Oifig um Sholáthar Rialtais
Office of Government Procurement

Information Note

Incorporating Social Considerations into Public Procurement

Rialtas na hÉireann
Government of Ireland

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This information note is dynamic in nature and will be subject to amendment and review periodically. Therefore, in terms of having the most up-to-date version and with the environment in mind, the Office of Government Procurement would encourage officials to check our website www.ogp.gov.ie for the most up-to-date version.

It should be noted that this information note is not intended as legal advice or a legal interpretation of Irish or EU law on public procurement. Legal or other professional advice should be obtained in relation to large or complex projects, or in relation to contracts with non-standard features, or if there is any doubt about the correct procedures to be followed.

Executive summary

Approximately €12 billion a year is spent by the State on the procurement of goods, services and works. While procurement is primarily focused on enabling the delivery of public services in a sustainable manner by ensuring value for money and broad access to public procurement opportunities for businesses, there are possibilities for public bodies to deliver wider social and environmental aims through their procurement processes. This can be achieved through the inclusion of social considerations as requirements throughout the process, from setting the specifications and award criteria through to the management of the contract.

Examples of social considerations that can be factored into procurement processes include: employment and training opportunities for disadvantaged groups, disability access, promoting social inclusion, or the protection of the environment and combating climate change. As with other aspects of public procurement, there are EU and national rules that determine what and how such considerations can successfully be incorporated. The Office of Government Procurement and the other Central Purchasing Bodies can assist and advise Government departments in developing policy regarding the appropriate use of social considerations in public contracts and can also support public bodies through the procurement process.

This information note forms part of the National Public Procurement Policy Framework, the overarching policy framework for public procurement in Ireland. The note details the key factors to be aware of, as well as the procurement pathway for policy departments and public bodies to follow when contemplating the use of social considerations in public contracts. The note is set out as follows:

- **1:** Introduction
- **2:** Key factors for consideration of social issues in public procurement
- **3:** Planning and developing a business case
- **4:** Specifications
- **5:** Selection criteria
- **6:** Award criteria/tender evaluation
- **7:** Contract management

The appendices contain a list of relevant Government departments and agencies, useful information/guidance and links, and examples of where social considerations may be incorporated in to public procurement.

1. Introduction

1.1 Procurement Reform Programme

The Government is committed to driving an ambitious reform programme designed to modernise the public sector and improve public service delivery. Public procurement is a key element of this programme. In addition to its potential to assist in the delivery of improved public services, it can also act as a platform to add value by maximising the public policy impact that procurement can have in enabling wider community benefits in areas such as employment, training, assisting SMEs, promoting innovation, environmental and social considerations. In this regard, contracting authorities are encouraged to consider how social issues can appropriately be integrated into the procurement process and this guidance is intended to show the stages in the procurement cycle where this is possible.

1.2 National Public Procurement Policy Framework

The National Public Procurement Policy Framework consists of five strands:

1. Legislation (Directives, Regulations)
2. Policy (Circulars etc.)
3. Capital Works Management Framework for Public Works
4. General Procurement Guidelines for Goods and Services
5. More detailed technical guidelines, template documents and notes as issued periodically by the Policy Unit of the Office of Government Procurement (OGP)

The framework sets out the procurement procedures to be followed by contracting authorities under national and EU rules. The framework supports contracting authorities, Central Purchasing Bodies (CPBs) including the Office of Government Procurement (OGP) and the four key sector sourcing organisations in Health (HSE), Education (EPS), Local Government (LGMA) and the Department of Defence, individual departments, offices,

commercial and non-commercial State bodies, and private entities which are subsidised by 50% or more with public money, when awarding contracts for works, goods and services. This document has been produced as part of the fifth strand.

This information note has been developed primarily for Government departments and public bodies and in particular:

i. Policy departments

When contemplating how the incorporation of social considerations into public procurement can be used to promote their objectives, for example, the Department of Communications, Climate Action and Environment in leading the national transition to a sustainable, low-carbon, resource-efficient economy and protecting and improving Ireland's high-quality natural environment, and the Department of Employment Affairs and Social Protection for active participation and inclusion in society.

ii. Central Purchasing Bodies, Procurement Officers, Procurement Officials

When the policy objectives at (i) have been established and approved, the information note sets out how it can implemented and integrated into procurement process.

iii. Government Departments, Public Bodies, Contracting Authorities

When considering incorporating social considerations into their public contracts.

The note will also provide a wider audience such as interest groups, elected representatives, industry and the general public with an appreciation of the complex deliberations that have to be taken into account when exploring the scope for including social considerations in public contracts. The OGP will be available to support Government departments and public bodies at both the policy and operational stages. It should be noted that this guidance does not replace the need to seek legal advice in respect of national and EU rules that relate to a particular procurement.

1.3 Central Purchasing Bodies

The OGP commenced operations in 2014 and, together with four key sectors (Health, Defence, Education and Local Government), has responsibility for sourcing goods and services on behalf of the public service. Through the central purchasing model, the public

service speaks with ‘one voice’ to the market for each category of expenditure, eliminating duplication and taking advantage of the scale of public procurement to best effect.

The new model has led to a shift from decentralised to a centralised model of procurement for sixteen categories of spend. The OGP is responsible for Framework Agreements (FWA) where it is the contracting authority. The OGP facilitates mini-competitions under these FWAs for public service bodies. Likewise, the Health, Education, Local Government and Defence sectors are responsible for frameworks in their categories of expenditure.

Policy Departments and procurement officials should work with the CPBs to enable them to incorporate social considerations in line with the relevant policy.

1.4 Providing public services in a more efficient manner (value for money)

A key component of the Government’s reform programme is that public procurement should be carried out in a sustainable manner that delivers public services on a value-for-money basis. This is a key principle of the Public Spending Code.

It is important to understand that the Government’s policy of achieving value for money in procurement, in terms of whole life cost and quality of works, goods or services to meet the user’s requirement, primarily applies to the award stage of the procurement process and to the delivery of the contracted benefits. In the context of its overall objectives, a department or public body should decide what to buy and set the specification accordingly, and ensure that its requirement is subject to the normal public expenditure tests of need, affordability and cost-effectiveness. It is at this earlier stage that there is the greatest scope to consider social issues.

1.5 Social considerations: European context

The Europe 2020 Strategy[1] puts forward three main priorities:

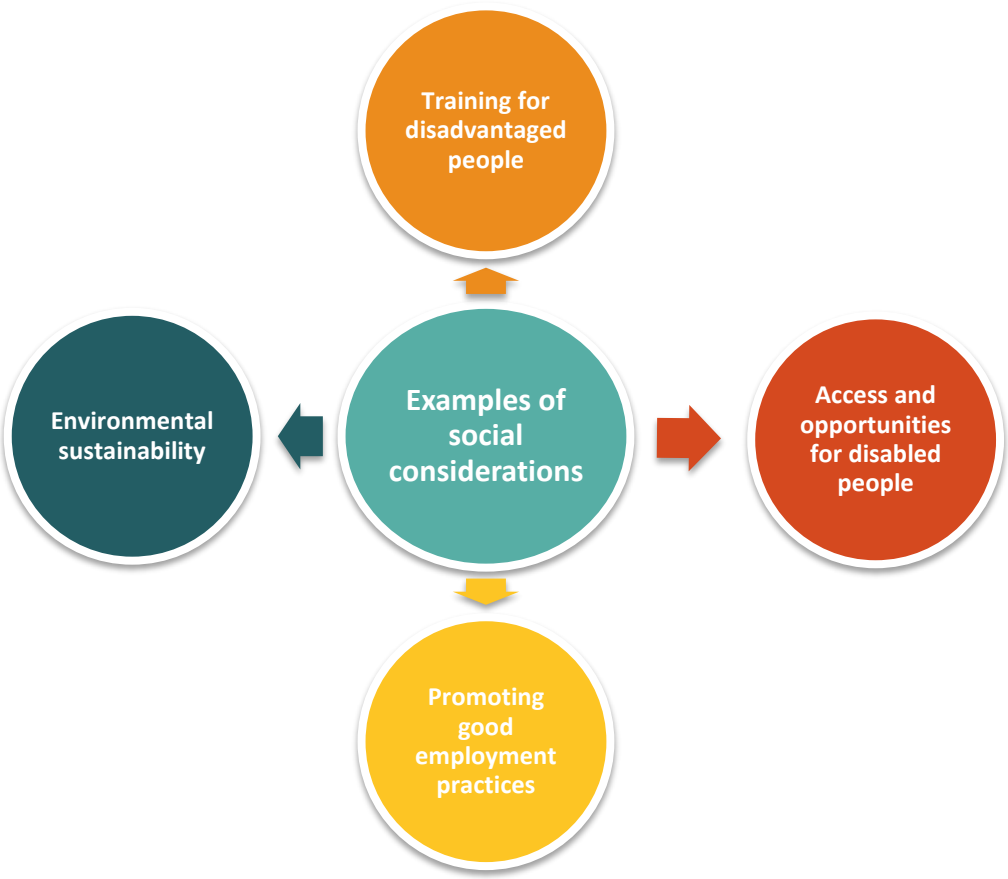
- **smart growth**: developing an economy based on knowledge and innovation,
- **sustainable growth**: promoting a more resource-efficient, greener and more competitive economy, and
- **inclusive growth**: fostering a high-employment economy that delivers social and territorial cohesion.

The main objective of the strategy is to ensure a social focus by: promoting employment and supporting labour mobility, promoting social inclusion and combating poverty, investing in education, skills and lifelong learning, and enhancing institutional capacity and an efficient public administration. There is no fixed definition of a 'social consideration'. The concept is most easily understood by way of examples:

- reducing unemployment,
- seeking to prevent the use of child labour and other forms of labour exploitation,
- preventing discrimination on the grounds of race, religion, disability, sex or sexual orientation,
- encouraging good employment practice,
- reducing social exclusion,
- promoting training opportunities for the young or disadvantaged, and
- facilitating access to work for people with disabilities.

It is worth noting that a variety of social considerations are already included in public procurement processes and contracts as a result of statutory requirements. These include areas such as health and safety, equality and employment law.

[1] EUROPE 2020. A European strategy for smart, sustainable and inclusive growth.



1.6 The legal framework for social considerations

Public procurement procedures must comply with the EU Treaty principles. The key policies in the Treaties, from a public procurement point of view, are the free movement of goods, the freedom of establishment, and the freedom to provide services. There are also five general principles of EU law derived from these freedoms which are particularly relevant to fair and competitive public procurement: equal treatment (discrimination on the grounds of nationality or location is not permitted), transparency, proportionality, mutual recognition, and openness to competition. These principles ensure a properly functioning internal market that affords significant opportunities to Irish suppliers.

