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COMMUNITY BENEFITS IN
PUBLIC PROCUREMENT



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COMMUNITY BENEFITS IN
PUBLIC PROCUREMENT

A Report Demonstrating the
Methodology for Including Targeted
Recruitment and Training Clauses in
Public Sector Contracts

by

Richard MacFarlane and Mark Cook,
Anthony Collins Solicitors



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FOREWORD

The public sector in Scotland spends a significant amount of money each year and, understandably, there is growing interest in examining ways in which this expenditure can be used to deliver wider social, environmental and economic benefits. This report illustrates the scope to incorporate social benefits in public procurement contracts, helping to maximise the impact of public spending. In particular the report focuses on the scope to take account of wider community benefits such as targeted recruitment and training, during public procurement processes.

The report draws on the experiences of a number of public authorities in Scotland, most of whom are located in areas that have suffered from a high degree of deprivation. Pilot participants have used community benefit clauses in contracts that would traditionally have been limited to construction and social care requirements. Through using such clauses they have been able to provide recruitment and training opportunities for some of those furthest from the labour market.

The report highlights the need to align investment in learning and skills with the needs of individuals, employers and the wider economy. It also provides practical examples of how to use community benefit clauses in public procurement projects, providing a clear route for public bodies wishing to include such clauses in contracts and helping ensure that public bodies are aware of the key issues which need to be addressed if these clauses are to deliver results while complying with EU procurement law.

The report and accompanying guidance contribute to the strategic objective to create a wealthier and fairer Scotland. We would, therefore, like to recommend this report to all public officials involved in commissioning and procuring as it gives practical guidance on how social clauses can be incorporated into public contracts in compliance with legal, policy and value for money obligations.

John Swinney, Cabinet Secretary for Finance and Sustainable Growth

Pat Watters, President, COSLA



EXECUTIVE SUMMARY

This report presents the findings of the Community Benefits in Public Procurement Pilot Programme which was intended to promote the use of Community Benefit, in particular, targeted recruitment and training (TR&T), clauses, in public contracts. The work of the Programme stemmed from general uncertainty regarding the legality and scope for using Community Benefit clauses in public procurement projects.

It explains the legal and policy background for using these clauses, especially in the context of the Public Contracts (Scotland) Regulations 2006, the Local Government Act (Scotland) 2003 and the case law of the UK and EU courts. It illustrates, through detailed descriptions of the procurement process, how Community Benefits can be delivered within the legal procurement framework in an affordable manner. The report is accompanied by brief guidance to facilitate understanding of the sensitivities related to this subject.

Over recent years there have been developments in the interpretation of the policy and legal frameworks surrounding public procurement that have made it possible to consider incorporating Community Benefits into public contracts. Such developments include the research funded by the Joseph Rowntree Foundation (*Achieving Community Benefits through Contracts* by Richard Macfarlane and Mark Cook. The Policy Press. Bristol 2002)¹, the Interpretative communication of the EU Commission on the possibilities for integrating social considerations into public procurement (15 October 2001), and the EU's adoption of the Consolidated Directive on public procurement which has been incorporated in Scotland by the Public Procurement (Scotland) Regulations 2006.

Community Benefits are one of a range of social clauses that can be included in public contracts. In order to form part of the criteria according to which contracts are awarded, community benefit clauses must be included as a core part of the contract specification i.e. where a contract may have traditionally been for construction, training and recruitment elements may be included as part of the specification. In these pilots the 'community benefit' that was sought by the contracting authorities was targeted recruitment and training (TR&T).

The report draws on the experiences of five contracting authorities –

- Glasgow Housing Association, (GHA), the largest of the pilots, is the largest UK social housing stock transfer Association with more than 80,000 housing units;
- Raploch Urban Regeneration Company (Raploch URC), one of three pathfinder urban regeneration companies in Scotland. Raploch is an area of Stirling that experiences low levels of income and qualifications and high unemployment;
- Dundee City Council which was keen to use its 'well-being' powers, as conferred by the Local Government Act (Scotland) 2003, to include Community Benefit clauses in a number of social care and construction contracts;
- Inverclyde Council, whose constituents experience high levels of deprivation, were keen to use their procurement powers to achieve regeneration objectives; and,
- Falkirk Council whose strategic objective is to mainstream the concept of achieving wider community benefits from all the Council's expenditure by embedding the idea in Council policy.

The pilot case studies are based on projects of varying scales and consider use of clauses in construction and in social care procurement. While the cases themselves do not always reflect best procurement practice, deviations from good practice have been highlighted throughout the report and they have provided the foundation for application of best practice in use of Community Benefits in procurement. Where projects have deviated from policy or recommended best practice, this is highlighted in the report through the extensive use of footnotes. In using Community Benefit clauses, authorities are expected to seek their own legal advice to ensure that their clauses comply with national and EU legal requirements.

¹ *Achieving Community Benefits Through Contracts: law, policy and practice* by Richard Macfarlane and Mark Cook. (ISBN 1 86134 424 4). The Policy Press. Available from Marston Book Services, PO Box 269, Abingdon, Oxon OX14 4YN Tel 01235 465500. Fax 01235 465556. E-mail direct.orders@marston.co.uk Price £13.95 + £2.75 p&p.

Each pilot presented individual issues which are explained in detail in the report. These may be generally summarised as:

- The appropriateness of including community benefit clauses in procurement projects will vary from contract to contract and they are likely to be most suited to works and services contracts;
- Once a decision has been taken to use Community Benefit clauses, they should be included at all stages of the procurement process from business case to contract implementation and monitoring;
- Projects benefit from a project champion, i.e. a person or a team of persons who can take control of the Community Benefits aspect of the contract, with adequate resources and high-level backing;
- Targeted Recruitment and Training clauses require an understanding of the capacity of the contract to meet these requirements and an understanding of supply-side arrangements available to the successful bidder to ensure their delivery, including training and funding;
- Organisations must set firm and realistic expectations in terms of their requirements. These must be precise to facilitate implementation and proportionate monitoring of the clauses.

Community Benefit clauses can be legally included in public procurement projects and this report details a range of the path-finding work that has been carried out which is intended to assist other organisations that wish to explore the scope for achieving Community Benefits through procurement.

The facilitators of the Programme and authors of the report were Mark Cook of Anthony Collins Solicitors LLP and Richard Macfarlane, who were co-authors of the Joseph Rowntree Foundation (JRF) Report.

1 INTRODUCTION

This report presents the findings of the Scottish Procurement Directorate's and Communities Scotland's Community Benefits in Procurement (CBIP) Pilot Programme. In these pilots public bodies sought to secure the delivery of certain 'Community Benefits', namely 'targeted recruitment and training' (TR&T)², through the use of public contracts. As will be discussed in section 2, targeted recruitment and training (TR&T) can be seen as one element of Community Benefits, and the latter is covered by the generic term 'social issues' which is now appearing in procurement literature.³ The Scottish Procurement Directorate has published separate guidance on the wider field of social issues in procurement.⁴

This document examines the methodology that has been used by a number of locally-focused public bodies to help achieve their policy goal of maximising local employment in order to reduce social exclusion. It is legitimate for these bodies to refer to 'local jobs' in their policy statements, but this term cannot be adopted as a tender requirement since this could discriminate against residents and businesses outside the geographic remit of the authority. A degree of sophistication is therefore required to translate the policy goal of 'local jobs' to a non-discriminatory contract requirement – targeted recruitment and training. The means that these public bodies employed to do this, and the outcome of their experiences, are the subject of this report.

The origin of the CBIP Pilot Programme in Scotland can be traced to the involvement of Scottish Procurement Directorate officers in research undertaken with the Office of Government Commerce and HM Treasury in 2000/2001. This was funded by the independent Joseph Rowntree Foundation (JRF) and published by The Policy Press in 2002.

The JRF report is the first detailed analysis of the legal and policy frameworks surrounding the use of public contracts to achieve Community Benefits in the UK. The identification that these wider benefits can be lawfully achieved through the means of public procurement has transferred the focus of concern from the question 'is it legal?' to two other questions:

- How is this best done so as to comply with good procurement practice?
- What is the impact on value for money?⁵

The Scottish CBIP Pilot Programme was established to examine these two questions.

The Pilot Programme commenced with three workshops for public bodies, including the bodies that participated in the Programme, and the production of a Draft CBIP Toolkit providing advice and model clauses that could be used in the pilots. The Toolkit was approved as a working document by the Scottish Procurement Directorate. Some consultancy advice was available to the participating bodies through the programme and this was used in different ways.

As will be seen there is considerable variation in the size and purpose of the pilot bodies, and in the approaches they have implemented over the duration of the Pilot Programme. The participating bodies are all locally controlled and include the UK's largest stock-transfer housing association, one of Scotland's pilot Urban Development Companies, and three local authorities.

To identify good practice it has been important for the participating bodies to be willing to acknowledge where things could have been done better. All of the participants were on a steep learning curve and the success of the pilots was as much influenced by the resources they could make available and by the previous experience of the people involved as it was by commitment of the procurement team involved. This document could not have been produced without the hard work of all of those involved in operating the pilots and thanks should go to them for providing a foundation of experience on which they and others can build.

² The Raploch URC pilot sought wider Community Benefits but these are not covered by the case study included here.

³ *Social Issues in Purchasing*, the Office of Government Commerce, February 2006.

⁴ <http://www.scotland.gov.uk/Resource/Doc/116601/0053331.pdf>

⁵ For this report 'value for money' has been interpreted in terms of cost, affordability and the benefit to the client.

This report:

- Introduces the legal and policy context within which the pilots were carried out;
- Provides a toolkit of appropriate clauses and procurement procedures which can be used to achieve Community Benefits through procurement;
- Demonstrates a range of approaches that have been adopted during the pilots and provides detailed information on several of these;
- Identifies good practice and potential pitfalls that other bodies seeking to adopt this approach should consider;
- Presents some evidence of the impact of including targeted recruitment and training (TR&T) requirements on competition, affordability and VfM.

Anthony Collins Solicitors and Richard Macfarlane have been supporting the CBIP Pilot Programme since it commenced in 2003. Over the period of the Programme, pilot contracts have been developed in five areas – Glasgow, Inverclyde, Dundee, Stirling and Falkirk.⁶

⁶ ACS & Richard Macfarlane were not involved in developing the CBIP contract requirements and procurement procedures in Dundee or Falkirk.

2 UNDERSTANDING COMMUNITY BENEFITS

2.1 MAPPING THE FIELD

The following hierarchy may be helpful in understanding this emerging field of policy and activity:

- Targeted recruitment and training (TR&T) is one element in a wider range of Community Benefits;
- Community Benefits is one element in a wider range of ‘social issues’;
- ‘Social issues’ are part of the still wider concern of ‘sustainable procurement’;
- Sustainable procurement is a way of delivering the Government’s sustainable development objective.

‘Sustainable procurement’ has primarily been concerned with environmental issues, but there is now greater awareness of the need to extend this to social and local economy issues. The Sustainable Procurement Task Force’s definition of sustainable procurement is:

“a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment”⁷

‘Social issues’ in the context of procurement is understood to include core labour standards,⁸ disabled access, disability, gender and race equality, employment and training issues, fair trade, and support for SMEs including social enterprises, black and ethnic minority enterprises and women and disabled-owned businesses.

‘Community Benefits’ include not only targeted recruitment & training, but also equal opportunities, training for the existing workforce, supply-chain initiatives, community consultation, ‘considerate contractor’ schemes, contributions to education, the promotion of social enterprises, and resources for community initiatives.

