. All recruitment, selection, supervision and discipline responsibilities rest with the Contractor and its Subcontractors and suppliers. Within this context the Council will work with local agencies to help facilitate the achievement of the supply chain requirements.*

**Please note: it is important that the local authority include this disclaimer so bidders know it is still their responsibility to choose their suppliers/subcontractors.**

### *Appendix [ ]*

#### *Proforma Supply Chain Opportunities Method Statement*

*Title of contract* .....

*Bidder:* .....

*Contact Name* .....

*Position* .....

*Telephone number* .....

*Email address* .....

*I confirm that this method statement sets out the actions that will be undertaken to ensure the achievement of the Council's supply-chain requirements. It is recognised that delivery of these requirements is part of the subject of the contract and may be used in the award of the contract.*

*Signed* .....

*Print Name* .....

*Date* .....

## Bulky Waste Guidance: Sample Social Clauses

*Prior to completing the Supply Chain Opportunities Method Statement bidders are advised to obtain the information on local training, job-matching and supplier development organisations and resources available from [ ] (insert details of the relevant person within the Council who can provide this information). All of these will operate an appropriate equal opportunities policy.*

### *Supply Chain Opportunities*

*What action will you take to maximise the provision of information on subcontract and supply opportunities to New Subcontractors, including use of appropriate portals, and to maximize the number and competitiveness of bids in response to these opportunities from these SMEs and TSOs?*

### *Opportunities for New Subcontractors*

*What action will you take to ensure that [10%] of the value of the contracts is delivered by New Subcontractors?*

### *Suppliers and New Subcontractors/ Subcontractors*

*How will you obtain the cooperation of suppliers and Subcontractors to ensure the delivery of the supply chain requirements?*

### *Management*

*Who will be responsible within your organisation for the delivery of the supply chain requirements set out in the specification?*

### *Other Information*

*Please provide here any additional information on how you would approach the implementation of the supply chain requirements, including any innovative ideas.*

## Contract Clauses Relating to Subcontracting

The following clauses can be included in a main contract where the local authority wishes to make provision for the subcontracting of parts of the contract. These clauses include, as an option, the ability to monitor subcontracting opportunities on the basis of locality. The clauses do not require a main contractor to subcontract with a local supply chain, but do require that local SMEs and TSOs be given equality of opportunity. This means that the locality clauses mentioned here are legitimate: they simply monitor the locality of sub-contractors, rather than imposing any requirement to hire from a locality (which would be discriminatory).

These clauses should be appropriately modified to fit the language and style of the overall contract being used by the local authority – this may be the local authority’s “house style”, or the style of a standard form of contract being used.

### *1 Definitions*

***Quarter***

*a three month period ending in any of June, September, December or March*

***New Subcontractor***

*any SME or TSO [based in areas with a [ ] postcode] that has not previously been engaged by the*

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**Bulky Waste Guidance: Sample Social Clauses**

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	<i>Contractor</i>
<b><i>Small Business</i></b>	<i>means either:</i> <ul style="list-style-type: none"><li>■ <i>small enterprises with less than 50 staff, a turnover of less than €10 million, or a balance sheet total of less than €10 million; and</i></li><li>■ <i>micro-enterprises with less than 10 staff, a turnover of less than €2 million, or a balance sheet total of less than €2 million</i></li></ul>
<b><i>SME</i></b>	<i>small and medium-sized enterprises, including:</i> <ul style="list-style-type: none"><li>■ <i>medium-sized enterprises with less than 250 staff, a turnover of less than €50 million, or a balance sheet total of less than €43 million;</i></li><li>■ <i>small enterprises with less than 50 staff, a turnover of less than €10 million, or a balance sheet total of less than €10 million; and</i></li><li>■ <i>micro-enterprises with less than 10 staff, a turnover of less than €2 million, or a balance sheet total of less than €2 million</i></li></ul>
<b><i>Social Enterprise</i></b>	<i>a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the community, rather than being driven by the need to maximise profit for shareholders and owners</i>
<b><i>Social Firm</i></b>	<i>a business created to employ people who have a disability or are otherwise disadvantaged in the labour market</i>
<b><i>Subcontract</i></b>	<i>any agreement entered into between the Contractor and a Subcontractor</i>
<b><i>Subcontractor</i></b>	<i>means any person whose services the Contractor engages or makes use of to perform the whole or any part of the services the subject of this Agreement</i>
<b><i>TSO</i></b>	<i>third sector organisation, which shall include the following types of organisation regardless of size:</i> <ul style="list-style-type: none"><li>■ <i>voluntary and community organisations;</i></li><li>■ <i>charities;</i></li><li>■ <i>Social Enterprises;</i></li><li>■ <i>Social Firms;</i></li></ul>

## Bulky Waste Guidance: Sample Social Clauses

- cooperatives; and
- industrial and provident societies

### 2 Subcontracting

- 1.1 *All work undertaken or services provided by the Contractor or any Subcontractor under the provisions of this Agreement shall be done or performed by the Contractor or under his personal supervision and direction.*
- 1.2 *The Contractor may appoint Subcontractors only on terms that:*
  - 1.2.1 *no Subcontractor may assign his appointment or further subcontract any of his rights or obligations;*
  - 1.2.2 *Subcontracts must in all cases terminate on or before the termination of this Agreement;*
  - 1.2.3 *each Subcontractor must be subject to obligations no less onerous than those imposed on the Contractor under this Agreement;*
  - 1.2.4 *the full and prompt performance by each Subcontractor of all his obligations must be unconditionally and irrevocably guaranteed by the Contractor as principal obligor and not merely as surety;*
  - 1.2.5 *the Contractor must keep the Council fully and effectively indemnified from and against all losses, claims, costs, damages and expenses whatever arising out of or in connection with any failure on the part of any Subcontractor to perform any of his obligations;*
  - 1.2.6 *the Contractor must furnish the Council with full particulars of any Subcontract arrangement within [30 (thirty) days] of entering into it.*

### 3 Supply chain opportunities

*The Contractor shall:*

- 1.3 *work with [.....] (add the name and contact details) or a suitable alternative organisation agreed by the Council to develop a programme of activities and support so as to maximise the provision of information on subcontract and supply opportunities to potential New Subcontractors and to maximise the number and competitiveness of bids in response to these opportunities;*
- 1.4 *notify all subcontract and supply opportunities to [ ] (insert an appropriate portal) and include a minimum of 2 (two) organisations from the list held by [ ] on each list of organisations invited to tender or submit a price for works, services or supplies where suitable organisations exist;*
- 1.5 *one week prior to each [monthly contract review meeting] provide a report to the Council setting out for the most recent complete Quarter:*

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## **Bulky Waste Guidance: Sample Social Clauses**

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- 1.5.1 *the names and contact details of organisations [with a [ ] postcode] that have been invited to tender or submit a price for subcontract and supply work;*
- 1.5.2 *the names of those that have been awarded supplies contracts and subcontracts; and*
- 1.5.3 *the total value of these contracts.*

### **4 Opportunities for new subcontractors**

*The Contractor shall:*

- 1.6 *use reasonable endeavours to ensure that [ x % (x percent)] of the value of the contract is delivered by New Subcontractors;*
- 1.7 *one week prior to each [monthly contract review meeting] provide a report to the Council setting out for the most recent complete Quarter:*
  - 1.7.1 *a list of the names and contact details for New Subcontractors identified in clause 1.6 above;*
  - 1.7.2 *the names of those New Subcontractors that have been awarded a contract; and*
  - 1.7.3 *the total value of work awarded to New Subcontractors.*

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