In addition to the Treaties, there are three main EU Public Procurement Directives that set out the principles with detailed procedures and criteria for specifications, selection and award of contracts above certain thresholds. The Directives have been implemented into Irish law by the following Statutory Instruments:

- EU Directive 2014/24/EU - EU Procurement Directive has been transposed by S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016 (referred to in this document as 'the 2016 Regulations')
- EU Directive 2014/25/EU - Procurement by entities operating in the water, energy, transport and postal services sectors (Utilities Directive) has been transposed by S.I. No. 286 of 2016 European Union (Award of Contracts by Utility Undertakings) Regulations 2016
- EU Directive 2014/23/EU on the award of Concession contracts has been transposed by S.I. No. 203 of 2017 European Union (Award of Concession Contracts) Regulations 2017.

1.7 EU Public Procurement Directives

The public procurement rules provide contracting authorities with a vehicle to achieve social goals where they are linked to the subject matter of the contract. The Directives do not affect the way in which EU member states organise their social security systems, nor do they oblige them to externalise the provision of services that they wish to organise themselves.

In relation to social considerations, the EU Procurement Directives make explicit the scope to take social and environmental issues into account at the relevant stages of the procurement process. This information note makes reference to the key articles of the Public Procurement Directives and the associated regulations as appropriate. In addition, contracting authorities may wish to familiarise themselves with the recitals[2] in this area.

The EU Directives allow contracting authorities to promote social inclusion and the protection of the environment and ensure the compliance of tender awards with social, labour and environmental legislation. By utilising them, public authorities can provide incentives to companies to develop socially and environmentally responsible products and services. The new opportunities to incorporate these considerations through the public procurement system may include but are not limited to:

[2] Recitals in EU Directives set out the reasoning that underpins Articles contained in EU Directives. For example, Recitals 97, 98 and 99 give examples of social and environmental factors that can potentially be included in specifications, award criteria and contract conditions.

i. Award criteria can include marks for proposals to promote social inclusion and the protection of the environment

Contracting authorities will be better able to take social and environmental aspects into account when awarding procurement contracts on the basis of the Best Price-Quality Ratio (BPQR) or Most Economically Advantageous Tender (MEAT) provided that this is clearly set out in the tender documentation. In this context, contracting authorities may award suppliers that provide for social considerations, such as a company employing long-term unemployed or disadvantaged persons to perform the contract, provided the social consideration is linked to the overall objective of the contract.

ii. Respecting social and labour laws

Public authorities need to be aware of obligations in public procurement procedures. These may include national or EU social and labour rules, collective agreements and/or international law. Tenders may be excluded if they do not comply with social or labour law obligations. Where a tender value is abnormally low because the offer does not comply with these obligations, then the tender should be rejected.

However, it should be understood that procurers cannot impose indigenous labour standards on another country. For example, if IT services are provided from another country and the supplier is applying wage rates that comply with the law in that jurisdiction, then the supplier is quite within their rights to do so.

iii. Reserved tendering procedures for companies that promote the integration of disadvantaged persons

Under normal conditions of competition, ‘sheltered workshops’ or social enterprises whose main aim is to integrate disadvantaged people in the workplace might not be able to obtain contracts. Under the EU Procurement Directives, contracting authorities are able to restrict some tendering procedures to ‘sheltered workshops’ and social enterprises. To participate in reserved procurement procedures, 30% of the company’s employees must be disadvantaged. Contracting authorities are also able to reserve the right to participate in award procedures for social services for a period of up to three years. The reservation has time-based conditions to prevent misuse, so contracting authorities cannot reserve contracts for organisations that have been awarded contracts within the last three years, and contracts cannot be longer than three years. The areas covered by these reserved tendering procedures include certain health and social services, certain education and training services, library,

archive, museum and other cultural services, sporting services, and services for private households and non-profit companies with a public service remit based on employee participation.[3]

iv. For social services, European public procurement rules apply only to contracts above €750,000

The procurement of social, cultural and health services, as well as some others such as legal, hospitality, catering and canteen services has been simplified. The new European public procurement rules apply to contracts above €750,000. Apart from the application of relevant exclusion grounds and the obligation to treat all companies equally and provide adequate publicity for the call for tenders and award of contracts (in a simplified form), national rules will apply to the relevant procedures. The full list of services falling into this area are listed in Annex XIV of Directive 2014/24/EU.

v. Promoting the protection of the environment and sustainable development

Factors relating to the protection of the environment and the promotion of sustainable development can be included at various stages of the procurement process including as technical specifications, award criteria and contract conditions. These could relate to the production process for example and the use of non-toxic chemicals or energy-efficient machines or to the packaging and disposal of products.

The requirements of the Directive in relation to the consideration of social and environmental issues in procurement are explained throughout this information note. In this regard, the relevant considerations for each stage of the procurement process are also explained, for example, at prequalification stage, in the technical specification, when developing contract conditions, and, encouraging the involvement of small and medium sized undertakings through provisions on subcontracting.

[3] Further details of the requirements for qualifying organisations can be found in 4.7 below and in the 2016 Regulations (20 and 77).

1.8 European Commission study "Strategic use of public procurement in promoting green, social and innovation policies"[4]

The study prepared on behalf of the European Commission suggested that procurement processes could aim to include some of the following 'Socially Responsible Public Procurement' (SRPP) practices as categorised by the EU.

- Promoting 'Employment Opportunities' in particular for youths, disadvantaged groups, long-term unemployed, older workers and the disabled.
- Decent work: promoting various labour rights relating to hours, pay, equal opportunities, health and safety, benefits, and ending workplace discrimination.
- Supporting social inclusion and promoting social economy organisations: encouraging participation of firms with significant numbers of employees from minority groups, the disabled and non-profit organisations.
- Promoting SMEs: this can reduce the cost of participating in SRPP opportunities.
- Promoting accessibility and design for all: ensure that goods and services are accessible to all and appropriate provisions have been made in technical specifications.
- Taking into account fair or ethical trade issues: these stipulations should be included in tender specifications and conditions of contracts.
- The provision of onsite vocational training.
- The fight against unemployment, for example through the recruitment of long-term job-seekers.

[4] Study on "Strategic use of public procurement in promoting green, social and innovation policies". Final Report DG GROW Framework Contract N°MARKT/2011/023/B2/ST/FC for Evaluation, Monitoring and Impact Assessment of Internal Market DG Activities, prepared by PWC in December 2015.

1.9 European case law

European case law has played a key role in the development of an understanding of this complex area. Indeed, one of the landmark cases on this subject was the Concordia Buses (C-513/99).

The case relates to a call for tenders in 1997 by the city of Helsinki for the management of its bus transport system. The best offer was to be determined according to three categories of criteria: (i) price, (ii) quality of the fleet, and (iii) operator's quality and environment management. In relation to the quality of the bus fleet, supplementary points were to be awarded for use of buses with reduced nitrogen oxide emissions. Additional points were also to be awarded in the quality and environment management category for a number of quality criteria and compliance with a certified environmental program. Although Concordia Buses was the lowest cost tenderer, the contract was awarded to another tenderer (HKL) which had been given additional points due to better performance with relation to the quality of the fleet. Following rejection of a complaint by Concordia Buses to the Finnish Competition Council, the case was referred to the Finnish Supreme Administrative Court which in turn referred the case to the European Court of Justice for a preliminary ruling.

The ruling by the European Court found in favour of the city of Helsinki (the contracting authority in this case) and established the circumstances within which social considerations may be used as award criteria:

- "The criteria adopted to determine the economically most advantageous tender must be applied in conformity with all the procedural rules laid down in Directive 92/50/EEC, in particular the rules on advertising."
- Criteria must also comply with the fundamental principles of EU law, in particular the principle of non-discrimination.
- The judgment concludes that a contracting authority may take into account ecological criteria provided that:
    - they are linked to the subject-matter of the contract,
    - do not confer an unrestricted freedom of choice on the authority,
    - are expressly mentioned in the contract documents or tender notice, and
    - comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.

These points were further developed in what is known as the Dutch Coffee case (European Commission v Netherlands C368/10). The main facts of the case were as follows:

- In a Dutch procurement for the supply and maintenance of drinks dispensing machines and supply of the ingredients for the machines (the tea and coffee), the contracting authority required tenderers products to have “EKO and MAX HAVELAAR” labels (fair trade labels).
- The CJEU said that the Netherlands established a technical specification incompatible with the Directive by requiring certain products to be supplied with a specific eco-label rather than using detailed specifications which the label fulfil. The Court found that the contracting authority had required a minimum level of technical ability not authorised by the Directive and in doing so breached the obligation of transparency by requiring tenderers to comply with the “criteria of sustainable purchasing and socially responsible business” without stating how they would comply with those criteria.

Why is this case relevant to social considerations?

- This case further clarifies, following Concordia Bus, to what extent it is possible to use ecolabels, fair trade and/or environmental labels as well as environmental and social considerations when awarding procurement contracts. However, this judgment emphasised the requirement on the contracting authority to comply with the principles of equality of treatment, non-discrimination and transparency and that doing this involves an obligation on the contracting authority for clarity and precision during the procurement process.
- This CJEU judgment provides useful guidance on the use of ecolabels, and the definition and description of technical criteria, selection criteria and contract award criteria.

CJEU Judgment

- The CJEU noted that in awarding a contract to the most economically advantageous tender, the procurement Directive allowed contracting authorities to determine what criteria to take into consideration provided this was done in compliance with the requirements of the Directive.

- In its judgment, the CJEU stated:
    - the list of possible award criteria specified in the Directive was not exhaustive,
    - contracting authorities were authorised to use qualitative award criteria, including those which were based on environmental characteristics or social considerations,
    - the award criteria had to be **linked to the subject matter of the contract**, and
    - compliance with the general principles of the EU (principles of transparency, non-discrimination and equality) required that the award criteria used by a contracting authority were objective and could not have the effect of conferring on the contracting authority an unrestricted freedom of choice.

1.10 Social and environmental obligations in EU and national law

When any public body carries out a tender process they should take account of EU and national law. Under Regulation 18(4)[5] of the 2016 Regulations, economic operators (for example, businesses/suppliers) delivering public contracts are required to comply with all applicable obligations in the fields of environmental, social and labour law applying under national and EU law as well as various international conventions on social, environmental and labour law matters "at the place where the works are carried out or the services provided[6]".

Potential bidders and tenderers for contracts above the EU thresholds are required to complete the European Single Procurement Document and the Tenderer's Declaration of Personal Circumstances which assist contracting authorities in gauging compliance. This obligation on contracting authorities can also be implemented by way of inclusion of appropriate contract clauses in public contracts. Beyond this, it is the responsibility of the relevant state agency (that is, Revenue for tax compliance, Work Place Relations

[5] Regulations 18(4) of the 2016 Regulations and Schedule 7, see also Recitals 37-40 of the Directive for further guidance.
[6] Recital 38 of Directive 2014/24/EU notes that the location of a call centre is the place of execution of the services even if the services are directed to another jurisdiction.

Commission for labour related issues etc.) to assess compliance with legislation under their remit.

Applicable obligations established by national law and national collective agreements or by relevant international environmental, social or labour law provisions must be complied with by economic operators provided that such rules and their application comply with European Union law in force[7]. Procurement processes cannot be discriminatory or be used as a means to favour local suppliers as this would not comply with EU treaty principles.