Targeted Recruitment & Training (TR&T) outcomes are viewed as key community benefits with clear scope for use in public sector contracts.

2.2 INNOVATION

The use of Community Benefit clauses provides a method of including social and economic matters in contracts for the supply of goods, services or works that do not conventionally have these requirements as defined or measured outcomes.⁹

Therefore, there is need for new and innovative ideas regarding the ways in which social requirements can be inserted into contract specifications while ensuring value for money in their delivery. The problems faced by public bodies in doing this can be disaggregated into:

- those related to pursuit of new contract requirements, e.g. disabled access to public buildings or new environmental standards; and/or
- those related to the context in which the social requirements are being introduced, e.g. vocational training being included in a works contract.

However, these problems do not provide a sufficient explanation for the resistance of some public bodies to successfully incorporating innovative solutions into their procurement practice. A second explanation is **centre-periphery tensions**, i.e. tensions operating between central and local procurement bodies, and at each level within a procurement body. They can involve:

- resistance by agency or departmental procurers to social requirements that are being promoted from the centre of the organisation;
- resistance by the centre to social requirements that procurers at the periphery want to include.

2.3 POLICY RATIONALES

2.3.1 SUSTAINABLE DEVELOPMENT

The following are priorities for Scotland and the whole of the UK:

- **Sustainable consumption and production:** achieving more with less. This includes reducing the inefficient use of resources, looking at the impact of products and materials across their whole lifecycle and encouraging people to think about the social and environmental consequences of their purchasing choices.
- **Climate change and energy:** securing a profound change in the way we generate and use energy, and reducing greenhouse gas emissions.

⁷ Procuring the Future – Sustainable Procurement National Action Plan: Recommendations from the Sustainable Procurement Task Force (June 2006), page 10.

⁸ as established by the International Labour Organisation (ILO).

⁹ Anthony Collins Solicitors *The scope for using social clauses in UK public procurement to benefit the UK manufacturing sector*. Report for the Manufacturing Forum (DTI) July 2006.

- **Natural resource protection and environmental enhancement:** protecting our natural resources, building a better understanding of environmental limits, and improving the quality of the environment.
- **Sustainable communities:** creating communities that embody the principles of sustainable development locally.¹⁰

The ‘well-being powers’ of local authorities¹¹ can be seen as the cascading of sustainable development to a local level. Including social issues in procurement can be a way of achieving sustainable development objectives as described above. This will be discussed in more detail in section 3.3.

2.3.2 SUSTAINABLE PROCUREMENT TASK FORCE

The business-led Sustainable Procurement Task Force was set up in May 2005 to bring about a step change in the way the UK buys its goods and services. The aim is for the UK to be recognised as a leader among EU Member States in the field of Sustainable Procurement by 2009. In June 2006 the Task Force published its National Plan¹² with a challenging set of recommendations to the UK Government for action in the short, medium and long term. The UK Government issued its response in March 2007.

The Scottish Government will produce a Scottish Sustainable Procurement Action Plan later in 2008 which will have regard to the UK report, the recommendations of the Review of Public Procurement in Scotland published in March 2006 and will build on existing achievements.

The UK report covered a range of themes including leadership, professionalism and building capacity and these also feature in recommendations of the Scottish Public Procurement Review, which also recommends that the Scottish Government should prepare and issue guidance on Corporate Social Responsibility (CSR) in procurement.

The Scottish Government is committed to embracing social, economic and environmental issues in its own procurement activity and in that of the wider public sector in Scotland. As part of its CSR guidelines the Government intends to support and promote the roll-out of the flexible framework produced by the UK Sustainable Procurement Task Force for benchmarking progress made by contracting

authorities in embedding sustainability into procurement practice and organisational culture.

2.3.3 REGENERATION AND SOCIAL INCLUSION

At a national level the importance of linking regeneration spend to opportunities for disadvantaged communities is clearly stated in the Scottish Government’s Regeneration Policy Statement:

“.....regeneration is about achieving outcomes for business, people and communities. It is about taking an approach which ensures these outcomes work together and reinforce each other to generate economic growth and an improved quality of life for people and communities.”

“..... regeneration can ... generate economic opportunities and connect disadvantaged communities to these opportunities ... and through this can make the difference in tackling concentrations of poverty and disadvantage.”¹³

At a local level many Community Planning Partnerships will have adopted policies to help address social exclusion, as will other public bodies. For example the Neighbourhood Renewal strategy of Glasgow Housing Association (GHA) lists amongst its aims:

“Jobs and Training. To maximise sustainable jobs and training gains for Glasgow residents arising from GHA investment activity.”¹⁴

This is a legitimate policy goal for GHA. It reflects commitments made during the tenants’ ballot on the transfer of the City Council’s housing stock to GHA.

10 Choosing Our Future: Scotland’s Sustainable Development Strategy (<http://www.scotland.gov.uk/Publications/2005/12/1493902/39032>).

11 Part 3 of the Local Government in Scotland Act 2003.

12 Procuring the Future – Sustainable Procurement National Action Plan: Recommendations from the Sustainable Procurement Task Force (June 2006).

13 Scottish Government. *People and Place Regeneration Policy Statement*. Edinburgh. February 2006 pp 9/10.

14 GHA. Neighbourhood Renewal Strategy 2004-07.

2.4 A FLEXIBLE APPROACH

The inclusion of social requirements in public procurement contracts can be achieved in accordance with UK and EU procurement laws, policy and good practice provided appropriate drafting and procurement processes are used.

Recent work for the DTI Manufacturing Forum¹⁵ identified the following benefits of ‘social clauses’ relative to other means of achieving social policy goals:

- they are available to a wide range of public bodies as a means of assisting in the delivery of their social, economic and environmental duties and priorities;
- they are flexible: they can be designed for specific contracts in specific contexts;
- they are more capable of being enforced than other means that are available to many public sector purchasers;
- they can provide durability in a context where public sector contracts may last for many years (e.g. PFI and facilities management) but organisations, personnel, and tax and grant regimes change regularly;
- they can be used in tandem with other approaches, e.g.:
 - to include measurable requirements in a specific contract as a means of implementing legislation or Government guidance;
 - to include requirements for outcomes that could largely be paid for by the contractor obtaining grants from other bodies;
- appropriate use of social clauses fits well with good procurement practice offering:
 - consistency and transparency: the opportunity for the purchaser to identify need and convert this into a specification that each bidder has to deliver;
 - the opportunity to focus on measurable outputs rather than the delivery process;
 - an approach that can be the subject of comparative evaluation which will help secure value for money;
 - the opportunity to include monitoring information as a part of the specification, which will enable the Authority to ensure that they receive the service they pay for.

2.5 SCOTTISH AND UK GUIDANCE NOTES ON SOCIAL ISSUES IN PUBLIC SECTOR PROCUREMENT

In February 2006 the Office for Government Commerce issued its guidance note on Social Issues in Purchasing (the Social Note), designed to further understanding of how such issues can be legitimately incorporated into the purchasing cycle. It reinforces good practice in procurement emphasising that:

- social issues must be relevant to the subject matter of the contract;
- actions must be consistent with government procurement policy based on value for money;
- sustainable procurement must be approached from a whole life cost perspective.

The Social Note covers a wide range of social issues, including: Community Benefits; core labour standards; disability and equality issues; employment and training issues; fair trade; gender equality; race equality; SMEs; workforce skills (including adult basic skills). In Scotland the OGC note has been superseded by the Scottish Procurement Directorate’s note “Social Issues in Public Procurement”.

Both sets of Guidance set out actions for incorporating social issues into procurements at the different stages of a purchasing process, covering: strategic context, business case development, specification, selections, tender evaluation and contract management. The Scottish Guidance provides an overview of how and when social issues may be taken into account. Neither guide precludes the need to take legal advice in any case where there is doubt as to whether it is possible to take social issues into account.

Noteworthy is the acceptance that *“a core requirement can be defined as an essential part of the 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 core requirement provided it is central to the subject of a procurement and consistent with the rules...”*¹⁶ Attempts to include secondary or additional requirements that are not related to the subject of the contract can add costs and increase the risk of legal challenge. It is for the authority to decide, on the basis of their powers and policies, what Community Benefits are a core requirement.

¹⁵ Anthony Collins Solicitors. *The Scope for using Social Clauses in UK Public Procurement to Benefit the UK Manufacturing Sector*. Report for the Manufacturing Forum (DTI), July 2006.

¹⁶ Social Issues in Purchasing, Office of Government Commerce, February 2006, page 15 and page 31.

3 THE CURRENT LEGAL SITUATION OF COMMUNITY BENEFITS IN PROCUREMENT

3.1 THE EU LEGAL FRAMEWORK

Much of the legislation governing procurement in the Scotland derives from European Community law, which is based on EC Treaty principles of:

- Equal treatment and non-discrimination: giving everyone the same chance to win the contract irrespective of their nationality or whether they are familiar to the contracting authority or not;
- Transparency: stating requirements and award criteria up front and sticking to them;
- Proportionality: setting requirements with reference to the needs of the contract in question;
- Mutual Recognition: giving equal validity to qualifications and technical standards of other member States, where appropriate.

These principles are intended to remove barriers to trade between the member States and create a free internal market within the EU by facilitating contractors from all over the EU to bid for the same public contracts. These aims are balanced increasingly with other objectives including the protection of the environment, combating social exclusion and deprivation, and consumer protection.

The EU public procurement legal framework consists of:

- certain provisions of the Treaty establishing the European Community, most importantly Articles 28 (free movement of goods), 43 (freedom of establishment) and 49 (freedom to provide services) Article 48 (free movement of workers).of the EC Treaty;
- EU procurement directives which regulate award procedures with regard to contracts above a certain value. These are implemented in Scotland by way of statutory instruments which lay down regulations governing the procurement of works, goods and services.¹⁷ In particular, Directive 2004/18/EC, often referred to as the 'Consolidated Directive' because it replaced three separate directives on works, supplies and services, was implemented in Scotland by the Public Contracts (Scotland) Regulations 2006, on the 31st January 2006.

The EU procurement rules operate principally at three levels:

- requirements for the advertising across the European Union of contracts for works, goods and services (this is done by placing a contract notice in the Official Journal of the European Union);
- the encouragement of the use of technical standards and approvals which are of application across the EU or the recognition of technical standards and approvals in force in another member State where these are of a similar standard to those in force in the UK;
- requirements for objective and open criteria for evaluating tenders and selecting contractors.

3.2 CONSOLIDATED DIRECTIVE 2004/18/EC

As stated in the OGC Note, Social Issues in Purchasing: *"the new Directive makes explicit the scope to take social and environmental issues into account at the relevant phases of the procurement process"*. The Consolidated Directive says much more on the subject of social and environmental considerations than its preceding directives, both in its non-binding but influential recitals and its articles which are now implemented in the Public Contracts (Scotland) Regulations 2006.

Recital 1 of the Consolidated Directive states: *"This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with [Treaty Obligations]"*. Case law relating to use of Social Clauses is contained in Appendix 6.

There are recitals which support other environmental and social issues, such as sheltered workshops, environmental requirements and the involvement of small and medium-sized undertakings in the public contracts procurement market. These areas are addressed in separate policy guidance. Specifically in the context of this report, Recital 33 states:

¹⁷ Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

“Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements – applicable during performance of the contract – to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.”

In Recital 46 there is the following acknowledgement:

“In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned,

as expressed in the specifications of the contract. Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs – defined in the specifications of the contract – of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.”

Article 26 of the Consolidated Directive has this express provision:

“Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.”

This is translated in the Public Contracts (Scotland) Regulations 2006 by regulation 39 which states:

- 1) *A contracting authority may stipulate conditions relating to the performance of a public contract, provided that those conditions are compatible with Community law and are indicated in –*
 - a) *the contract notice and the contract documents; or*
 - b) *the contract documents.*
- 2) *The conditions referred to in paragraph (1) may, in particular, include social and environmental considerations.”*

This section implements the European framework and Purchasers should refer to the the guidance available, such as the Scottish Procurement Directorate’s *“Social Issues in Public Procurement”*, in applying it to their own procurement practices.

3.3 LEGAL PARAMETERS FOR PUBLIC BODIES

The extent to which public bodies and contracting authorities can include social requirements into their contracts depends on:

- whether or not they have the legal powers to do so (or whether or not there are any limitations on their powers which inhibit them from so doing);
- whether there are sufficient policy grounds for them to do so.

Contracting authorities such as local authorities and Non Departmental Public Bodies (NDPBs) have their powers for the most part set out in statute. In considering whether a contracting authority is able to promote social policy initiatives through public procurement, the following issues have to be addressed:

- does the contracting authority, at first sight, have the necessary legal powers, express or implied, to pursue such matters in the cause of the exercise of its functions?
- are there any express or implied prohibitions which prevent the exercise of such powers?
- are there any conditions set out in legislation to be satisfied if such matters are to be pursued lawfully?
- has the contracting authority followed the appropriate procedures, in particular any procedures that it has adopted itself?
- has the contracting authority taken into account all the matters it should take into account (the “Wednesbury” principle)¹⁸?

Local authorities are subject to a statutory framework that is worth considering in a little more detail given their purchasing strengths.

3.3.1 LOCAL AUTHORITIES IN SCOTLAND

Local authorities may use only those powers conferred upon them by statute, and may use those powers only for the purposes contemplated by the statute.

Under Part 3 of the Local Government in Scotland Act 2003 a local authority has an express power to do anything that it considers likely to achieve the well-being of the whole or any part of its area and/or all or some of the persons within that area.

This power does not enable a council to do anything that it is unable to do by virtue of other enactments. This includes section 17(5) of the Local Government Act 1988 that requires the Council to avoid the inclusion of non-commercial considerations within its contract documentation and includes in the list of ‘non-commercial considerations’:

The terms and conditions of employment by contractors of their workers or the ... arrangements for the ... training... of or other opportunities afforded to their workforces.

LGA 1988 S.17(5)(a)

However, section 7 of the Local Government in Scotland Act 2003 sets aside the above constraint in the following circumstances:

- *where the local authority reasonably seeks to ensure that the contractor..... will comply with the contractor's obligations under the contract; and*
- *where the local authority reasonably seeks to ensure that the contractor will perform the contractor's obligations in a way that will not prevent the authority from securing best value nor hinder it in doing so.*

It is therefore suggested that a council is free to include matters related to the recruitment and training of the contractor's workforce where these workforce matters are a contract condition and do not hinder the authority from achieving ‘best value’. In addition such provisions must be consistent with national and EU procurement law, in particular the EC principle of equal treatment.

Under Part I of the Local Government in Scotland Act 2003 a council has a duty to make arrangements which secure best value, defined as “*continuous improvement in the performance of the authority's functions*”. This includes a requirement for councils to “*maintain an appropriate balance among:*

- (a) *the quality of its performance of its functions;*
 - (b) *the cost to the authority of that performance;*
 - (c) *the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.”*
- (section 1(3) Local Government in Scotland Act 2003).

¹⁸ The Wednesbury principle, which dates from 1948, states that public bodies are required to be reasonable in the decisions that they make.

Furthermore, *“in maintaining that balance, the local authority shall have regard to –*

- (a) efficiency;*
- (b) effectiveness;*
- (c) economy; and*
- (d) the need to meet the equal opportunity requirements”* (section 1(4) Local Government in Scotland Act 2003).

Under section 1(5) of the Local Government in Scotland Act 2003 a council must discharge its best value duties *“in a way which contributes to the achievement of sustainable development”*. This requirement is developed in statutory guidance provided by the Best Value Taskforce which states that a local authority which secures Best Value will be able to demonstrate contribution to the achievement of sustainable development, i.e. consideration of the social, economic and environmental impacts of activities and decisions both in the shorter and longer term.

Finally, section 1(6) provides that *“in measuring the improvement of the performance of a local authority's functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved”*.

Scottish local authorities have therefore a strong statutory mandate to pursue targeted recruitment and training requirements in a way which meets its sustainable development responsibilities, including the pursuit of equal opportunities subject to compliance with EU treaty principles.

3.3.2 GOVERNMENT DEPARTMENTS AND OTHER PUBLIC BODIES

The scope for other public bodies to promote environmental and social requirements will depend on their particular frameworks, statutory powers and the basis on which funding is provided. This is very straightforward for organisations engaged in regeneration such as housing action trusts and regional development agencies. However, it will require specific attention for each organisation involved. Many public bodies have broadly framed ancillary or subsidiary powers to their main functions. It is the policies they adopt which will therefore be of critical importance in setting the scope for procuring sustainability in its widest context.

3.4 LEGAL SUMMARY

In summary, therefore:

- Procurement can be used to achieve social and environmental requirements if they comply with the EU procurement rules and general EU law, which includes a duty to specify the requirements in the contract notice published in the Official Journal of the European Union (OJEU). The contracting authority must also have the legal powers to pursue the requirements;
- In particular, the principles of equal treatment and transparency must be observed. Community benefit requirements in contracts must be objective and should not favour local suppliers or restrict employment or training to UK nationals. For example, contracting authorities must not express a preference for jobseekers from a particular locality to receive training or employment or require subcontracts to be placed with “local” SMEs. As wide a variety of suppliers as possible should be able to compete for the contract;
- Case law supporting use of social clauses and the extent of their use is available and should be observed;
- The EU legislative framework is generally more concerned with how public bodies procure, rather than what they procure, so long as value for money (vfm) is attained.

Contract Authorities should seek legal advice to ensure that the community benefit clauses they wish to use are within the parameters of their competence and comply with EC Treaty principles.

4 THE PROCUREMENT PROCESS

Public bodies are required to comply with the EU procurement rules and national procurement policies. The inclusion of recruitment and training requirements in the contract specification can be compatible with this legal/policy framework. The key requirements are set out below.

4.1 UNDERPINNING POLICY

To include recruitment and training clauses in a contract these should be part of the “core elements” of what is being purchased, central to what the contractor is expected to provide. Inclusion of such clauses is a matter for the purchasing organisation to decide, on the basis of its legal powers and policies.

4.2 THE BUSINESS CASE

A business case needs to be made for each significant public procurement, in relation to each element, including recruitment and training. The business case needs to show that:

- the requirement is appropriate and meets a legitimate and reasonable need;
- funds are available to cover all of the costs of the requirement; and
- that the resources are available to enable the requirement to be met (e.g. there are trainees and training provisions that can be engaged), and for the requirement to be properly managed (i.e. through monitoring facilities).

In the case of targeted recruitment and training (TR&T) requirements, this would involve the contracting authority considering the full range of delivery options, such as grants and training and asking the additional preliminary question: what are the added benefits of using the approach compared with doing nothing, or perhaps seeking voluntary support after contractors have been appointed? Following this process should help to demonstrate that the purchasing body has properly considered all issues related to the requirement, and that it has set quantifiable and achievable outcomes.

4.3 PROCUREMENT STRATEGY

Where Community Benefit requirements are a core element of the contract they should form part of the Procurement Strategy and be dealt with appropriately at each stage of the procurement, including:

- any contract notice published in the Official Journal of the European Union or elsewhere;
- any pre-qualification questionnaire (used to identify that contractors have the capacity and capability to deliver all mandatory elements of the contract);
- the contract specification contained in the invitation to tender;
- tender evaluation: the contractors’ Community Benefit proposals should be ‘scored’ as part of the evaluation;
- contract documentation;
- partnering agreements.

If the relevant contracting authority is concerned that many of their potential pool of contractors will not have experience of responding to the community benefit requirements within a contract, then consideration should be given to inviting each firm on the tender list to attend a pre-tender meeting to discuss the purchaser’s requirements in relation to this element. Depending on the available market it may be appropriate to hold such a meeting before PQQ or at tendering stage. All participants must have access to equal information.

4.4 TECHNICAL CONSIDERATIONS

4.4.1 TARGET-SETTING

Aids the adoption and delivery of community benefit requirements if these can be specified in a clear and measurable way. In addition, EU law requires that community benefit requirements must be verifiable.¹⁹ Numerical targets are the easiest to monitor.

Therefore, a primary consideration in formulating an appropriate targeted recruitment and training (TR&T) requirement is the setting of targets which will facilitate the monitoring of the contractor’s performance.²⁰

¹⁹ Appendix 6 -C-448/01 – (1) *EVN AG (2) Wienstrom GMBH v Republic of Austria (2003)*.

²⁰ The major problem is likely to be the lack of robust comparable data from sites that don’t have the provision of labour-force monitoring information as a contract condition.

The case studies demonstrate a range of ways of setting targets:

- setting a % of the total labour time required to deliver the contract;
- setting a specified number of beneficiaries (e.g. employees, trainees, work placements);
- setting a specified number of weeks of engagement for beneficiaries in the contract;
- all opportunities to be made available, at a minimum through named sources;
- number of beneficiary-weeks per £... in contract value (used in the Dundee social care training requirement).

The selection of the measures used depends on the context. For example, in the Raploch pilot the Stirling Western Access Road was a contract of limited duration (26 weeks) and value (about £1.3m). The contracting authority wanted work placements for recruits that would go through a bespoke pre-site training programme. It calculated the capacity of the site, negotiating this with the procurement team, and specified that 4 beneficiaries should receive a total of 52 weeks site work experience. In contrast, GHA was tendering for framework contracts where the actual volume of work to be delivered by each contractor was not known. In this context the targets had to be set in relation to a variable that would become known. The trainee target (the primary requirement) was set at 10% of the time required to deliver all of the works, plus 100% of vacancies to be notified to named agencies.

In construction contracts there is a particular problem in defining ‘a job’ since many people working on the site will be there for a short period and will not be a ‘new employee’ since their employment requires them to move between different sites on which they are contracted to work. In this context it needs to be left to the main contractors to devise a working method that will achieve the required Community Benefits.

Using ‘the % of person-weeks used on the site’ is a good measure in these circumstances, with the following formula being a way of setting the person-week targets for,

(in this case), 10% trainees, 20% targeted recruitment and 3% work experience beneficiaries in a construction works contract. Here, labour content constitutes 40% of the works value.

Calculation of targets (construction):

- A. Estimated site works value = £.....
(enter figure)
- B. Labour content: site works value x 40% = £.....
(enter figure)
- C. Average gross weekly earnings in construction as published by the Office of National Statistics (www.statistics.gov.uk) for the last Qtr + employer’s on-costs = £ (enter figure)
- D. Total labour requirement: divide B by C = ...
(enter figure) person-weeks
- E. New entrant trainee target: D x 10% = (enter figure) person weeks
- F. Targeted recruitment target: D x 20% = (enter figure) person weeks²¹
- G. Unwaged work experience placement opportunities: D x 3% = (enter figure) person-weeks.

If the value of the contract was uncertain the application of the above formula with an estimated site value of £1m would produce person-week targets per £1m in contract value. For example:

$$\begin{array}{l} \text{£1m would have a labour requirement of 40\% (£400,000)} \\ \text{Total labour requirement (D) = £400,000} \\ \text{in person weeks} \end{array} \quad \frac{\quad}{\text{(average gross weekly earnings in construction + employee on-costs)}}$$

D would then be multiplied by the targets for new entrant trainees (E), the targeted recruitment target (F) and the unwaged work experience placements target (G).