Regulation 18(4) provides for when these aspects are dealt with at relevant stages in the procurement process, that is, when deciding whether to award a contract to the most economically advantageous tenderer[8], when applying the discretionary exclusionary criteria, provisions related to abnormally low tenders and, where appropriate, in relation to subcontracting.

It is also permissible for contracting authorities to incorporate environmental and social requirements into their award criteria provided they are linked to the subject matter of the contract[9] and are contract specific, that is, they are not related to the overall corporate policy of the tenderer.

Where a tender appears to be abnormally low, the contracting authority is required under the Directives to seek an explanation from the relevant tenderer. Where the contracting authority establishes that the price is abnormally low because the tender does not comply with applicable social, environmental and labour law obligations, the contracting authority should reject the tender[10].

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[7] Applicable obligations include for example, obligations under S.I. No.339 of 2011 which implements Directive 2009/33/EC (clean and energy efficient road transport vehicles); S.I. No. 151 of 2011 which implements Directive 2006/32/EC (Energy Efficient public procurement). For further guidance, contracting authorities should consult the EU Commission's Buying Guide to Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement, 2010 and the EU Commission's Handbook on Green Procurement, 2011.
[8] Regulation 56(2) of the 2016 Regulations.
[9] Regulation 67(3) of the 2016 Regulations specifically mentions the possibility of including social, environmental criteria. Regulation 67(5) provides that award criteria are considered to be linked to the subject matter where they relate in any respect to the works/supplies/ services in question at any stage in their life cycle including the process of production of goods (for example, no toxic chemicals); the provision of services (for example, energy efficiency of machines); trading (for example, the use of “fair trade” products in the contract).
[10] Regulation 69(5) of the 2016 Regulations.

2. Key factors for consideration of social issues in public procurement

2.1 Considerations in pursuit of the best policy outcome

Policy departments

The OGP and other CPBs can and will play a clear supporting role in assisting and enabling Government departments and public bodies deliver on their policy objectives. However, the primary policy responsibility remains with the relevant policy departments and public bodies, for example:

- Department of Communications, Climate Action and Environment for leading the national transition to a sustainable, low-carbon, resource-efficient economy and protecting and improving our high-quality natural environment,
- Department of Business, Enterprise and Innovation for creating and sustaining high quality enterprise and employment across all regions of the country,
- Department of Employment Affairs and Social Protection for active participation and inclusion in society,
- Department of Justice and Equality for maintaining and promoting fairness and equality,
- Workplace Relations Commission for employment rights, and
- Department of Community and Rural Development for the economic and social development of rural areas and the contribution to enhanced regional development.

The objectives for incorporating social considerations in a public procurement process should be clear and takes into account value for money for the State. The potential to include social considerations should form part of the planning process which is particularly important for large scale and/or complex procurements.

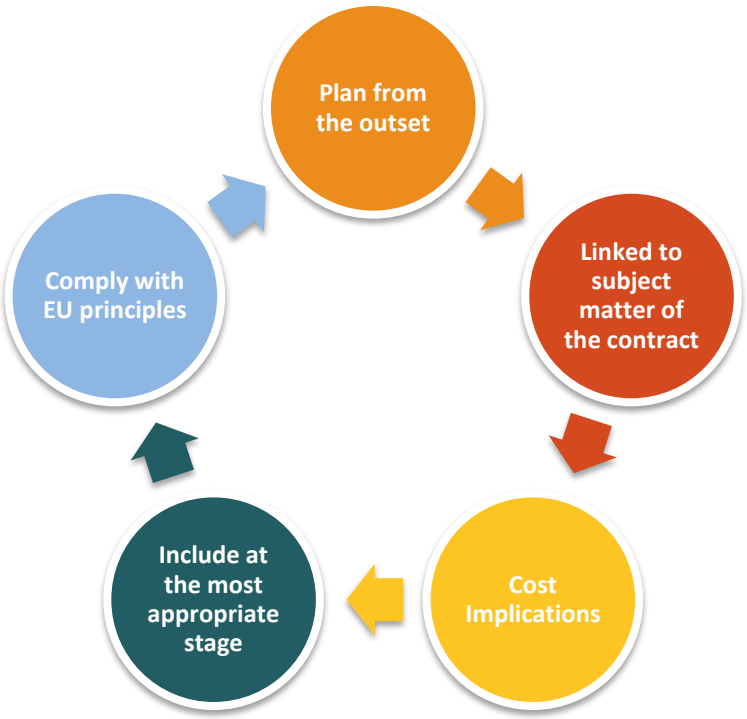
Public procurement law

Public procurement law requires that, where social considerations are included in procurement competitions, they must promote equal treatment of market participants, be proportionate to the needs of the buyer, and be transparent. In that context, where social

considerations are built into a tender, core and comprehensive selection and evaluation criteria must be established.

In addition, conditions or criteria requiring the employment of local unemployed people or requiring suppliers to be located locally would not be compatible with the EU Treaty principles. The Commission's interpretative document on social considerations in procurement mentions that the inclusion of employment provisions can be compatible with EU rules, provided there is no requirement for workers to be found in a particular region or location:

> "*The clauses or conditions regarding execution of the contract must comply with Community law and, in particular, not discriminate directly or indirectly against non-national tenderers*."



Cost implications

There may be additional costs associated with the inclusion of social considerations in public contracts and Departments and contracting authorities must also consider the risk of narrowing markets and excluding businesses, particularly SMEs. Resources devoted to the appraisal of proposals by policy departments and by contracting authorities involved in specific procurements should be commensurate with the cost of the project and its complexity.

Appraisal by policy departments and contracting authorities

As with any public expenditure, the appraisal steps as set out in the Public Spending Code should be followed: define the objective, explore options taking account of constraints, quantify the costs of viable options and specify sources of funding, analyse the main options, identify the risks associated with each viable option, decide on a preferred option, and make a recommendation and obtain approval.

When assessing the costs and benefits of an intervention, other factors to be taken into account include:

- Deadweight loss: the cost to society created by market inefficiency and can be applied to any deficiency caused by an inefficient allocation of resources.
- Displacement: the proportion of intervention benefits accounted for by reduced benefits elsewhere in the target area.

Following on from this process, the OGP and other CPBs can examine options for taking social considerations into account in the establishment of framework agreements.

2.2 When social issues can be incorporated

The appropriateness of including social considerations needs to be examined on a contract-by-contract basis and there needs to be sufficient flexibility to allow each individual contracting authority to decide what, how, and when social considerations can be used. EU law allows member states the option to take social considerations into account provided the fundamental EU Treaty principles are respected.

Contracting authorities need to ensure that:

- the social consideration does not result in discrimination,
- social considerations are linked to the subject matter of the contract,
- value for money is maintained to ensure sustainable delivery of public services,
- the objective of the social consideration is proportionate to the contract,
- the targeted benefit is capable of being measured and monitored during the execution of the contract (the necessary staffing, arrangements and resources should be allocated to this task having regard to the principle of proportionality), and

- the clauses do not negatively impact on the SME sector.

The planning phase is a key stage in a procurement process and the point at which the potential to include social considerations should be mapped out. Once project sponsors and stakeholders have decided which social issues are of most relevance to a particular procurement, they should consult with procurement officials to decide at what stage in the procurement process this social policy could most effectively and legally be included. There is potential scope when drawing up the specifications/user requirements, setting the selection criteria, the award criteria and the contract conditions or through liaison with the supplier when the contract is being performed.

The decision by a contracting authority to factor in social considerations should be clearly signalled from the outset and at all relevant stages of the procurement process from business case and specification stages through to the selection, award and contract management stages. Care must also be taken to ensure that legal requirements are addressed when planning a particular procurement as failure to adequately account for the impact of the relevant policy, circular or legislation can lead to additional costs and burdens later on.

For example, in choosing to redesign its internal and external websites, a department should assess its requirement for need, affordability and cost-effectiveness in the context of its overall objectives. In this example, the insertion of a requirement such as access by disabled persons into the specification would achieve a social policy objective and would be compliant with policy on disability.

Whilst this guidance aims to highlight the potential for consideration of social issues at the different stages of the procurement process, it is not intended to act as an exhaustive list of possibilities. Indeed it is recommended that officials should research or consult with the relevant department or agency with responsibility for a particular social policy.

2.3 Dos and Don’ts

Do

- Consider the strategic context.
- Develop a purchasing strategy that ensures relevant social issues are considered, take account of departmental and Government-wide objectives to inform your organisation’s overall procurement strategy.
- Ensure that obligations contained in social legislation, for example, those relating to race, gender and disability, are considered at the outset of procurements, where possible in a manner that enables an assessment of their impact and relevance to be undertaken. This will assist procurers to ensure relevant legislative/policy obligations are reflected in their requirements at the earliest stage.
- In assessing the costs and benefits of including a particular social issue, it is worth considering other direct ways that may be more effective in taking the issue forward, such as grants or more direct provision of training opportunities.
- Consider developing a risk-based approach. This might include an assessment of any social risks, for example, effects on certain types of businesses, or the wider community, or other vulnerable groups, as well as related risks to security of supply. Identifying how a department or public body will work with suppliers to minimise any of these adverse effects would be useful in this regard. For example, putting mechanisms in place to collect data, to monitor, to evaluate and to report performance on procurement activity.
- Consider seeking legal and/or expert advice as necessary.

Other important issues

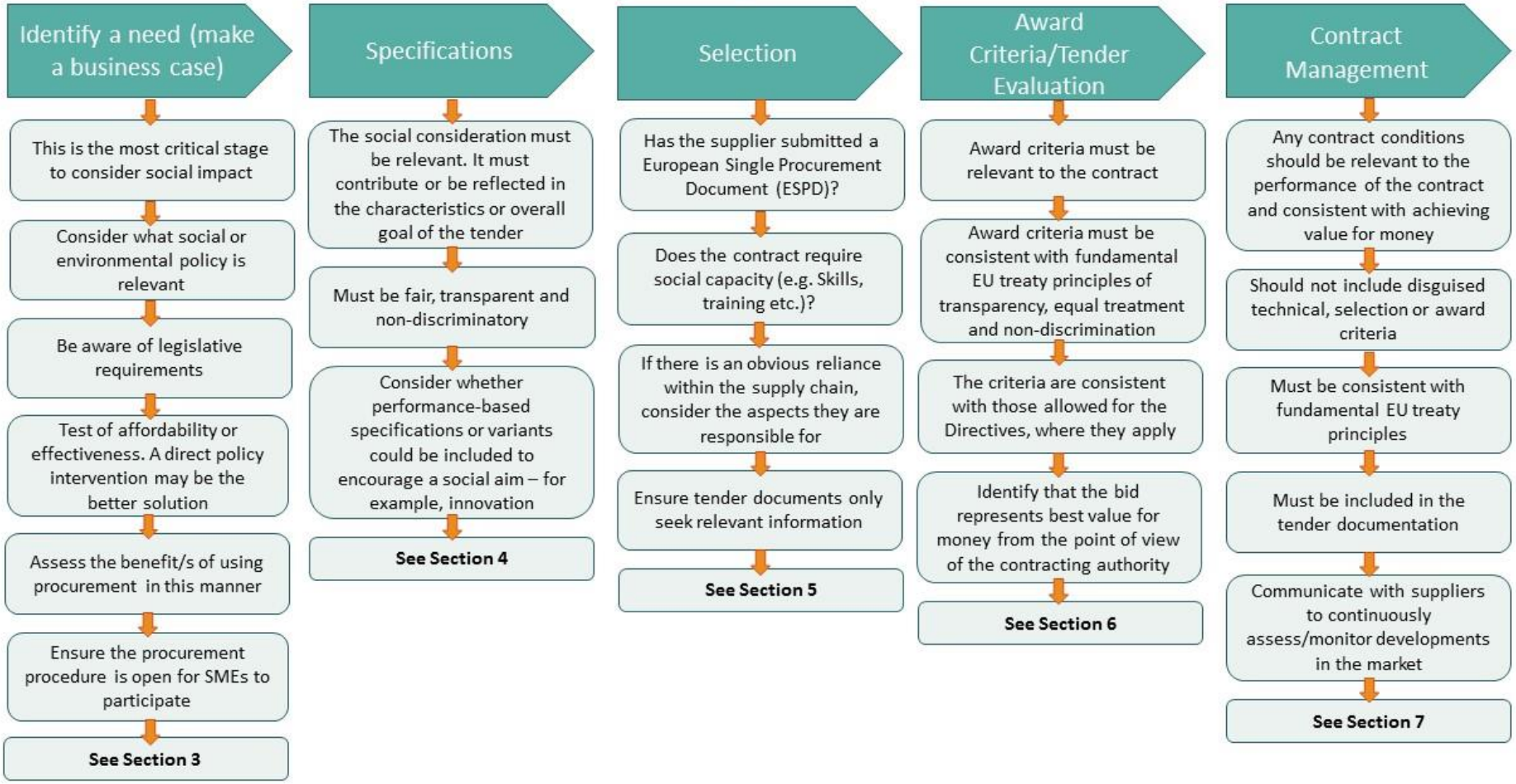
- Consider social issues from the outset. There is greatest scope available early on in the process, in the business case or when defining needs and specifications, and early action is more likely to be successful.
- Ensure that the initiative can be supported through existing means and, if not, take into consideration the resources required to develop the necessary infrastructure, for example to manage the contract once in place, to monitor relevant indicators etc.

- Carefully plan the whole procurement process and ensure it is accessible to a suitable variety of suppliers including small and medium-sized enterprises (SMEs) that might include social enterprises depending on the nature of the procurement.
- Assemble relevant expertise. Procurement specialists and end-users should be involved together with those responsible for social policies, and others with relevant knowledge or experience. (Appendix A outlines the main agencies involved in the delivery of social services, though this list is not exhaustive).
- Initiate early dialogue (before an individual procurement begins) with the supplier community including the SME sector. This can be useful in finding out what is available, in informing the market of future requirements, and in stimulating more innovative responses. However, care should be taken not to distort competition, this type of engagement should not give advantage to any particular supplier.
- During the tender process highlight the importance of the social issues being targeted (for example, related to a specific policy or legislation) to potential bidders (for example, training and development opportunities for staff). This may include directing potential bidders to relevant sources of information or direct agency assistance to improve its understanding and performance in relation to these issues.

Don't

- Act in such a way as to distort competition or discriminate against candidates from other member states or locations.
- Leave consideration of social issues until too late in the process.
- Add social elements to a contract that are beyond what is required under law without careful evaluation and justification of any additional costs.
- Ask suppliers about their policies generally on issues which are not related to the specific contract. This is to ensure that award decisions are robust legally. If wider, non-relevant issues are requested, they are likely to be deemed by the Courts to have been taken into account, and this could lead to legal difficulties later on. Looked at another way, a contracting authority may ask for evidence that tenderers have the requisite expertise or skills to fulfil the contract, or evidence that they are complying with relevant social legislation, where this is relevant to the contract.

Social Considerations and the Stages in the Procurement Process



3. Planning and developing a business case

The planning stage is the most critical phase for the inclusion of social considerations in a procurement process. It will not usually be the procurement officer who identifies the need, so it is essential that procurement staff are assisted by the official in charge of the project or area. This will ensure a coherent approach to the whole procurement process, including incorporating relevant social considerations which will inform the subsequent development of appropriate specifications. For information on cost implications and project appraisal by policy departments and contracting authorities see page 20.

3.1 Awareness of social issues

Procurement staff working in an area related to public policy implementation or delivery should make efforts to be aware of which social policy priorities that central and local government and governmental agencies are pursuing in Ireland and in some cases abroad. This will help procurement staff to identify which social policy considerations, on a contract-by-contract basis, are relevant to the procurement they are undertaking and the scope to integrate these aims into their particular user requirements. For larger once-off projects, this process is likely to be assisted by setting up a working group of relevant stakeholders with a knowledge of the key issues related to the project.

For example, it is at planning stage that in considering the user requirement to build a hospital, a contracting authority's awareness of social issues might lead it to work with relevant State agencies to assess how the project can help that area to facilitate its regeneration. In that regard, the contracting authority could include a requirement for the winning tenderer to work with the local community during the project. This criterion would apply regardless of where in the EU the tenderer itself is based.

Contracting authorities might also consider consulting interested organisations when sounding out the market prior to a specific procurement (though not in a way that disadvantages particular suppliers, including those from other member states) provided that any such consultation is in compliance with the 2016 Regulations (Regulation 40 and 41). Collaboration with bodies such as voluntary groups or social enterprises may be helpful in this context, as they may alert procurers to issues that need to be considered of which they may not otherwise have been aware.

3.2 Ensuring access to public contracts

A key part of the Government's public procurement agenda involves encouraging as broad a spectrum of businesses, including SMEs and social enterprises, to participate in competitions for public contracts.

Encouraging increased competition through facilitating these kinds of bodies should help deliver value for money benefits to contracting authorities and can bring innovative, flexible and cost effective solutions to the outcomes sought by contracting authorities through procurement. They operate in many sectors that are central to public service delivery and are often well placed to provide services in hard to reach areas. Social enterprises, including voluntary organisations, may often be best placed to deliver certain types of contract, for example, services to deprived sections of the community. Failing to ensure the SME sector has equal access to Government contracts could mean that a valuable source of supply is lost.

For example, a hospital located in a disadvantaged area is likely to have a diverse customer base. It will need to consider the differing cultural and language needs of the local population in its procurement of goods and services, to ensure it is effectively meeting the needs of its clients. Therefore, such matters should be considered when procuring information leaflets or designing notices.

3.3 SME access to procurement opportunities

The OGP is committed to encouraging SMEs to avail of public procurement opportunities. Circular 10/14 sets out a number of positive measures that buyers should take to promote SME involvement in public sector procurement. These are summarised below.

- Buyers are advised to undertake market analysis prior to tendering in order to better understand the range of goods and services on offer, the competitive landscape, including the specific capabilities of SMEs.
- Buyers are required to advertise goods and services contracts with an estimated value of €25,000 (excluding VAT) and over on the Government's electronic tendering portal, eTenders.
- Suppliers, including SMEs are encouraged to fully utilise eTenders and avail of its facilities in relation to registration, etendering and automatic alerts for future tendering opportunities.
- Buyers are encouraged not to set turnover thresholds at more than twice the estimated contract value and to apply insurance levels that are appropriate for the contract in question.
- Buyers are encouraged to make greater use of the 'open procedure' and less use of the 'restricted procedure' in relation to tendering.
- SMEs are encouraged to form consortia where they are not of sufficient scale to tender in their own right.
- Buyers are encouraged to break large contracts down into lots, where reasonable to do so and where it does not expose the State to undue risk or significant management overheads.

Care should be taken to ensure that the addition of social considerations to public contracts is done in a manner that does not mitigate against SMEs as they may not be in a position to bear the additional costs or administrative burden.

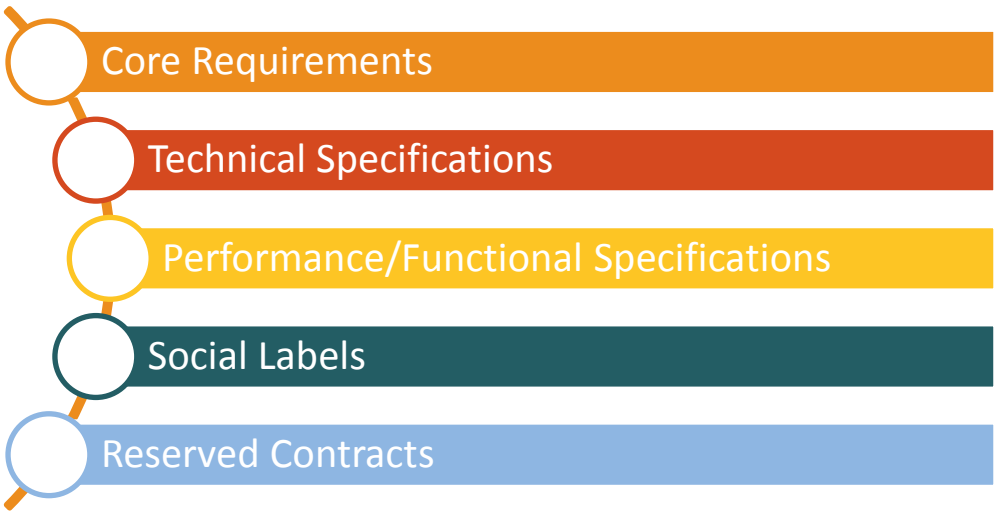
3.4 Green Public Procurement

Green Public Procurement (GPP) seeks to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured. GPP is a voluntary instrument but has a key role to play in the EU's efforts to become a more resource-efficient economy. It can help stimulate a critical mass of demand for more sustainable goods and services which otherwise would be difficult to get onto the market. GPP is, therefore, a strong stimulus for eco-innovation. Each stage in the procurement process offers opportunities to take 'green' issues into account, from defining the subject matter of the contract, through to the selection of the candidates and the award and execution of the contract. The EU Commission's main guidance document, *Buying Green!*, helps contracting authorities to buy goods and services with a lower environmental impact, it can be found here. The *GPP at a glance* brochure also provides a useful summary of GPP which can be found here. The *GPP a collection of good practices* document presents useful case studies and is found here.[11]

[11] The three GPP documents referred to are available at http://ec.europa.eu/environment/gpp/pubs_en.htm

4. Specifications

In a procurement process, specifications articulate the user requirement so that suppliers know what is needed. It is, therefore, a key stage at which to consider social issues. Contracting authorities have a great deal of scope to decide how they draw up their specifications provided they meet EU and national rules, are non-discriminatory and meet the requirements of the Public Spending Code.



4.1 Core requirements

A core requirement can be defined as an essential part of a contract, and this should be reflected both in the specifications and the conditions of the contract. In this context, it is possible for a social issue to be a requirement provided it is central to the subject of a procurement and consistent with the rules outlined above.