It is important to state again that targets must be set in accordance with the capacity for targeted recruitment and training (TR&T) in the construction part of the contract.

²¹ This target can include new entrant trainees (E above) that are recruited from the target agencies.

4.4.2 TARGETS – BENEFICIARIES

Targeted recruitment and training (TR&T) requirements need to be few in number and well focused. There are three questions to ask:

- what are the needs of the people/organisations that we are trying to help by including the targeted recruitment and training (TR&T) requirements – the beneficiaries?
- which of these needs can be met through this particular contract?
- is there a balance to be struck between the needs of the beneficiaries (e.g. for training and support) and the number of trainees that can be employed on the contract?

In Raploch it was recognised that the significant characteristic was the need to acquire skills and site experience. This is essentially a training need. GHA have made new entrants a key target. A new entrant is a person that is leaving an educational establishment or a training provider, or a person that is non-employed and is seeking employment, this may include on-site training and assessment, or offsite training, or a mix of these. A new entrant may not be in receipt of any training. For non-trainees, jobs have to be notified to named agencies that can provide job-matching for unemployed people with appropriate skills, but there is no ‘measured target’ for the recruitment of non-trainees.

4.4.3 TARGETS – CONTRACTUAL

Members of the procurement team should be involved in setting targets. This will help them assess the risk to other key requirements of the contract, for example quality, timely completion, and cost.

Targeted recruitment and training (TR&T) targets should be based on knowledge of costing and the labour resources, in terms of numbers, skills and training, that the contractor will need in order to deliver the contract.

The target also needs to take account of:

- How the labour resources relate to the numbers in the relevant cohort of ‘target beneficiaries’.
- The availability of supply-side resources to enable contractors to deliver the desired volume and type of output.

Some empirical information on this topic has been compiled by Sunderland Council and the topic of matching the supply of trainees and recruits with demand is being developed by the Working Ventures UK using the “Construction Skills Integrator”.²²

It is important to challenge simple assumptions about the capability of the beneficiaries. They potentially include people with a wide range of capabilities. Targeting people with a low initial capability (and then supplementing this with training and support) is only one variable in setting the targets.

When setting targets, the contracting authority must take into account that these targets must be monitored and achieved and include this in the requirements specification.

4.4.4 COST IMPLICATIONS

The cost of incorporating targeted recruitment and training (TR&T) requirements will vary depending on the requirements. Key variables are:

- whether the beneficiaries have to be employed or just accommodated for work experience or a work trial;
- whether employed beneficiaries can be recruited from a scheme that includes a funding package, vocational training provisions, training management and trainee support;
- the degree of pre-site training that has been completed: some GHA contractors are working with SEG²³ on 20-week bespoke training courses that mean the new entrant trainees have useful skills and are well-motivated when they are employed on site;
- access to industry training resources for apprentices and workforce training;
- the provision of good contacts or good quality information about the external resources that are available to help the contractor deliver the requirements;
- funding: are the bidders given the opportunity to price for the targeted recruitment and training (TR&T) elements in their bid and if so is this the net cost after deducting grants etc? In the alternative, are they told that they must find any additional resources?

Where the contracting authority has some input into training, care must be taken to limit responsibility for trainee capability.

²² <http://www.wv.co.uk>

²³ Scottish Enterprise Glasgow.

4.5 THE AWARD PROCESS

The inclusion of targeted recruitment and training (TR&T) or other community benefit requirements in the award process introduces the need for a new skill: evaluating bidders' tenders in response to these requirements. This has been done effectively at GHA where a scoring framework was developed by the Regeneration Team. This required them to:

- decide what weighting should be given to each of the targeted recruitment and training (TR&T) requirements;
- identify what a 'good' response would be to each of the questions that were asked in the Recruitment and Training Method Statement.

The GHA approach was then shared with Raploch URC, which tailored the information, working out the weighting to be applied and what should be expected from a 'good' response.

At GHA this process was done by three members of the Regeneration Team. They developed and pilot-tested the scoring framework, and then all three team members scored each Method Statement. The final score was the average of the three assessors' scores. At Raploch (for the development partner contract) a larger group, including community representatives, was established to work up the scoring framework and then assess each Method Statement.

The scores for the targeted recruitment and training (TR&T) elements were then combined with other quality scores to produce a total quality score for each tenderer. The weighting given to the TR&T elements varied with the number of quality matters that had to be considered.

The above approach required the regeneration or community benefit teams to apply their specialist knowledge in a new context. This resulted in a proper consideration of the work that bidders had put into the Method Statements and confidence amongst the rest of the procurement team that the scoring of the Community Benefits elements would be robust if challenged.

This degree of attention to the evaluation of the targeted recruitment and training (TR&T) requirements at GHA and Raploch may have been due to the size of the contracts. Elsewhere evaluation does not seem to have been carried out as effectively, including where the tender evaluations were undertaken by external consultants who were not given assistance in evaluating the training requirements.

So a key lesson may be to ensure that the whole procurement team is well briefed on how to evaluate targeted recruitment and training (TR&T) requirements in the tender.

4.6 AWARD CRITERIA AND NEGOTIATION

Tenders should only be assessed on clearly stated evaluation criteria. Except for wholly voluntary agreements, Community Benefits should not be negotiated after contract award.

This is important to maintain the principles of transparency and equal treatment in the procurement process.

5 MODEL CLAUSES

To assist public bodies, developers and contractors to include targeted recruitment and training (TR&T) requirements in their procurement processes the following model clauses have been developed.

Contracting authorities, developers and contractors are advised to obtain their own legal advice about the appropriate procurement process and appropriate clauses for their requirements.

5.1 POLICY STATEMENTS

The following wording may be adopted in an Authority's Community Plan and over-arching Procurement Strategy and can be replicated in other policy documents, including the business case for a procurement undertaken by any contracting authority Community Plan:

“The Authority will continue to use all of its powers, wherever it can, to do anything it considers will promote or improve the well-being of the area. Steps to be taken include:

- *securing representation for black and ethnic minority communities in employment at all levels that is equivalent to their representation in the population;*
- *developing a workforce that is highly skilled and well motivated and can truly meet the skill needs of the economy;*
- *building a place where there are far fewer disparities in employment and everyone who wants to can participate in economic success;*
- *providing residents with the skills to compete for the employment created by new investment in public services and private enterprise;*
- *encouraging local residents to take up high quality, sustainable employment opportunities.”*

5.2 PROCUREMENT STRATEGY

“The Authority will seek to implement its aims as stated in its Community Plan of securing skills and employability and

equal opportunities in employment. This will be achieved by using in its procurement and development contracts specifications which include, where appropriate, broad regeneration activities which enable the use of both mainstream and additional funding to achieve objectives such as the enhancement of local skills within a broad value for money framework. To this end the Authority may require particular conditions concerning performance of the contract, provided that those conditions are compatible with European Community law and provided that they are stated in the contract notice or in the contract documents. Contract performance conditions may relate in particular to social and environmental considerations relating to the subject matter of the contract.”

5.3 OJEU NOTICE

The inclusion of social requirements in contract conditions must be mentioned in any OJEU notice by a contracting authority. The following model wording is suggested, under the section in the OJEU Notice typically headed “other information” .

“Under this [procurement/project] the [contractor/developer] will be required to support the authority's economic and social regeneration objectives. Accordingly, contract performance conditions may relate in particular to social and environmental considerations.”²⁴

²⁴ Social and environmental considerations must be linked to the subject matter of the contract, cannot be a blanket requirement.

Where recruitment is included as a requirement of the contract, the Common Procurement Vocabulary (CPV) for “labour recruitment and the provision of personnel services”, CPV 74500000-4, should be included in the list of CPV codes given in the OJEU Notice.

Use of appropriate wording in standard Notices (e.g. OJEU Notice), for example use of the text set out above reserves the right to take account of social and environmental issues in the award of the contract.

5.4 PRE-QUALIFICATION QUESTIONNAIRE

Where recruitment and training is included as a requirement of the contract the following questions can be asked in the section of the pre-qualification questionnaire that assesses technical capacity and ability:

“Please give examples of your involvement in each of the following:

- *generating employment and training opportunities for long-term unemployed people;*
- *providing training opportunities;*
- *the development of trade skills in your existing workforce; and*
- *equal opportunities recruitment procedures.*

What was your exact involvement in each of the above activities? Which of the examples you have cited have been more successful, and which have been less successful, and why?”²⁵

5.5 SPECIFICATION

The clauses included in Appendix 2 – Raploch Community Benefit Conditions – illustrate a number of key elements that should be included in the Community Benefits section of a specification. However, the specification must be considered on a case by case basis. Some key considerations to take into account are as follows:

5.5.1 REQUIREMENTS RELEVANT TO THE SPECIFIC CONTRACT

What requirements are relevant to this specific contract, taking account of:

- the nature of the works or services to be delivered;
- the scale and duration of the contracts;
- the policy priorities and the need for the opportunities that could be provided;
- the most appropriate way to describe and measure the requirement;
- specifying a clear minimum requirement in the tender documentation and contract so that tenderers all bid on an equal basis;
- proportionality, i.e. ensuring the burden placed on the supplier is proportionate to the potential community benefit.

5.5.2 DELIVERY SUPPORT AND EXTERNAL RESOURCES

What delivery support and external resources will be available to the contractor and on what terms? How robust is this? Can it be assured over the duration of the contract? It is appropriate to suggest a local agency that is able to provide delivery support to whichever contractor is appointed. It is also appropriate to name sources of trainees. It should be remembered that the source of recruits should not be limited, as this would be contrary to EC principles of non-discrimination and equal treatment.

5.5.3 INFORMATION FOR MONITORING REQUIREMENTS

What information is required from the contractor in order to monitor and verify the delivery of the Community Benefits? This requirement should result in the provision of data on the items included in the specification but should be manageable for both the contractor and the contracting authority’s contract managers. Who will be responsible for contract management in relation to the monitoring information and outcomes, and what are the formal means of doing this?

5.5.4 VALIDATING OUTCOMES

There should be a robust and transparent method of checking outcomes in the contract to ensure that the contractor delivers the agreed Community Benefits.

²⁵ In order to observe the EC Treaty Principle of Proportionality, questions in the PQQ must be set with reference to the needs of the contract in question.

5.5.5 COLLECTING COMMUNITY BENEFITS INFORMATION IN THE TENDER

What information is required from the bidders at each stage of the award process and how will this be evaluated? It is easier to compare bids if information is provided in a standard format (e.g. a pro-forma targeted recruitment and training (TR&T) Method Statement – see Appendix 2). Community Benefit provisions in the tender must be judged only on objective and measurable outcomes. Authorities must only collect information that will be used in evaluating the tender.

5.5.6 TREATMENT OF TARGETED RECRUITMENT AND TRAINING (TR&T) COSTS

How are the costs associated with the community benefit requirements to be treated in the award process and the contracts? Should the bidders provide a price and cost breakdown with their tender, or are they expected to find additional resources outwith the contract?²⁶

5.5.7 ADDITIONAL INFORMATION

What additional information on the community benefit requirements will be provided to bidders and at what stage of the procurement process?

The above points should be considered at the stage of developing the Business Case for a procurement since this should cover the ‘need, deliverability and affordability’ of each element of the contract.

5.6 CONTRACT CONDITIONS – MODEL CLAUSES

Specific contract conditions should be developed on a project by project basis to tie the contractor/developer to specific targets and outcomes.

The following model clauses can be used as a starting position for procurements. They are drafted on the basis that the contractor will have supplied a service delivery plan/method statement satisfactory to the Authority, concerning how they will generate training and employment opportunities. Alternative clauses may be drafted depending on the requirements that have been included in the specification.

5.6.1 *The [Contractor/Developer] agrees to secure the creation of training opportunities in connection with the [Project] of a total of [number] training weeks in accordance with the [Service Delivery Plan/Method Statement for economic development activities].*

5.6.2 *The [Contractor/Developer] agrees to secure the creation of at least [number] employment opportunities in connection with the [Project] which are aimed specifically at [detail target group, for example, people who have been unemployed for at least 6 months (including people who first take advantage of training opportunities created under Clause X.1)] and use all reasonable endeavours to fill those posts with such persons.*

5.6.3 *The [Authority] undertakes to assist the [Contractor/Developer] and their sub-contractors to provide training and employment opportunities by providing lists of agencies that can assist in the recruitment of suitable trainees/employees, and the identification of potential sub-contractors and suppliers. Any action taken by the Authority or their agents does not imply, and must not be deemed to imply any promise to provide suitable labour/firms/agencies, and does not imply and must not be deemed to imply that any individuals/ firms/agency referred to the contractors or sub-contractors are suitable for engagement.*

5.6.4 *The Contractor is required to complete weekly labour monitoring forms in a format to be provided by the Authority, and is responsible for obtaining accurate data from all sub-contractors on site for entry onto the forms. The weekly labour monitoring form must be completed and supplied to the Authority or their agent within 7 days of the end of the week to which it relates.²⁷*

5.6.5 *To the extent it has not already done so the [Contractor/Developer] shall enter, and shall procure that its Sub-Contractors enter, into the [enter name] Construction Initiative’s Employment Charter at the same time as entering into this Agreement.*

It is clear from the ‘JRF Report’ and the SPD *Social issues in Public Procurement* note that it is for the individual Authority to decide what the core requirement of the contract should be. Social issues like TR&T and other Community Benefits can be included as core requirements where the procuring body has appropriate powers and policies. Inclusion as core requirements – even if they are given a low weighting in the award process – is the recommended approach.

²⁶ As the contract will include a social clause as part of the core requirement, the Authority must ensure that there is adequate budget to finance this part of the requirement. Experience to date suggests that funding has been available externally for training, but some resources are needed for the procurement process, implementation and monitoring of clauses.

²⁷ The degree of monitoring must take into account Data Protection legislation and proportionality.

6 MONITORING COMMUNITY BENEFITS

The monitoring and reporting requirements for a contract relates to the way the Community Benefits are measured. However, they may also relate to the context in which the initiative is being delivered and the monitoring requirements of external resource providers. This can lead to an excessively complex and onerous set of monitoring requirements being placed on the contractor and the contracting authority's team and would run counter to the principle of proportionality. Monitoring conditions should be supported by the costs and benefits they accrue.

A second issue to consider is how the monitoring data can be verified, especially in the context of the Data Protection Act which may limit the 'personal information' that an employer can provide to a third party, such as the contracting authority.²⁸

It is important to consider how outcomes will be monitored and how information will be used at the time when targets are set (see section 4.4.1).

Monitoring and verification is an activity that has caused some problems for GHA. The problems have arisen in relation to:

- the reporting needs of GHA – to demonstrate the benefits its activities were having on social exclusion;
- the resources required to undertake adequate monitoring;
- an expectation that Construction Glasgow would provide some elements of the monitoring and verification: this has not been fulfilled.²⁹

The result has been a complex set of monitoring requirements in the contracts and gaps in the verification system. These problems have now been addressed. To handle the complex monitoring requirements GHA has invested in an electronic monitoring system with data being e-mailed to a monitoring officer and input into a bespoke data-base system that produces management reports on the overall performance and the performance of each contractor. This is producing robust output information.

It is important that the contracting authority responds to the monitoring information or the lack of information. Contractors and suppliers will respond to the priority that the contracting authority gives to different elements of the contract.

²⁸ The individual needs to give consent to their employer to share personal information with the contracting authority.

²⁹ SEG and its partners in Construction Glasgow decided that the project should close in March 2006, two months after delivery of the first GHA 'CBIP contracts' started.

7 VALUE FOR MONEY (VFM)

Value for Money is defined in the Scottish Public Finance Manual as “the optimum combination of whole life costs and quality to meet the customer’s requirement”.

Despite the fact that VfM should be based on the cost of procuring the core elements, which in the case of CBIP will include the Community Benefit, there are perhaps two concerns expressed by the procurement community concerning Value for Money –

- the community benefit requirements will add inappropriately to the cost of a contract;
- this may happen inadvertently by discouraging or eliminating the contractor that would have provided best VfM because they could not or would not address the community benefit requirements.

Until the CBIP pilot study there was not sufficient evidence of the impact of including TR&T requirements in a contract on VfM.³⁰ However, based on scoring of 340 PQQs and 84 Targeted Recruitment and Training Method Statements, the GHA case study indicates that:

- the inclusion of the TR&T requirements at all stages of the procurement did not deter bidders;
- the bidders with the highest scores overall – at both PQQ and tender stage – were those that also scored highest on the recruitment and training requirements.

In each case the Community Benefits requirements helped the contracting authorities to achieve their policy objectives without additional cost to the contracts.

In the GHA tendering it was made explicit that the contractors would be expected to access external resources to fund the additional costs of meeting their training and recruitment obligations. In other examples (e.g. Inverclyde) contractors could include a net cost (after deducting grants, etc.) in their tenders, but none chose to do so. By including the community benefit requirements in the whole tendering process, they are subject to competitive pressures that will deter a contractor from submitting a potentially inflated price for delivering these requirements.

Finally, there is another issue of VfM that can be considered. This relates to the VfM obtained from the public investment in training and job-matching services. The case studies have not produced significant data on this, but two of the supply-side agencies, (in Raploch and Inverclyde), referred to the efficiencies they achieved by having a single employer that is committed to taking on a number of trainees. This means that a ‘placement worker’ can get much better outputs from their time, and training providers get a higher progression rate into jobs because the training can be bespoke to the employer’s requirements.

³⁰ Waltham Forest Housing Action Trust in London (in the early 1990’s) could provide a comparable scale of project, but comparable tendering information is not available.

8 AN INTRODUCTION TO THE CASE STUDIES

The following five contracting authorities participated in the Community Benefits in Procurement Programme by putting pilot contracts out to tender:

- Glasgow Housing Association (GHA);
- Raploch Urban Regeneration Company;
- Inverclyde Council;
- Dundee City Council; and
- Falkirk Council.

In addition to the targeted recruitment and training requirement (TR&T) the case studies involved procurement of a variety of services on varying scales.

The focus of the case studies is the suitability of using Community Benefit clauses in procurement projects and the effectiveness of the procurement process in obtaining a contractor that is committed to delivering the required Community Benefits and any ‘supply-chain’ initiatives (e.g. training and recruitment services) that were put in place to help the contractors to deliver their obligations. The clauses used were developed from a range of model clauses.

While working in accordance with EC Treaty principles and Scottish procurement legislation, each of the authorities provided specific justifications for their use of Community Benefits clauses. A short introduction to each pilot participant and their justification is detailed below:

8.1 GLASGOW HOUSING ASSOCIATION (GHA)

Glasgow Housing Association (GHA) is the UK’s largest social housing stock-transfer Association, receiving 80559 housing units from Glasgow City Council in March 2003, after a tenants ballot in 2002. The key objectives of the transfer were to secure investment for stock modernisation, promote community empowerment and ownership, provide more effective housing management, provide increased opportunity of home ownership and contribute to area and community regeneration and social inclusion.³¹ It is

anticipated that over a 30-year period GHA and its successor bodies³² will invest £2.9 billion in the housing stock,³³ but this review covers the arrangements for an initial investment of £750 million over the five years commencing in 2005-06.³⁴

GHA is also Scotland’s largest Registered Social Landlord (RSL) and, as such, it is governed by the terms of the Housing (Scotland) Act 2001. Section 58 of the Act sets out the objectives and purposes which RSLs are permitted to pursue in carrying out their principal function of providing and maintaining affordable housing. In particular, section 58(g) states that RSLs may pursue the objective of:

“promoting or improving the economic, social or environmental well-being of –

- (i) it’s residents (or its residents and other persons together), or*
- (ii) the area in which the houses or hostels it provides are situated.”³⁵*

This gives GHA a power of well-being similar to that bestowed on Local Authorities which can justify the incorporation of targeted recruitment and training (TR&T) clauses when contracting with the private sector. Of course, such clauses must comply with the EU procurement rules and Public Contract (Scotland) Regulations 2006.

The policy basis for regeneration activity relies on policy documents. From its very inception GHA’s Statement of Intent for 2003 and 2004 stated that it would endeavour to use its procurement strategy to maximise employment and training gains for GHA neighbourhoods.³⁶ The detail of this intention has been developed in GHA’s Procurement Strategy and its Neighbourhood Renewal Strategy.

GHA’s medium-term Procurement Strategy includes a section on Wider Action³⁷ that establishes the following principles:³⁸

- each bidding supplier or contractor should make proposals for their commitment to employment and a ‘partnership training initiative’;

31 GHA website. May 2004.

32 It is intended that within the first few years much of the stock and management functions will be transferred from GHA to 60+ neighbourhood-based Associations.

33 GHA 30-Year Business Plan. March 2004. Page 5.

34 The investment programme is complex because of the range of works to be undertaken, the numbers of occupied dwellings to be improved, the geographical spread and the numbers of contractors required.

35 This provision was inserted into the Housing (Scotland) Act 2001 by the Housing (Scotland) Act 2006.

36 <http://www.gha.org.uk/content/mediaassets/doc/statement%20of%20intent-03-04.pdf>

37 this is critical to GHA since 90% of its tenants live in the 15% most deprived areas of Scotland.

38 This must be done while achieving value for money for the authority.

- GHA's Neighbourhood Renewal Team would advise and support the procurement process to ensure that this maximises social and economic benefits;
- GHA would not be the main funder of social and economic initiatives but would act as enabler and facilitator.³⁹

The first bullet point establishes the intention to use the procurement process to obtain contractors' commitments to targeted recruitment and training.

The Neighbourhood Renewal Strategy includes the following aim:

“To maximise sustainable jobs and training gains for Glasgow residents arising from GHA investment activity.”

The Strategy identifies the role of the Neighbourhood Renewal Team in facilitating the delivery of targeted recruitment and training by working with the GHA Procurement Team, contractors, economic development agencies and training providers. It provides more detail on how the second and third of the above bullet points would be delivered by GHA.

More recently, GHA's "Sustainability Strategy", November 2006 states:

“We ensure that our policies and actions are underpinned by our commitment to sustainability. We consider the impact we can have in improving the economic, social and environmental circumstances of the wider community.”

Even GHA's Business Plan for 2007/2008 takes these commitments into account, pledging that *“GHA will continue to support wider city-wide action on issues such as...access to jobs and training with GHA contractors and partners”*.

The above legal and policy framework has been considered sufficient to justify the inclusion of targeted recruitment and training (TR&T) requirements as a core element of the contract requirements.