Care should be taken to ensure that social objectives which are not essential elements of the contract are not included as requirements or reflected as such in the specifications. This is because additional or secondary requirements that are not related to the subject of the contract can add costs, and increase the risk of legal challenge.

4.2 Technical specifications

As previously stated, specifications must be relevant to the requirement and must not discriminate against products or providers from other member states, international trade

partners or signatories to the Government Procurement Agreement[12] (GPA), and they must not restrict competition. Overly prescriptive use of technical specifications and standards can also have a disproportionate impact on the ability of the SME sector and other organisations to compete. However, where there are standards that usefully incorporate the social aspects of the user requirement, these can be specified.

> *For example, while the Building Regulations set minimum standards for 'accessibility for all' on building projects, contracting authorities can require that their buildings exceed these standards, where appropriate.*
>
> *Likewise, there are standards for IT systems which contracting authorities can specify to ensure that their systems are accessible to people with disabilities, and interoperable with software and hardware intended for such users.*
>
> *Or for supplies of goods and services, a contracting authority may specify products that meet certain environmental standards or agreed fair trade labelling (remembering of course to allow for equivalents).*

In all cases, the contracting authority must be prepared to consider equivalent standards and other solutions that meet the underlying requirement. The onus is on the supplier to prove that the solution being offered meets the need. The contracting authority must be satisfied in this regard. Failure to provide sufficient reassurance of this could be grounds for rejecting a bid.

4.3 Relevance and social labels[13]

A social label is a broad term relating to the social capacity of a company or undertaking and can, among other things, cover environmental standards and both fair and ethical trade. It can be used in reference to goods produced in line with standards aimed at securing fair terms of trade for suppliers in the developing world, or general business practice which is deemed to be carried out in an ethical manner through promotion of certain labour and environmental standards.

[12] To ensure open, fair and transparent conditions of competition in the government procurement markets, a number of WTO members have negotiated the Agreement on Government Procurement (GPA). The fundamental aim of the GPA is to mutually open government procurement markets among its parties.
[13] Regulation 43 of the 2016 Regulations.

The European Commission's Interpretative Communication *Buying Social: a guide to taking account of social considerations in public procurement* makes it clear that the social capacity of an undertaking can be taken into account if this demonstrates the technical capacity of the undertaking to perform a given contract. In other words, the social issue must be relevant to what is being procured and not relevant to how the companies providing the goods, works or services manage their businesses generally, beyond the relevant legal obligations on, for example, health and safety and employment.

> *For example, a contracting authority can specify organic coffee because the production process relates to the coffee itself in terms of the way it is grown and the chemical content. Additionally, there may be possibilities to encourage fair trade options which the contracting authority can request. It can state that it would 'welcome' fair trade coffee options, such as Fairtrade or equivalent, as part of a contract for the supply of a range of coffees. The contracting authority would need to evaluate bids on a value for money basis, using directly relevant award criteria linked to the subject of the contract (that is, not those related to any wider 'social' considerations). Where the winning tenderer was able to provide fair trade options, contract documents could then make it clear that such products should be made available. Thus, provided a supplier offering fair trade options has been awarded a contract on a value-for-money basis, the contracting authority is free to insist on those fair traded options.*

4.4 Performance/functional specifications

Contracting authorities are free to specify in terms of performance or functional requirements, which can include social aspects.

> *For example, in an ethnically diverse area, a local authority would want to ensure that information about its services was accessible to all ethnic groups. To address this issue, the authority might choose a helpdesk solution to answer questions or provide assistance to those people with little or no proficiency in English. It might, therefore, include requirements for staff working on the helpdesk to have fluency in languages other than English. This would help ensure that the needs of a large part of the authority's customer base could be more successfully met.*

Furthermore, by focusing on an outcome or desired levels of functionality, contracting authorities can give suppliers the opportunity to be innovative, to suggest solutions with

added social impact and to find the most cost-effective ways of meeting the social requirements of the contract.

4.5 Specifying production processes that factor in social considerations

Production processes can form a part of the specification where they help to define the characteristics of a product. They need not be visible in the end product. It should be noted, however, that any elements of these standards that relate to wider social issues that is, those beyond the subject of the contract are usually not permitted as they are not deemed relevant under EU rules.

> *For example, a sustainable timber production process standard might have elements relating to the protection of forest-dependent people. This part of the standard could not be specified, as it does not relate directly to the timber being bought but would be a factor in its production. However, the standard can still be accepted as proof of compliance with aspects relevant to the timber itself, and this can be highlighted in the contract notice.*

4.6 Variants

Variants are solutions which are technically or economically equivalent to a model solution known to the contracting authority. Where variants are used, it is possible for contracting authorities to take account of tenders submitted that exceed the minimum requirements it has deemed necessary to fulfil a contract. By accepting variants when assessing which bid is best placed to fulfil its needs, contracting authorities would then be able to see if tenders with enhanced social elements would be affordable on the basis of the bids received. Where this is not the case, contracting authorities could still choose from the bids meeting only the minimum requirements without having to re-advertise. This option is available as long as tenders are assessed on a most economically advantageous tender (or Best Price Quality Ratio) basis, and where the minimum technical specifications to be delivered are mentioned in the contract notice. The notice must also indicate if variants will be accepted.

4.7 Supported employment

Contracting authorities may reserve certain types of contracts for certain types of organisations. In other words, it is legally possible to close, for a defined period of time,

some markets to suppliers of a specific nature, referred to in Regulation 77 as “qualifying organisations”. These contracts have to exclusively target one or more of the following services in the categories listed in Regulation 77(2) using the relevant CPV (Common Procurement Vocabulary) codes[14] which include:

75121000-0: Administrative educational services	75122000-7: Administrative healthcare services	75123000-4: Administrative housing services
79622000-0: Supply services of domestic help personnel	79624000-4: Supply services of nursing personnel	79625000-1: Supply services of medical personnel
80110000-8: Pre-school education services	80300000-7: Higher education services	80420000-4: E-learning services
80430000-7: Adult education services at university level	80511000-9: Staff training services	80520000-5: Training facilities
80590000-6: Tutorial services	85000000-9 to 85323000-9: Fundamentally, all types of medical services	92500000-6: Library, archives, museums and other cultural services
98133110-8: Services provided by youth associations	92600000-7: Sporting services	98133000-4: Services furnished by social membership organisations

In the cases where reserving contracts under Regulation 77 is possible, the contracting authority will need to make sure that the type of organisation awarded the contract is a ‘qualifying organisation’. For the purposes of the Regulation, a qualifying organisation needs to comply with a cumulative list of requirements presented below.

- It needs to pursue a public service mission linked with any of the contracts mentioned above.
- Their profits are reinvested into the organisation with a view to achieving the organisation’s objective. Where profits are distributed or redistributed, this should be based on participatory considerations (for example, profits should be reinvested within the organisation with the purpose of achieving its social goal). In relation to the latter, certain profit-based models (for example, companies that ensure they employ

[14] The ‘Common Procurement Vocabulary’ (CPV) is a detailed system of codes for describing works, goods and services to be advertised in the OJEU. It is available at www.simpap.europa.eu

30% or more disabled or disadvantaged persons but who are commercial in nature) are also allowed to compete.

- The management and ownership structures need to be based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders.
- The final requirement is that the organisation cannot be awarded the same contract (with the same CPV code) by the same contracting authority again within a three year period. They can win contracts with other CPV codes awarded by the same contracting authority or win contracts with the same code but awarded by other contracting authorities.

A contracting authority should pursue this option on the basis of their user requirement and specification, after establishing that supported employment organisations can meet this specific requirement and provide value for money before conducting the procurement exercise.

It is important to note that the role of social enterprises and their contribution to the delivery of public services through grant-funded schemes will not be affected by this aspect of the Directives.

5. Selection criteria

Under the EU Public Procurement Directive the selection stage may usefully be divided into two parts. Firstly, if candidates do not meet certain basic requirements they can be excluded from participating in the tendering process. Secondly, the selection can also take account of certain permitted criteria. Here, only those criteria likely to be relevant to social considerations are examined.

In relation to the first, the Regulations set out that mandatory and discretionary exclusions exist to allow a contracting authority to exclude a supplier for specified reasons, for example non-payment of taxes, at any time during the procurement process. The details of these exclusions are set out below. It should be noted, however, that suppliers can engage in self-cleaning measures which must be taken into account by contracting authorities and, where they are deemed satisfactory, the exclusion criteria would not be applied.

5.1 Exclusions[15]

Existing and new mandatory exclusions

Under the rules contained in the 2006 Regulations, suppliers had to be excluded from contracts if convicted of offences related to organised crime, corruption, fraud and money laundering. This list has now been expanded in the 2016 Regulations to include convictions for terrorist, child labour and human trafficking related offences.

Taxes and social security contributions[16]

There is a new obligation to exclude a supplier which (i) has been subject to a binding and final legal or administrative decision which found breach of obligations to pay tax or social security obligations and (ii) where no binding decision has been made the authority may use its discretion to exclude an economic operator where it can demonstrate "by any appropriate means" non-payment of taxes or social security contributions by the economic operator. In the case of (i) and (ii), this can be remedied by full payment or "entering into a binding arrangement with a view to paying".

Derogation from mandatory exclusions

Under Regulation 57(6) there is a derogation from the application of the mandatory exclusions (in Regulation (57) (1) and (2)) for overriding requirements in the public interest, for example, provision of vaccines in an emergency public health scenario.

Under Regulation 57(7) a contracting authority can disregard tax and social security obligation breaches under Regulation 57(3), where the exclusion would be clearly disproportionate, that is, where only minor non-payment amounts are involved. However, if a supplier has been found to have breached a mandatory exclusion ground, the 2016 Regulations provide for a timeframe of five years for those exclusion grounds to apply[17] and

[15] Regulation 57, 18, 24 and 41 of the 2016 Regulations.
[16] Regulations 57(3)-(5) of the 2016 Regulations.
[17] Regulations 57(18)-(19) of the 2016 Regulations.

allow economic operators to prove that they have taken self-cleaning measures which demonstrate their reliability (see below)[18].

Discretionary exclusions[19]

Contracting authorities have discretion to exclude economic operators in the circumstances set out in Regulation 57(8) including for:

- non-compliance with environmental, social and labour law obligations (Regulation 57(8)(a)),
- bankruptcy (Regulation 57(8)(b)),
- grave professional misconduct (Regulation 57(8)(c)),
- distortion of competition (Regulation 57(8)(d)), and
- past poor performance which led to termination, damages or other comparable sanctions (Regulation 57(8)(g)) etc.

The 2016 Regulations provide that the period of exclusion can be up to three years under the discretionary exclusionary grounds[20]. The regulations also allow economic operators to prove that they have taken self-cleaning measures which demonstrate their reliability (see below)[21].

It is important to note that in many cases these areas are subject to legislation that is the responsibility of specific Government departments or public bodies and it is their remit to implement the law in these areas. Where such information is available, contracting authorities may use it to assess compliance or otherwise with these discretionary exclusion grounds.

[18] Regulations 57(12)-(17) of the 2016 Regulations 8.
[19] Regulation 57 of the 2016 Regulations - Article 57(4) of Directive 2014/24/EC.
[20] Regulations 57(18)-(19) of the 2016 Regulations.
[21] Regulations 57(12)-(17) of the 2016 Regulations.

Procedural changes

There are new procedural rules allowing for exclusion of an economic operator during the procurement procedure where the authority becomes aware that the economic operator is subject to any of the mandatory exclusion grounds or in breach of its tax or social security contribution obligations or subject to any of the discretionary exclusionary grounds[22].

Point in procedure for applying exclusions

Contracting authorities may exclude an economic operator on the basis of the mandatory exclusion grounds (2016 Regulations 57(1) & (2)) or the discretionary exclusion grounds in (Regulation 57(8)) at any time during the procedure. However, in applying the exclusion grounds contracting authorities should pay particular attention to the principle of proportionality, fair procedure, and the 'self-cleaning' mechanism, as allowed for under the Regulations.

Contracting authorities are obligated to pursue these exclusions and exclude candidates as a result of the information they obtain, from the candidate or otherwise.

> *For example, a contracting authority is required to exclude a candidate convicted of employing child labour, or one who had been convicted of mistreating employees and breaking employment or equality laws in the country in which it operates, subject to due process. Infringements such as these may relate to International Labour Organisation (ILO)[23] conventions, where such standards have been ratified and implemented into law.*

Self-cleaning provisions: fair procedures

Care should be taken to ensure that candidates are treated equally, and that the decision to reject a candidate is proportionate to the contract and the seriousness of the misconduct. For example, a disproportionate response might be one in which a candidate is rejected for a minor offence, unrelated to the contract, committed many years ago. The candidate should

[22] Regulations 57(10) and 57(11) of the 2016 Regulations.
[23] The International Labour Organisation (ILO) is the United Nations specialist agency responsible for the adoption and promotion of internationally recognised standards on worker's rights, including standards on Issues such as slavery and child labour. Contractors who flout these standards, and are consequently convicted of an offence under the national laws of the country in which they operate, may legitimately be excluded from the tender process.

also be given the opportunity to describe any steps they have taken to prevent a recurrence of the problem. This is commonly known as self-cleaning.

Where any of the mandatory or discretionary exclusion grounds apply to an economic operator, it may demonstrate its "reliability despite the existence of relevant grounds for exclusion" by being proactive and taking action. Under Regulation 57(13), economic operators must not be excluded under the mandatory exclusion grounds (Regulation 57(1)&(2)) or the discretionary exclusion grounds (Regulation 57(8)) if they have provided sufficient evidence of reform by payment of compensation, cooperated with the investigating authority and taken concrete technical, organisational and personnel measures that are appropriate to prevent further misconduct. On foot of taking these measures, an economic operator would have the opportunity to provide evidence at tender stage on self-cleaning measures and must not be excluded if the evidence is considered sufficient. This self-cleaning option cannot, however, be extended to the case of exclusion from participation in procurement procedures by final judgment[24].

> *For example, in asking for details of any convictions in say the past five years, a contracting authority might discover that a candidate had been found guilty of breaching certain legal obligations. While this would provide reason for exclusion at the selection stage, the contracting authority might allow the organisation to demonstrate what actions it had since taken to rectify the problem. The company might show that it had subsequently completed a full review of its policies and procedures with regard to equality, and had consequently established procedures and training for its staff. Exclusion in view of these actions might therefore be deemed disproportionate at this stage.*

5.2 Selection according to technical capacity

The objective here is to select the candidates most able to execute the contract. Therefore, requirements relating to capacity must be directly relevant to the subject of the contract. The EU Public Procurement Directive provides an exhaustive list of the evidence contracting authorities can request as proof of technical capacity[25]. Some of these can be of a social

[24] In the case of Regulation 57(2) of the 2016 Regulations, there is no need for self-cleaning measures once the taxes are paid or social security contributions made.
[25] Annex XII of the 2016 Regulations.

nature, for example, evidence of the environmental management measures that the supplier will be able to apply when performing the contract.

Where relevant to the subject of the contract, contracting authorities can only ask for evidence of the following:

- Suitability to pursue a professional activity
- Economic and financial standing
- Technical and professional ability

For example, the suitability to pursue a professional activity and technical and professional ability can be assessed at selection stage where poor labour standards or lack of skills are cause for concern in relation to the product being provided. Risks of this kind that relate to the capability of the supplier and thus to the delivery of the contract need to be addressed at the selection stage.

The European Commission Interpretative Communication on social issues and public procurement[26] expressly allows for the exclusion of tenderers who have failed to comply with social legislation.

For example, it might be necessary to request evidence of a tenderer's ability to fulfil the health and safety aspects of a contract in order to assess whether the contractor's staff will work effectively with the target customer or the contracting authority's own staff. In this regard, OGP's standard template documents include model terms and conditions and contain a provision for the contractor's compliance with the client's health and safety measures while on the client's premises, and also a requirement for compliance with health and safety legislation. Care must be taken when making such requests, however, as asking for social policies in their entirety may lead to information being submitted that is not wholly relevant to the contract. If a complaint was then made, it could be deemed that a contracting authority had taken non-relevant aspects into account.

[26] Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement (COM(2001) 566 final).

Staff engaged in procurement should be aware of the potential impact on SMEs. Requirements should, therefore, be carefully considered to ensure that SMEs are not disadvantaged by disproportionate and/or irrelevant requests for information.

5.3 Qualification questionnaires (European Single Procurement Document)

Qualification and selection questionnaires, including the European Single Procurement Document (ESPD) are used by contracting authorities in a variety of different ways. For example, some use them to keep a database of eligible suppliers for a range of contracts, while others use a standard questionnaire to help select candidates for a particular contract. Both types of questionnaire must be consistent with the ESPD Regulation[27], where the contracts in question are above EU threshold values.

The same principles discussed throughout this guidance apply to these questionnaires. Where contracts are above the EU thresholds, all questions posed for a particular contract must be relevant to that contract.

Therefore, it is important to carefully consider the types of questions that are asked on the standard forms which are used for a wide range of public procurement contracts. Questions relating to aspects of social policies are not forbidden, **but they must be tailored to each specific contract**.

For example, the qualification questionnaire for a stationery contract should not ask general questions about suppliers' equality policies. However, because there has been agreement that compliance with equality legislation can be included as standard in contracts, something to this effect could be included in the terms and conditions.

It should be noted that over-burdensome paperwork and unnecessary requests act as a major obstacle to the participation of the SME sector in the public sector market. This can reduce their ability to compete effectively for Government contracts and requests for information should therefore be proportionate and relevant.

[27] Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document.

5.4 Subcontracting

The EU Procurement Directives allow contracting authorities to consider aspects of subcontracting where they are relevant to the contract, and consequently, there may be situations where the capability of subcontractors needs to be addressed, as this may impact on the successful delivery of the contract.

Social issues related to subcontracting aimed at assisting the community at large rather than the contract itself cannot form requirements in a particular procurement, but contracting authorities can discuss the possibility of working voluntarily with contractors after award to achieve these aims.

Subcontracting is an important route through which the SME sector can secure public sector business. While EU rules do not allow contracting authorities to mandate that a contractor use a particular company as subcontractor[28], it is often possible to work voluntarily with the supplier, once the contract has been awarded, to increase opportunities for these organisations. This is likely to be suited to larger contracts.

For example, a contracting authority might work voluntarily with the main contractor to set up a structure such as a website allowing SMEs notice of subcontracting opportunities and to influence more SME-friendly hiring policies during the length of the contract. In such case, the main contractor wouldn't be dependent on these subcontractors to complete the contract.

[28] Other than where that subcontractor has been identified through a public procurement process.

6. Award criteria/tender evaluation

The primary aim of the Government's procurement policy is that all contracts should be awarded on the basis of value for money. This policy ensures that public services are supplied in a sustainable manner. The extent to which it is possible to consider relevant social issues at tender evaluation stage within the framework of value-for-money policy and the EU rules, is examined in this section.

6.1 Value-for-money policy

Value for money is not about securing the lowest initial price, it is defined as the optimum combination of whole-life costs and quality to meet the user's requirement. This does not preclude lowest price where the good or service is largely homogenous in nature. Taking quality into account or seeking clearly measurable criteria should allow for relevant social aspects of a bid to be considered. Care should be taken to ensure that any additional costs are proportionate to the benefits and are reflected in the award criteria.

6.2 Award criteria and the EU Procurement Directives

The EU rules permit contracts to be awarded on the basis of either lowest price, or Best Price Quality Ratio[29]. This latter option is equivalent to 'value for money' as defined above, and should be chosen by contracting authorities in most circumstances. Acceptable criteria for determining the most economically advantageous tender must meet certain conditions. Examples are provided in the Directives and in 6.3 below. Award criteria must:

- Be relevant to the subject of the contract[30]

  All award criteria used must be justified by the subject of the contract[31]. The purpose of the award stage of the procurement process is to allow the contracting authority to evaluate the tenders and assess which tender best meets its needs. The award criteria chosen will help the authority to do this. They should relate to the intrinsic qualities of each of the bids, and not to secondary issues, such as external costs or benefits. These wider costs and benefits should be considered much earlier, as previously explained. This is what is meant by criteria having a direct link to the subject of the contract. For example, in a construction contract, an award criterion based on how much money bidders invest in the local community, outside of the contract, would not be legally acceptable. However, if the award criteria gave additional marks for training or apprenticeships this would be acceptable because it is linked to the contract.

- Be consistent with EU Treaty principles

  As with all aspects of the procurement process, at the award stage the principles of non-discrimination, equal treatment and transparency should be respected. For example, an award criterion based on the percentage of local people employed would be discriminatory, as the local element would not accord with EU Treaty principles. In addition, more focussed criteria at the award stage ensures that bids can be effectively and objectively compared. Inclusion of poorly developed criteria makes it hard to evaluate the bids against each other, as such issues can be difficult to quantify

[29] In accordance with Regulation 67(1) of the 2016 Regulations contracts will be awarded on the most economically advantageous tender. The most economically advantageous tender shall be identified on the basis of lowest price or the Best Price Quality Ratio and should be assessed on the basis of qualitative, environmental and/or social aspects …".
[30] Primarily covered by Regulation 67(5) of the 2016 Regulations.
[31] Concordia Bus case C-513/99 is a good example of where the CJEU has found that environmental criteria were satisfactory as they were linked to the subject matter of the contract.

and compare. For example, how would you objectively compare a bidder who carries out equal pay audits to another who has an outstanding equality policy?

- Relate to the specification

  Specifications require that a tender meets the user requirement while award criteria evaluate how the tender meets this requirement in value-for-money terms. Award criteria are, therefore, able to address levels of quality or performance compared to what was requested in the specifications.

- Be distinct from selection criteria

  Selection or prequalification criteria should not normally be revisited at the award stage. The criteria used for selection and award should be distinct.

- Be proportionate

  Is it a 'must' for inclusion as award criteria or could it be included at an earlier stage of the procurement process?