8.2 RAPLOCH URBAN REGENERATION COMPANY

Raploch is an area of Stirling that experiences low levels of qualifications, low average incomes and high unemployment, both in absolute terms and in relation to the increasingly affluent Forth Valley area. The area has also suffered through the poor quality of the public sector buildings and environment including housing and health, and from its position on the City's roads network that cuts the community in two. To address these issues Raploch Urban Regeneration Company has been created. It is one of six Urban Regeneration Companies (URCs) which have been incorporated in Scotland to coordinate the physical and economic regeneration of specific areas. Raploch URC will lead the investment in roads, housing and the environment, while complementary investments will be made in the schools (by Stirling Council), a new health campus (by NHS Forth Valley) and business premises (through Scottish Enterprise Forth Valley).

Its Business Plan of December 2004 states that the vision of the Raploch URC is to “build a community where people choose to live, work and visit within an economically sustainable environment”. This vision is “underpinned by one core principle: community benefit is at the heart of everything we do”.⁴⁰

The vision is to be delivered through five sets of outcomes relating to property, place, partnership, prospects and people. The 'prospects' theme refers to “improved prospects and opportunities for the Raploch” and includes the following targets for 2004-12:

- People of working age with qualifications beyond standard grade: rise from 22% to 80%;
- Percentage of school leavers entering further or higher educations: rise from 4% to 40%;
- Unemployment benefit claimants: fall from 6% to 2.4%;
- Average incomes: rise from £6,240 to £29,170.⁴¹

This vision has resulted in the Raploch URC including targeted recruitment and training requirements in their procurement processes and documentation.

³⁹ Report on the Procurement Strategy to GHA Operations Sub-committee. January 2004.

⁴⁰ Raploch URC Business Plan. December 2004. page 8.

⁴¹ Business Plan 2004 pages 24-25.

The incorporation of the Raploch URC as a limited liability company in 2005 formalised the pre-existing partnership between key private and public sector bodies, including Stirling Council, which operated as a Shadow URC. Before its incorporation it did not have a separate legal personality from its founding partners and thus could not enter into contracts on its own behalf. This is why this case study relates to two contracts that were procured on behalf of the Shadow URC⁴² by Stirling Council. The first was a £1.3 million roads construction contract and the second was for a development partner that will lead the investment into new homes and the environment.

For the first contract and for the procurement process for the second contract,⁴³ the local authority undertook the procurement on behalf of the Shadow URC. This required Stirling Council, as opposed to the Raploch URC, to have a legal and policy basis for incorporating the CBIP requirements in the procurement process. The broad legal powers are provided by the Local Government in Scotland Act 2003 which includes a power to promote or improve the well-being of its area and persons within the area. The policy basis for action was the Raploch URC Business Plan referred to above (to which Stirling Council was a party), the Council's Social Inclusion Policy and the Stirling Community Plan.

8.3 INVERCLYDE COUNCIL

On the basis of the Scottish Index of Multiple Deprivation (2004) Inverclyde has the second highest concentration of deprivation amongst Local Authorities in Scotland (after Glasgow), with 33% of its population living in the worst 15% of datazones for deprivation. The key contributing elements to this deprivation are health, unemployment, education and income.

In recognition of the employment issues in Inverclyde the area has been selected as one of the Scottish Executive's six 'Closing the Opportunity Gap' areas. This initiative aims to reduce the current 12,100 people on DWP benefits by 3,000 between 2004 and 2010.

These statistics form the basis upon which the Inverclyde Alliance (the Community Planning Partnership) has prepared its Regeneration Outcome Agreement (its Community Plan) 2005-2008. This provides the strategic and operational framework for the community planning partners to deliver the 'closing the opportunity gap' objective:

“Regenerating the most disadvantaged neighbourhoods so that people living there can take advantage of job opportunities and improve their quality of life.”

(Regeneration Outcome Agreement 2005-08 Page 2).⁴⁴

The above commitment is reflected in the Council's Economic Development Strategy which is based on sustainable development. The Strategy aims to secure improvements in the economy in a way that:

“... tackles social and economic exclusion,... (and)... minimises any adverse impact on the environment, whilst providing meaningful and additional employment opportunities.”

(page 4).

In relation to 'inclusion' the Strategy states:

“For Inverclyde to achieve sustainable economic progress, it is vital that residents and communities are connected to economic opportunities and feel able to contribute to and benefit from them.”

(Page 14).

The latter is a very clear statement of the Council's commitment to targeting the recruitment and training opportunities that arise from its development and investment activities. However, prior to the CBIP pilots it had not sought to use its contracts to achieve this.

It is against this backdrop that the Council agreed to participate in the CBIP Pilot Programme. This decision was approved by the Council as a pilot initiative.

42 The partnership body that operated before the Raploch URC obtained separate legal status in 2006.

43 The actual contracts for the Development Partner will be between the successful bidder and Raploch URC Ltd.

44 Inverclyde Alliance Regeneration Outcome Agreement 2005-08 page 10.

8.4 DUNDEE CITY COUNCIL

Dundee City Council is entitled to use Community Benefits on the basis of well-being powers conferred on Local Authorities by the Local Government in Scotland Act 2003.

To implement its CBIP pilots Dundee City Council established a 'Community Benefits in Procurement Group' chaired by the Head of Leisure and Communities. This had participation from Community Services, Economic Development, Social Work, Housing, Architectural Services and the Solicitors within the Council, plus a range of external partner organisations including Communities Scotland, Job Centre Plus, NHS Tayside, Scottish Enterprise Tayside, Dundee Anti-Poverty Forum and Hillcrest Housing Association.

At an early meeting of the Procurement Group it was agreed that the Council would run pilots in the construction and social care sectors.

8.5 FALKIRK COUNCIL

Falkirk Council's strategic objective is to mainstream the concept of achieving wider community benefits from all the Council's expenditure by embedding the idea in Council policy.

To support their participation in the Pilot Programme the Council's Policy and Resources Committee agreed, in September 2004, to the appointment of consultants⁴⁵ to undertake a programme of work to enable the Council to realise the full potential of implementing community benefits within Council contracts. This work was jointly funded by Scottish Enterprise Forth Valley and the Council.

The first part of the work was to analyse the Council's procurement expenditure of £108 million per year. This identified the main categories of expenditure as property and infrastructure (48%), care services (24%), and transportation (10%). The review also identified that:

- 80% of the Council's expenditure was with only 5% of their suppliers (ca. 300 suppliers). There is therefore scope for rationalising the supply-base (ca. 6,000 other suppliers);

- 41% of the expenditure, equating to £44 million, is with suppliers with a local (FK) postcode;⁴⁶
- in relation to construction and property maintenance, 22% of suppliers had a local post-code, indicating scope to increase local company sourcing for these areas.⁴⁷

The second stage of the work was to consult Council officers and those in partner agencies (e.g. the Community Planning Partnership) on the idea of using their procurement to achieve additional Community Benefits. This process helped to promote the concept, identified widespread support (with employment, additional apprenticeships and the development of civic pride seen as advantages), and enabled links to be identified to other initiatives being delivered by the Council.

Thirdly, the consultants undertook research with suppliers. The majority of these were supportive of the proposed approach and a number gave examples of their existing initiatives to employ people from socially excluded groups. Other suppliers expressed concerns about potentially being relegated to sub-contractors (if supply-lists were rationalised) and they perceived there would be potential risks and costs associated with incorporating 'social clauses'.

The consultation resulted in a set of Organisational Strategic Objectives for the Council in relation to expanding 'Community Benefits':

- to increase the level of spend with local suppliers across all areas of procurement;⁴⁸
- to increase the percentage of local labour used in Council contracts;⁴⁹
- to assist in achieving an increase in youth attainment;
- to assist in decreasing the level of long-term unemployment;
- to increase the number of training opportunities within the local area;
- to assist in increasing the level of inward investment;
- to embed the community benefit requirements in the procurement process in order that they are not seen as part of a separate initiative.

45 Hedra Consultancy Ltd.

46 Use of postcodes depends on a number of assumptions, may not be valid measure reinvestment in the local economy.

47 This approach, if used in a procurement context, runs counter to the EU Treaty principle of equal treatment.

48 To achieve its strategic objectives, the Council needs to look at ways of opening-up the supply chain to all SMEs, and by default, a significant amount will be local. This should not be interpreted as a "well-being" power.

49 For the benefit of doubt it is appropriate for the Council to seek to maximise 'local employment' through its policies and programmes. It is acceptable to use procurement to facilitate training of local residents, but is not appropriate to use it to facilitate local labour recruitment.

These objectives are aligned to, and support, the aims of Falkirk's Strategic Community Plan. In addition, the consultant's report recommends that the Council should aim to embed the community benefit requirements in to the procurement process so that they become a Falkirk Council "Business As Usual" approach.

These objectives are legitimate as Council policy but in relation to Council procurement care must be taken to ensure that they are pursued in a way that does not conflict with EU and Scottish procurement frameworks. This can be achieved by following the approach set out in this document and in the Scottish Procurement Directorate's guidance on Social Issues in Procurement.

Annexes 1-5 are Case Studies of the five programme participants and include a variety of Community Benefit Clauses and Method Statements as used by authorities in the pilot projects. It is essential to recognise that these are used to test the approach and, authorities are expected to tailor clauses to their individual requirements. **Footnotes clearly identify cases where the case studies may illustrate drift from the recommended approach in terms of legal and vfm considerations.**

9 CRITICAL SUCCESS FACTORS

9.1 ORGANISING FOR SUCCESS

Experience both in Scotland and elsewhere suggests that a key determining factor in the success of using targeted recruitment and training (TR&T) requirements is the combination of commitment and dedicated resources. Both of these are necessary, but the commitment of the organisation needs to be reflected in the level of resources that are applied and the way these are organised.

9.2 CULTURE AND RESOURCES

Both GHA and Raploch URC had the benefit of being new organisations where the commitment to 'Community Benefits' was explicit in their objectives and could be built into the culture of the organisation from an early stage. This is in contrast to Inverclyde and Dundee where CBIP pilots required a change to existing practice at a time when there were a number of changes being required and the relative importance to be given to the CBIP was not clear. This is a problem of innovation.

Both GHA and Raploch had newly-appointed staff that were able to commit time to this emerging work-stream. They were able to:

- act as 'champion' for the initiative, in particular when working with the procurement teams;
- identify the external resources that would help contractors deliver the targeted recruitment and training (TR&T) requirements with little extra cost;
- determine what the target outputs should be and draft information that could be included in the procurement process;
- identify the monitoring information that would be required and determine how this would be processed and reported;
- act as the 'specialists' in assessing the community benefit elements of PQQs and Tenders;
- work with contractors to help them deliver the requirements.

The pilot in Inverclyde suffered from the lack of a targeted recruitment and training (TR&T) "champion". The economic development officer who negotiated the inclusion of the targeted recruitment and training (TR&T) requirements with the procurement officers early in the procurement process was transferred to other duties before the works went on

site and was never replaced. Consequently, the Inverclyde pilot did not have a dedicated officer, but sat within the remit of an existing economic development officer.

Similarly, in Dundee it appears that the procurement officers were expected to deliver the pilots without regular input from officers with knowledge of training, recruitment and external funding sources. In the construction pilots there was an expectation that external agencies would act as project champions.

The 'Falkirk approach' has been designed in anticipation of the problems of embedding the new initiative within the existing Council organisation and priorities. During the Programme they have focused on 'mainstreaming' the commitment to using contractual leverage to secure targeted recruitment and training (TR&T). In the process they have been seeking voluntary outcomes and building up the staff infrastructure to assist in setting targets and monitoring outcomes.

The GHA and Raploch examples demonstrate that the key element of the system is a "champion" for the Community Benefits who knows what can be expected, routinely supports the work of the procurement team and then works with the contractors and their 'Community Benefits supply chain' to ensure that the requirements are met. This person may be best placed to act as the contract manager for CBIP aspects of the procurement.