6.3 Examples of award criteria

A number of examples are provided in the Public Procurement Directive[32] that illustrate permissible award criteria which must be related to the subject matter of the contract. These include: quality, price, aesthetic and functional characteristics, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion. Examples of award criteria relating to social considerations include employment and training opportunities for disadvantaged groups and disabled people or environmental and sustainability efficiencies. It is important where there are additional costs arising from the inclusion of any award criteria that these are identifiable and the costs are proportionate to the benefit delivered.

[32] Article 67.

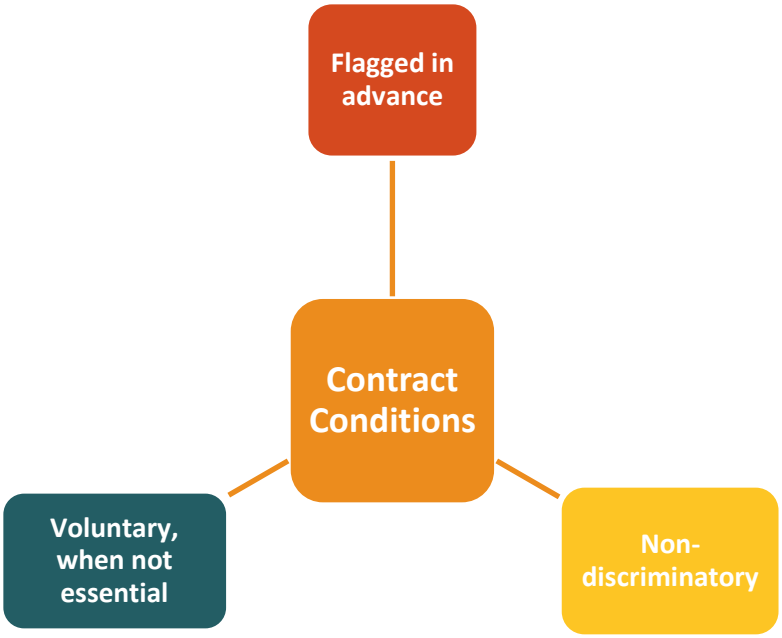
6.4 Notification of award criteria

The award criteria must be mentioned in the contract notice or contract documents. They should normally be listed in descending order of importance where the weightings are not defined at the time the contract notice is published. It is best practice to include the relative weighting given to each of the criteria.

7. Contract management[33]

7.1 Contract conditions

Contract conditions relate to the performance of the contract. Provided they are relevant and do not undermine value-for-money considerations, they can offer significant scope for working with suppliers in a way which maximises the social impact of a particular contract. Working with suppliers after the contract has been awarded also provides an additional opportunity for procurement to contribute to the achievement of relevant social objectives. It is important to be clear that these are included as part of the performance monitoring of the contract, not as part of the assessment/award processes. They must also be advised in advance to potential bidders by including them in the tender documentation.



7.2 Key points to remember

- Contract conditions should not be disguised technical specifications, selection or award criteria. They should be able to be met by whoever wins the tender, from the time at which the contract starts. Where particular skills or qualifications are needed

[33] Recitals 97-100 of Directive 2014/24/EC.

for a contract, these should be considered at the selection stage. If a contracting authority wishes to promote additional training not essential for the contract, then this should generally be done on a **voluntary basis** once the contract has been awarded, rather than as a formal condition.

- Contract conditions must be compatible with the fundamental EU Treaty principles, particularly the provision on non-discrimination.
- The need for transparency requires that conditions of contract should be **advised in advance** to candidates. Details should be included in the tender documentation.

7.3 Contract conditions and the EU rules

There is scope within the legal framework governing public sector procurement to include certain positive actions to achieve social policy objectives in the terms and conditions of contracts. Regulation 70 of the 2016 Regulations allows a contracting authority to set special conditions relating to the performance of a contract where the conditions are related to the subject matter of the contract. These conditions may be economic, innovation, environmental, social or employment related.

> *For example, in a procurement for the construction of a new community centre, a contracting authority might consider whether there would be significant benefits to be gained from including a targeted recruitment and training requirement in the conditions of the contract. It might, therefore, include the clause '10% 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 sub-contractor and are engaged in a training programme that is accepted by the Employer'.*

When considering the inclusion of such clauses in a contract, however, care must be taken to ensure they are non-discriminatory, and that value for money is being maintained. The contractor's performance in delivering on this requirement is also important with proportionate sanctions for a failure to comply.

Contract conditions should be relevant to the subject of the contract and should not undermine the performance of the contract and achievement of value for money for the taxpayer. As a general rule, contract conditions should be used carefully and they should be supported by the costs and benefits they accrue.

Appendix A: Relevant government departments or agencies

Office of Government Procurement	www.ogp.gov.ie
Department of Public Expenditure and Reform	www.per.gov.ie
Department of Communications, Climate Action and Environment	www.dccae.gov.ie
Department of Employment Affairs and Social Protection	www.welfare.ie
Department of Transport, Tourism and Sport	www.dttas.ie
Environmental Protection Agency	www.epa.ie
Solas	www.solas.ie
Sustainable Energy Authority Ireland	www.seai.ie
Department of Business, Enterprise and Innovation	www.dbei.gov.ie
Enterprise Ireland	www.enterprise-ireland.com
InterTrade Ireland	www.intertradeireland.com
The International Labour Organisation	www.ilo.org
Court of Justice of the European Union	www.curia.europa.eu
European Commission	www.ec.europa.eu

Appendix B: Useful information/guidance and links

EUROPE 2020. A European strategy for smart, sustainable and inclusive growth
Green Procurement - Guidance for the Public Sector (EPA)–2014
Buying Green Handbook (EC)
National Disability Authority - Procurement Process and Accessibility
"Strategic use of public procurement in promoting green, social and innovation policies" Final Report - DG GROW
European Commission Green Public Procurement
European Commission - GPP At A Glance Brochure
Green Tenders - An Action Plan on Greens Public Procurement
European Commission Green Public Procurement FAQ
European Commission GPP A Collection of Good Practices
European Commission Public Procurement for a Circular Economy
Office of Government Procurement - Public Procurement Guidelines For Goods And Services
Circular 10/14 Initiatives to Assist SMEs in Public Procurement
Directive 2014/24/EU on public procurement
S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations
EU Directive 2014/25/EU on Procurement by entities operating in the water, energy, transport and postal services sectors (Utilities Directive)
S.I. No. 286 of 2016 European Union (Award of Contracts by Utility Undertakings) Regulations 2016
Directive 2014/23/EU on the award of concessions contracts
S.I. No. 203 of 2017 - European Union (Award of Concession Contracts) Regulations
S.I. No. 339 of 2011 European Communities (Clean And Energy-Efficient Road Transport Vehicles) Regulations
Directive 2006/32/EC of 5 April 2006 on energy end-use efficiency and energy services
S.I. No. 151/2011 European Union (Energy Efficient Public Procurement) Regulations 2011
Environmental Considerations in Public Procurement

Commission Staff Working Document – Buying Green! – A handbook on environmental public procurement
Communication From The Commission To The European Parliament And The Council - Building the Single Market for Green Products - Facilitating better information on the environmental performance of products and Organisations

Appendix C: Examples of the use of social considerations in procurement

These examples are for information purposes only. These examples together with the contents of this information note should be used to prompt readers to consider how social considerations might be included in a procurement process.

There are three ways to consider and/or include social considerations in a procurement competition:

- As a minimum requirement
- As an award criteria
- As a contract provision

Each of these is set out below.

Social consideration as a minimum requirement

Objective A: Promoting social justice and inclusion

i. Employment opportunities

The contractor shall provide, either directly or through its supply chain [insert number] of person(s) or [insert number of] of weeks of work experience or employment opportunities for an unemployed person(s) to be arranged through an appropriate training body such as Solas or equivalent organisation, or through an equivalent scheme that is acceptable to the contracting authority if the contractor is operating elsewhere in Ireland or in another member state of the European Union.

ii. Apprenticeship opportunities

The contractor shall employ [insert number] of apprentice(s) for the contract duration, either directly or through the supply chain.

Objective B: Strengthening engagement between service providers and the community

i. Social/Community considerations

Providers must actively engage with the community and other organisations to ensure any benefits from working collaboratively can be realised during the duration of the contract. Tenderers must submit a Community Engagement Plan with their tender submission to detail how, if awarded the contract, it will engage with the community in the local area over the term of the contract.

Social consideration as an award criteria

Example of use by OGP of a Social Consideration in a procurement process

Social considerations used by OGP in the 2017 Catering Consumable and Disposable Products RFT.

Quality: 500/1000 marks

Social considerations: 100/500 quality marks

	Table A. Quality Award Criteria			
Section	**Award Criteria**	**Marks Available**	**Minimum Marks Required to Pass ***	**Weighting**
1	Tenderer's proposed Contract Mobilisation, Delivery and Management Plan	200	120	40
2	Tenderer's proposed methodology for ensuring continuity of supply and proposals for reliable deliveries	150	90	30
3	Tenderer's Proposals for Environmental and Sustainability Efficiencies	100	60	20
4	Tenderer's Proposals in respect of product recalls/replacements and customer complaints procedure	50	30	10
	Totals	**500**	**300**	100

Detail contained in the specification contained at Appendix 1 to the RFT

Tenderer's proposals for Environmental and Sustainable efficiencies: 100 Marks

Tenderers are asked to provide details of the environmental management system they propose to use in providing the required services including but not limited to the system which will be implemented by the Tenderer to reduce and monitor the environmental impact of its operations and any external accreditation (for example, ISO) obtained for that system.

Tenderers must demonstrate in a clear and comprehensive manner how they propose to deliver and manage a contract from an environmental and sustainable perspective, setting out details of any environmentally friendly or sustainable initiatives they propose to adopt in the provision of the goods. Examples of ways in which this can be done may include (but are not limited to):

- the Framework Supplier will supply energy efficient products, through minimising and reducing packaging and other waste, where appropriate,
- successful development of Compostable products to EN 13432 or ASTM D6400,
- consolidation of deliveries, and
- eBilling systems to reduce paper waste.

The contracting authority reserves the right to visit the tenderer's facilities and to perform inspections to ensure the tenderer's compliance with applicable environmental, hygiene, health and safety standards before or during the term of the tender.

Example of how social considerations could be used as an award criteria in an employment context

Award Criteria example of Social Benefit/Employment Consideration

Award Criteria	Marks
Outline your proposals to provide for up to three full-time employees with a Disability per contract year	30 marks

The allocation of marks available for award criterion [insert number] of the RFT is as follows:

Number of Employees	Marks
Three employees per contract year	30 marks
Two employees per contract year	20 marks
One employee per contract year	10 marks
Zero employee per contract year	0 marks

Example of detail relating to the award criteria to be put into the specification in RFT

- The Government of Ireland is committed to maximising social benefits that can be delivered under public procurement. Potential social benefits include apprenticeship opportunities, staff training as well as the creation of employment opportunities for the long term unemployed. The focus of this competition is the potential employment of person(s) with a disability.
- In this competition the contracting authority aims to facilitate the employment of up to three persons with disabilities in fulltime employment. The social benefit may be gained either through the frontline service delivery or through the supply chain or support functions. Tenderers are referred to the definitions of disability below (Social Benefit). Tenderers wishing to propose employment of person(s) with a disability in the delivery of the services must include in their tender a clear and comprehensive social method statement outlining how they would propose to further the important policy objective of encouraging the employment of persons with disabilities, if awarded a contract as a result of this public procurement competition. The tenderer must set out its procedures and programmes proposed together with appropriate Key Performance Indicators (KPI) demonstrating how the Social Benefit will be achieved and measured over the Term of the Contract (the Preliminary Social Method Statement). The Social Method Statement must relate to this public procurement competition only.
- The successful tenderer will be required to provide a [monthly] KPI summary report which must include such information as the contracting authority may specify from time to time. A more detailed Annual/Quarterly report will also be required. The Preliminary Social Method Statement will be required to be agreed with the Contracting Authority in final form no later than from [1 month] of the execution of any contract with the successful tenderer.

- Tenderers must ensure that the attainment of the Social Benefit (including measures proposed in the Preliminary Social Method Statement and subsequently set out in the Social Method Statement) do not prejudice the employment or terms of employment of any existing employees.
- Tenderers should note that 'Disability' is as defined under the Disability Act 2005 and the Employment Equality Acts 1998 and 2004 and is set out below:

  The Disability Act 2005 defines Disability in the following terms:

  > "Disability, in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment".

  The Employment Equality Acts 1998 and 2004 defines Disability in the following terms:

  a. the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
  b. the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
  c. the malfunction, malformation or disfigurement of a part of a person's body,
  d. a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
  e. a condition, illness or disease which affects a person's thought process, perception of reality, emotions or judgement or which results in disturbed behaviour, and shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person.

Tenderers must satisfy themselves that their tender satisfies the social benefit.

Social consideration as a contract condition

The clauses set out below are intended as a sample only to enable the reader to consider how social considerations can be used as contract conditions. The two examples below are not template clauses.

A. Environmental clause

The Contractor shall not:

a. cause in the performance of the Services any release of dangerous substances into, or contamination of, the environment, including the soil, the atmosphere, or ground water, except in accordance with applicable Environmental Laws, and
b. use as part of the performance of any of its obligations under this Agreement any dangerous substances except on accordance with all applicable Environmental Laws and subject to the Client's prior written consent.

The Contractor shall comply, and shall procure that the Contractor's personnel shall comply with:

a. all applicable Environmental Laws,
b. all applicable environmental requirements relating to the Premises and Services, as are notified by the Client to the Contractor in writing from time to time,
c. the Contractor's own internal environmental standards to the extent such standards do not conflict with this agreement, and
d. best Industry Practice in relation to the provision of the Services.

The Contractor shall comply, and shall procure that the Contractor's personnel shall comply with:

a. all applicable food hygiene requirements relating to the Premises and Services as are notified by the Client to the Contractor in writing from time to time,
b. the Contractors own internal food hygiene standards to the extent such standards do not conflict with this agreement, and
c. best Industry Practice in relation to the provision of the Services.

B. Reporting clause

Option 1

a. The Contractor shall provide the Community Engagement Plan in the form and at the intervals set out in Schedule [insert number].
b. The Contractor Contact and Client Contact shall meet in accordance with the details set out in Schedule [insert number] and the Contractor shall, at each meeting,

present its previously circulated Community Engagement Plan, in the format set out in that Schedule [insert number]

Option 2

a. The Contractor shall, at its own cost, submit a report to the Client within [insert number] Business Days of the end of each Contract Year following the completion of the [insert description of services/actions to be taken], which shall identify the emergence of new and evolving relevant ***energy/efficient/sustainable/environmentally friendly*** technologies and processes which could improve the Operational Services. The report shall be provided in sufficient detail to enable the Client to evaluate properly the benefits of the new technology or process.

Appendix D: Case study/example of Social Considerations in procurement by OGP

Green Procurement Project: Catering consumable and disposable products

Background

In February 2017, the Office of Government Procurement (OGP) were requested to procure catering consumable and disposable products by several public sector bodies. During the research phase prior to writing the Request for Tender (RFT) it became clear very early on when developing the product specifications that there was a large amount of non-recyclable, non-biodegradable and non-compostable products being currently used.

In this case, the research made the OGP aware of the following issues:

- The French decision to ban the sale of many of these plastics from 2020.
- OGP's environmental responsibilities as the leading procurement organisation in the State.
- The European Union push on Green Procurement following the publication of their document *Buying Green, a handbook on green public procurement*.
- New advances in green manufacturing technologies.
- The reduction in the current market prices for 'environmental' options.
- Building media attention focusing on environmental issues.
- Approximately €2 million spent per annum on 145 different disposable catering products.
- Approximately 14 million 'coffee' cups used by the State each year.

Based on its research and the issues listed above the OGP formulated a RFT strategy that encouraged tenderers to submit alternative compostable products for each and every item on the tender pricing schedule.

The ‘Green’ objectives set out in the RFT were:

- Introduce compostable alternatives to plastic products where possible.
- Reduce the usage of plastic based products, particularly the enormous usage of ‘coffee’ cups by encouraging re-use or replacement with the compostable alternatives.
- Set up a system of information gathering over the life of this contract that would lead to a future standalone competition for compostable products.

Execution and challenges

The OGP held pre-tender meetings with a range of potential suppliers, to assess the market for compostable products and the OGP asked the market their opinions on the viability of compostable products and their future use in Ireland. OGP found out that suppliers were already developing solutions in this area and as such were very receptive to the idea of them being included in the tender. Likewise, public service bodies were positive and enthusiastic about the proposed strategy.

OGP method of including social considerations in the procurement competition

The purpose of the green procurement element of this project was to find sustainable, compostable alternatives to the 145 disposable items currently in use. OGP also included an environmental award criteria that was to be evaluated as part of the award procedure. Tenderers were asked to provide details of the environment management system they propose to use in providing the required services including:

- the system which will be implemented by the tenderer to reduce and monitor the environmental impact of its operations,
- any external accreditation (for example, ISO) obtained, waste licenses and collection permits etc., and
- how the tenderer would address, packaging disposal, waste disposal, European Directives compliance, energy reduction initiatives, reduction of carbon footprint initiatives, vehicle efficiencies etc.

For illustrative purposes the stages of the completion were handled as follows

Selection criteria

Economic and Financial Standing: ESPD (checked prior to evaluation), Current Banking References (checked post evaluation), Insurances (checked post evaluation) and Auditors Statement of Annual Turnover. As part of the selection process a First Minimum Turnover (greater than or equal to the value of the lot applied for) and a Second Minimum Turnover requirement (greater than or equal to the sum of the Lots applied for) was used for Lot applications.

Technical and Professional Ability: Experience of Previous Contracts (three similar contracts within the previous three years providing some or all of the same Goods delivered to multiple locations in more than one County), Health & Safety Statement (checked post evaluation) and compliance with Garda vetting requirements.

Award criteria

Quality: there were four qualitative requirements used.

- Tenderers proposed Contract Mobilisation, Delivery and Management Plan.
- Tenderers proposed methodology for ensuring Continuity of Supply and proposals for reliable deliveries.
- Tenderers proposals for Environmental and Sustainability Efficiencies
- Tenderers proposals in respect of product recalls/replacements and customer complaints procedure.

Cost: The cost of each item was individually evaluated with the total of marks awarded then further evaluated under:

- Year One Pricing
- Year Two Pricing
- Year Three Pricing

Furthermore, there was an additional criteria also used.

- Non-Core Product Discount Percentage

Scoring mechanism and balance of scoring

1000 marks were available for the evaluation and this was broken down as follows:

Quality: 500 marks

- Tenderers proposed Contract Mobilisation, Delivery and Management Plan (200 marks)
- Tenderers proposed methodology for ensuring Continuity of Supply and proposals for reliable deliveries (150 marks)
- Tenderers proposals for Environmental and Sustainability Efficiencies (100 marks)
- Tenderers proposals in respect of product recalls/replacements and customer complaints procedure (50 marks)

Cost: 500 marks

- Year One Pricing (100 marks)
- Year Two Pricing (150 marks)
- Year Three Pricing (200 marks)

Furthermore, there was an additional criteria also used.

- Non-Core Product Discount Percentage (50 marks)

The successful tenderer in this procurement competition scored full marks for their response to the environmental award criteria and did so by:

- having FTSE Good Index Member since its inception in 2001,
- being ISO 14001 Registered Business,
- having annual carbon footprint reduction initiatives,
- detailing plans to introduce Electric Vehicles by end of 2018,
- complying PEFC/FSC which ensures that paper based products come from sustainable forests,
- being a member of Repak [note: an equivalent organisation could have been referenced, if they were from another EU member state], and

- being committed to the sourcing of environmentally sustainable products.

Outcome of competition and envisaged results

Outcome

The purpose of the green procurement element of this project was to find sustainable, compostable alternatives to the 145 disposable items currently in use. The project identified 37 alternatives and these are currently offered to the PSBs. As a result of this competition the public sector now has access to affordable, environmentally friendly products. The successful tenderer has a committed environmental protection programme in place.

Envisaged future results

There are cost savings and efficiencies to be gained with the use of compostable alternatives, for example, if used there will be no need to separate food waste as both food waste and compostable products can both be placed in compost bins. In terms of what it means to the environmental social considerations:

- The products break down in landfill over time, however, if they are processed by industrial composting then they can be broken down in as little as 8–12 weeks, after which the compost itself can become a source of income.
- Raw materials used in the production of compostable products are generally derived from renewable resources or from byproducts of agricultural processes.
- Composting reduces the need for fertilisers, improves soil quality and yield potential, gives a better soil structure and can improve water retention rates in light soil.
- Manufacturing compostable products generally requires 50% less energy (corn-based bio-plastics), 40% less water (bio-based plastics) and emit up to 73% less CO^2 (compared to the production of Styrofoam).

Monitoring

It should be noted that there was an oversight function built into this framework that showed the amount of products, value of spend and the proportion of overall spend.

As part of the Appendix 1: Requirements and Specifications, tenderers were required to address requirements such as management information reporting and key performance indicators. These requirements are regularly addressed with the Contractor at a quarterly

business review that the OGP carries out with them. These reviews are scheduled for the month after their (the Contractor) quarter ends, usually in January, April, July and October. The OGP requires a Spend Report by Location and Product to be submitted prior to each of these reviews.

To date (June 2018) points of note are:

- €667,000 spend to date (2018)
- 176 Different Locations (145 of these are HSE)
- 4 Departments, 2 Local Governments, 1 Central Government
- 5 Compostable alternatives now being used (€9,000 to date)

The Contractor has recently created an Environmentally Friendly Products Only Catalogue, a draft copy of which the OGP was shown. The product price list was not yet ready but the OGP hopes to add this catalogue to the user guide once it becomes available.