9.3 ROLES AND RESPONSIBILITIES

Contracting authorities need to establish a "process map" setting out who is responsible for the different elements of the championing, procuring, implementing and monitoring the Community Benefits specified. Stakeholders to the process should be involved in developing the specification.

In some cases there was a lack of understanding amongst procurement officers about 'what is required and why'. Such confusion was usually due to a lack of clear commitment on the part of the authority and a lack of a dedicated project champion. Also, in some cases the successful bidder did not adequately comply with the tender requirements or the contractor made no serious attempt to deliver the targeted recruitment and training (TR&T) contract requirements. Awarding contracts to non-compliant bidders or ignoring breaches of contract is counter to the principle of transparency and may lead to legal challenges from other bidders.

9.4 REQUIREMENTS SPECIFICATION

Another lesson from the CBIP pilots is that considerable thought needs to be given to the TR&T requirements from the very beginning of the procurement process. The key questions in determining and formulating the requirements should be:

- what are the priority ‘Community Benefits’ that can be addressed through this particular contract within the framework of EU regulations and VfM?
- what are the cost implications of including different Community Benefits, and different output targets, and how are these costs to be met?
- what Community Benefits can be included without putting at risk other key priorities, e.g. VfM, quality and the timetable for completion?
- what is the best way of measuring the community benefit requirements – for the purposes of both target setting and monitoring?
- how will the client team manage the monitoring of information and who will undertake progress-chasing on the community benefit elements?
- how will account be taken of contractors that are currently training recruits taken on under a previous community benefit clause to avoid discrimination against these organisations?

9.5 A SYSTEMS RESPONSE

Community Benefits need to be defined for individual contracts. However, there will be benefits in adopting a systematic approach to incorporating TR&T. These include:

- implementing an approach that ensures compliance with procurement and good practice e.g. in appropriate procurements the Contract Notices will include wording that will allow community benefit requirements to be included as a core requirement;
- involvement of a stakeholder group in the procurement that has the skills to set appropriate targets and score responses in the award process;
- an appropriate output monitoring and reporting arrangement can be set up and resourced;
- external funding and services can be arranged so that contractors are better able to deliver the requirements at little cost to the contracting authorities.

9.6 THE SUPPLY-SIDE

The case studies demonstrate the importance of having an appropriate ‘supply-chain’ that the contractors can use to deliver their recruitment and training requirements. To maintain a level playing field between bidders it is important that information and contacts for this potential supply-chain is included in the tender information.

This supply-chain potentially includes public sector training organisations, screening and job-matching services, small business support agencies and funding providers, and can:

- reduce the cost to the contractor and therefore the contracting authority by bringing in external resources, e.g. training grants;
- provide easy access to the target beneficiaries;
- supplement the training and recruitment skills of the contractor;
- help the contracting authority’s officers by providing verification of the outputs.

It has been argued above that the supply-side services that are available should be a key factor in deciding what community benefit requirements are included in the specification. This was a core part of the success of the Raploch and Inverclyde case studies.

9.7 TRAINING AND FUNDING MISMATCHES

However, the Dundee and GHA case studies illustrate problems related to reliance on the supply-chain to facilitate the delivery of the Community Benefit requirements.

Whereas a contractor’s supply-chain for most services and supplies includes many potential sources, this is not the case with publicly-funded training and job-matching suppliers. Here policies, priorities and resource allocations are determined by funders rather than either the beneficiaries or the prospective employers. This creates considerable instability since funding regimes can change almost annually – sometimes at very short notice – on the basis of national policies.

For example, in Dundee the training provider on one of the schools projects was no longer able to obtain Jobcentre Plus funding to engage their ‘traditional’ client group of under-achieving young people because the priority had shifted to an older age-group, but there was insufficient take-up from the latter group at the time the opportunities became available.⁵⁰

In addition to this, supply-side agencies expect to determine their working method, but this may not match the requirements of the contractor as set out in the contract. For example, training organisations will have a training regime that they offer to contractors and may not be comfortable with the contractor – the employer – deciding what is needed.

Clearly, these problems can be reduced by designing the community benefit requirements to fit with the existing supply-chain. However, the risk is that these resources may be relatively unstable.

There are different ‘solutions’ to this for different durations of contract:

- for longer-lasting contracts (like the GHA contracts) and those with a more uncertain timetable the onus to resolve the supply-side issues has to be transferred to the contractor. It may also be necessary to be more flexible about the types of beneficiary so that these can be varied as external funding regimes change;
- the design of a responsive demand led training and employment infrastructure for larger, long-term contracts;⁵¹
- for contracts that will be delivered within the time-frame of existing funding and policy regimes (like the Raploch roads contract) the requirements can be designed with the current supply-side agencies, using the available resources.

Alternatively, bidders may decide to include training costs in their tender.

⁵⁰ The problem was exacerbated by the training provider not having enough lead-time to recruit for the opportunities.

⁵¹ Construction Employment Integrator, National Employment Panel.

10 KEY LESSONS

10.1 TARGETED RECRUITMENT AND TRAINING (TR&T) AND VALUE FOR MONEY (VFM)

The inclusion of targeted recruitment and training (TR&T) as core requirements in the procurement of works can be delivered without detriment to VfM. However, success in achieving these outcomes depends on:

- a high-level commitment to the new approach that, over time, changes cultures and practices in the client's procurement teams;
- an appropriate commitment of resources by the client body: most especially engaging a project champion with employment and training knowledge that can advise the procurement team, liaise with training and job-matching service providers, establish appropriate monitoring and verification systems and liaise with contractors when they are appointed.

10.2 ACHIEVING COMMUNITY BENEFITS

When drafting Community Benefit Requirements, the following factors should be taken into account:

- the objectives of Community Benefit clauses, i.e. the needs of the beneficiaries compared with the capacity of the contract to accommodate these needs and still deliver other priorities like quality, timetable, cost;
- designing the requirements to fit with supply-side funding and services, while taking into account the durability of the latter in relation to the timeframe for contract delivery;
- the monitoring and reporting requirements in relation to the contracting authority's capacity to use this information effectively.

Clear, measurable and deliverable targets best facilitate these objectives.

10.3 ALIGNMENT OF TARGETED RECRUITMENT AND TRAINING (TR&T) RECRUITMENTS WITH EXISTING SERVICES

A third point to emerge from the pilots is the importance of aligning the targeted recruitment and training (TR&T) requirements with the existing training and recruitment services available to help contractors deliver the requirements. Community Benefit requirements should allow contractors to tap into the training and job-matching services currently available. This may be problematic where the Community Benefit requirements contained in the contract require training and recruitment service providers to change their working method in order to comply with the needs of the contractor.

10.4 COMMISSIONING SKILLS

Finally, we can note that the approach requires the development of new skills within the procurement's stakeholder group (including economic development/regeneration, housing and procurement staff). This includes an understanding of the entitlement to procure Community Benefits alongside more traditional requirements, for example, construction and an understanding of public procurement procedures, including evaluation of PQQs and tenders.

The evidence from the case studies has been that it is easier to achieve an appropriate organisational culture and practice in new organisations like GHA and Raploch URC than those with long-established practices like Dundee and Inverclyde councils.

APPENDIX 1: Glasgow Housing Association (GHA) Case Study

A1.1 CONTRACT ARRANGEMENTS

GHA has adopted a suite of procurement contracts. These include:

- a GHA Framework contract (bespoke)
- PPC (Scotland) 2000 partnering contract
- GHA Project Partnering contract (bespoke)
- Sectional Commencement Agreements (setting out the project-specific requirements under PPC 2000).

The suite is necessary to implement an approach that has three core features:

- a ‘framework approach’: a constructor is selected for a programme of work but the volumes and detailed requirements are agreed as a second stage through the Sectional Commencement Agreement;
- a ‘partnering approach’: the constructor and the client, GHA, work together on the needs and the detail of what will be delivered so as to achieve best quality and value for money;
- a ‘multi-partner approach’: there are a number of partner constructors delivering the same type of work and these are required to work in a collaborative way (under the GHA Partnering contract).

At present the employment and training requirements are included in two of the contract documents. Section 7.6 of the standard PPC(S) 2000 partnering contract states:

“The Partnering Team members shall implement together and individually such employment and training initiatives as are described in the Partnering Documents or otherwise agreed between them.”

The GHA Partnering Agreement includes the requirements as set out in the Invitation to Tender, and the Employment and Training Method Statement submitted by the contractor.

Although the latter was for a fixed number of units (e.g. 2000 doors to flats or kitchen and bathroom re-fits) and the Partnering Agreement does not specify this or any other number of units, the commitments and percentages set out in the Method Statement are expected to apply to the volumes set out in each Sectional Commencement Agreement.

At present there is no reference to employment and training requirements in either the Framework contract or the Sectional Commencement Agreement. Both documents provide the opportunity to include key performance indicators (KPIs) for new entrant employment and training, and internal discussions are ongoing about what should be included with a focus on clearly measurable KPIs e.g. the percentage of training weeks and the timely and accurate completion of monitoring forms.

Under the ‘partnering’ approach it is expected that the client and the constructors will work together to achieve the aims of the contract, including the wider Community Benefits like targeted recruitment and training. However, under the ‘framework’ approach the best contractors can expect to be awarded additional volumes and projects, and the less satisfactory contractors may obtain less work. The ‘framework’ approach uses performance against the quality KPIs as leverage on the partner contractors. The inclusion of new entrant employment and training KPIs in the Framework Agreement or the Sectional Commencement Agreement would provide a legal basis for taking each contractor’s performance on these requirements into account in deciding the allocation of work.⁵²

A1.2 THE PROCUREMENT PROCESS

The employment and training requirements were incorporated in each stage of the procurement process, including the selection of the contractors to be invited to tender and the award of the contract. This is summarised in Table 1.

⁵² Experience is taken into account at the pre-qualification stage of the procurement process, not during award of tenders within the framework, making it inappropriate to use KPIs as the basis for award of further work within the framework.

Table 1 Reference to Employment & Training in the Procurement Process

Procurement Activity	Reference to Employment & Training
Official Notice (OJEU)	The following text was included in II 1.6 Description/object of the contract. <i>Under this contract/these contracts, the contractor/supplier will be required to support the awarding authority's economic and social regeneration objectives. Accordingly contract performance conditions may relate in particular to social and environmental considerations.</i>
Contractors' Conference	For each contract or group of contracts a contractors' conference was held. This included a presentation from GHA and SEG ⁵³ on the employment and training requirements and opportunities to ask questions. A leaflet setting out the objectives and contact information for labour and training supply organisations was provided at each conference.
Appraisal Questionnaire (PQQ)	Information was requested on existing apprenticeship and training activity; recruitment and training of young people; adult returners and the unemployed; willingness to invest in training; the existence of contract monitoring arrangements (for training); and the name and position of the person responsible for training in the Company.
Selection of Tender List	A scoring framework was used to assess the responses to the questions in the Questionnaire.
Invitation to Tender (Specification)	Bidders had to submit an Employment and Training Method Statement with their tender setting out how they would deliver: <ul style="list-style-type: none"> • every vacancy (including those with subcontractors) to be notified to agencies named by GHA • 10% of person-weeks delivered by new entrants engaged in a training programme agreed by GHA⁵⁴ • the equivalent of 5% of person weeks to be available for unwaged work experience placements • the provision of records for monitoring and verification purposes, including compliance with the Data Protection Act • provision of reports on performance against stated KPIs. <p>The above had to be delivered at no cost to GHA: the contractor had to obtain resources from other sources (e.g. SEG) or through productive work. Contractors also have to take part in a partnership training initiative.</p>
Selection and Award	GHA's Neighbourhood Renewal Team developed a scoring framework for the Method Statements. This score represented between 5 and 12.5% of the 'quality' score, ⁵⁵ so typically between 1.5% and 3% of the overall scoring framework (on a 30:70 quality/price ratio).
Contract Conditions	Employment and Training requirements included in two of the four documents that make up the suite of contracts.

53 Scottish Enterprise Glasgow that manages a Construction Skills Action Plan for the city.

54 This % is varied with the type of work. Most contracts have included a 10% requirement, but this was reduced to 5% for demolition and may rise to 15% of new build housing contracts.

55 Depending on the range of quality matters that applied to the type of work to be delivered.

A1.3 SCORING THE EMPLOYMENT & TRAINING ELEMENTS

As can be seen from Table 1 there are two procurement activities where responses from potential contractors need to be evaluated: the response to the Appraisal Questionnaire (at Pre-Qualification stage) and then the Employment and Training Method Statement. In each case the response from the contractors was scored by members of GHA's Regeneration Team with experience of construction training and an understanding of the needs of the target communities. In line with other elements of the contractors' responses this was done through a rigorous process, with

the Team members developing an appropriate scoring framework. This was a learning process that was quality controlled by several officers test-scoring some bids, cross-checking the results, discussing discrepancies and then amending the scoring framework prior to undertaking the first 'proper' scoring processes.

The employment and training questions were allocated 10% of the available score for the Appraisal Questionnaire.⁵⁶ This is significant as it reduces the chances of a contractor that has little experience of targeted recruitment and training (TR&T) being included in the list of firms invited to tender for the work.

Table 2 Worked Example of a Scoring Framework for Appraisal Questionnaire

Question		(a) Scores (1-10)	(b) Scores Weight	(a x b) Scoring Possible	(a x b) Scoring Actual	Comments
1	Apprenticeships and training including up-skilling	7	5	50	35	
2	How many employees do you train each year	8	3	30	24	
3	Experience of local labour and employment initiatives ⁵⁷	2	5	50	10	
4	Are you prepared to invest in training programmes	6	4	40	24	
5	Do you have monitoring systems in place	0	3	30	0	
6	Who is responsible for training	–	–	0		
Total				200	93	

Scoring		
Possible	Actual	%
20	9.3	46.5

The overall scores are ranked to produce the list of firms that will be invited to tender.

A critical part of the above process is to agree what constitutes a good or a poor response. This was done using the following guidance.

Notes – Information considered during scoring

Q1 Number and type of apprenticeships, different types of training programmes, examples of employee development.

Q2 Total and % number of employee's trained each year.

Q3 Information on previous experience of delivering local labour and how it was delivered, client groups receiving training.

Q4 Type and level of investment.

Q5 Type of monitoring information – does it seem robust.

Q6 Named person for job training.

Definition of rating⁵⁸

- 0 Not mentioned
- 1-3 Mentioned but unsatisfactory detail
- 4-6 Reasonable detail
- 7-9 Good detail
- 10 Exceptional detail

⁵⁶ The Pre-qualification questionnaire (PQQ).

⁵⁷ It would be more appropriate to ask for "Experience of Targeted Recruitment and Training Initiatives" to avoid inferring "local preference" which would run counter to the EC Treaty principle of Equal Treatment.

⁵⁸ Quality of response will obviously influence the score given.

Table 3 Analysis of Appraisal Questionnaire (PQQ) Returns – 13 works packages

Contract	PQQs	Top 10 Submissions			Bottom 10 Submissions		
		Average Overall Score	Average Training Score	%	Average Overall Score	Average Training Score	%
Works 1	41	167.7	19.3	11.5	49.2	4.0	8.1
Works 2	34	159.7	10.7	6.7	83.0	4.4	5.3
Works 3	35	156.7	10.2	6.5	66.5	4.2	6.3
Works 4	33	163.7	17.6	10.8	62.2	4.2	6.8
Works 5	28	160.9	17.0	10.6	55.5	2.0	3.6
Works 6	33	147.3	16.0	10.9	29.0	3.1	10.9
Works 7	35	152.1	18.9	12.4	35.4	5.5	15.5
Works 8	14	115.5	12.0	7.7	78.4	7.6	9.9
Works 9	15	115.6	12.3	10.6	75.9	7.6	10.0
Works 10	14	116.5	10.2	8.8	72.8	6.0	8.2
Works 11	6	137.0	16.0	11.7	44.3	3.6	8.1
Works 12	31	155.5	17.6	11.3	38.6	3.9	10.1
Works 14	21	133.3	16.5	12.4	81.6	10.2	12.5
Total/Average	340	144.7	14.9	10.3	66.3	5.1	8.6

Notes: Top and bottom 10 are based on the overall scores. For works 11 top and bottom 3 were used

Overall score is out of a maximum of 200 and the average training score out of 20.

% = average training score as a % of average overall score

Table 3 sets out a comparison between the overall scores for the 340 Appraisal Questionnaires submitted to GHA (across 13 works packages) and the scores for the training questions for the top 10 and bottom 10 submissions based on the overall scores.⁵⁹ This demonstrates that the top 10 submissions also tended to score well above the bottom 10 submissions in relation to the training questions. The margin was very great, with the top submissions scoring an average of 14.9 out of 20 and the bottom 10 an average of 5.1 out of 20

The overall scores for the top 10 submissions were marginally advanced by their responses on the training question (their responses were 10.3% of their overall score

against a baseline of 10%), while the training score of the bottom 10 submissions tended to exacerbate their poor score (8.6% of their overall scores). In all of the top 10 submissions (across 13 works packages) there were 31 scores of less than 12 out of 20 (60%), but in all of the bottom 10 submissions only 11 scored more than 12 out of 20.

This analysis indicates that the firms that scored highest overall also tended to score highest on the training requirements: the scores for the training questions enhanced the scores of the highest-scoring submissions and retarded the scores of the lowest-scoring submissions.

⁵⁹ Where there were less than 20 submissions the top and bottom 10 were still used (so some scores were counted in both top and bottom), except in the case of Works 11 where the top and bottom 3 were used.

A similar process was adopted for scoring the Employment & Training Method Statements, but there were many more questions to consider (below).⁶⁰ Again, officers used

guidance notes when scoring each Method Statement as a way of increasing the consistency.

Table 4 Analysis of Employment & Training Method Statement Scores

Type of works	All bidders		UK Gen. Contractors		Reg. Gen. Contractors		Specialist Contractors		Highest Score		Lowest Score	
	No	%	No	%	No	%	No	%	%	Type	%	Type
Roofing & cladding	10	81	6	85	2	68	1	86	94	UK Gen.	53	Reg. Gen.
Doors to houses	12	79	7	81	3	79	2	71	91	UK & Reg Gen.	66	UK Spec.
Doors to flats	12	75	7	76	4	71	1	75	91	UK & Reg Gen.	49	Reg. Gen.
Kitchens & Bathrooms	12	77	9	80	3	66			93	UK Gen.	46	UK Gen.
Common areas	9	65	7	65	1	67	1	69	93	UK Gen.	9	UK Gen.
Common area improvements	10	75	6	77	3	74	1	74	92	UK Gen.	30	UK Gen.
Common areas MSF	6	72	4	68			2	81	92	UK Gen.	74	Reg Gen.
Domestic Electrics	7	85	3	91	2	80	2	81	92	UK Gen.	74	Reg Gen.
Environmentals	6	79	1	86	1	54	4	84	98	Specialist	54	Reg. Gen.
Total/Average	84	77	51		18		15		98	Specialist	9	UK Gen.

Note: specialist contractors include both UK (4 – 27% = %) and Regional firms (11 = 73%)

Definitions: UK Gen – a general contractor working across the UK

Reg. Gen. – a general contractors working primarily in Scotland

Specialist contractor: those who primarily deliver one trade/activity

Bidders for more specialist and technical work tended to score above the average, and those for less technical work (common area improvements and environmental works) below the average of overall score of 77% (See Table 4, above), although the highest bid in each type of work scored over 90%.

It is clear that most bidders did address the Method Statement, and the majority scored over 60%: only 11 bidders (13%) scored less than this and only one failed to submit a method statement.

In most contracts the award was based on a 70/30 price/quality ratio (on some contracts a 60/40 ratio was used). The employment and training requirements formed part of the 'quality' assessment of each tender. In most contracts the employment and training scores had a 5% weighting within the quality score: 1.5% weighting in the overall tender assessment – so the impact of a high or low score on the Method Statement would not, on its own, have a significant impact on the award of the contract. However, in at least one contract (environmental improvements), a 12.5% weighting was given so the impact could have been greater. This was because there were a smaller number of quality issues to be considered for these contracts than for most of the contracts.

⁶⁰ The Framework has not been included here because it will be used in the evaluation of forthcoming tenders and has not been made available to bidders. However, the form of the document was also used by Raploch URC and is included in that case study.

Table 5 sets out a ranking of the top 10 bidders for six contracts⁶¹ on the basis of their overall quality scores.

It then provides their ranking on the basis of their employment and training scores.

Table 5 Ranking of Bidders by Overall Quality & Employment & Training (E&T) Scores

Roofing & Cladding		Domestic Electricals		Kitchens & Bathrooms		Environment		Doors to Flats		Doors to Houses	
Quality Rank	E&T Rank	Quality Rank	E&T Rank	Quality Rank	E&T Rank	Quality Rank	E&T Rank	Quality Rank	E&T Rank	Quality Rank	E&T Rank
1	4	1	1	1	1	1	1	1	1	1	1
2	1	2	4	2	4	2	4	2	3	2	5
3	9	3	3	3	2	3	2	3	2	3	3
4	2	4	7	4	6	4	6	4	5	4	4
5	6	5	2	5	5	5	5	5	4	5	2
6	3	6	5	6	7	6	7	6	7	6	7
7	8	7	6	7	9	7	9	7	8	7	6
8	5			8	3	8	3	8	6	8	9
9	7			9	13	9	13	9	11	9	8
10	10			10	8	10	8	10	12	10	11

This suggests a general pattern: as with the Appraisal Questionnaires (PQs), the firms scoring highest on quality bids on a wide range of scored criteria⁶² also tended to submit a high-scoring employment and training method statement.

The final element of the quality assessment was an interview with each bidder. This aimed to clarify any of the quality elements of the bid in order to confirm the score and ranking of the contractors. An officer from the Regeneration Team took part in these interviews.

Since the GHA procurement process represents the largest source of data on how contractors have responded to the inclusion of recruitment and training requirements in construction contracts in the recent past.⁶³ It has been important to assess the impact of the approach on the achievement of value for money (VfM);

The data set out above shows a high level of competition for the contracts that included Community Benefits as part of the core requirement.

A1.4 CONTRACT MANAGEMENT

The monitoring requirements are set out in a Constructor Training and Employment Monitoring Pack. This contains:

- an overview of the monitoring arrangements
- copies of the monitoring forms:
 - New Start Personnel Record
 - Employee leaver form
 - Quarterly Report form
- New start definition flow-chart
- Guidance and a Glossary of terms for completing the Quarterly Report.

This pack is sent to contractors in advance of the Partnership meeting, the gathering of contractors appointed to deliver an element of the works. It is then discussed with each individual contractor at GHA monitoring meetings that are intended to reaffirm the commitment to monitoring and to explain the format and reporting methods. Officers from the Team are subsequently available on an on-going basis to answer any queries, provide advice on completion and check submissions.

61 For which detailed information was easily available.

62 Typically 21 criteria, but in the case of environmental improvements only 12 criteria.

63 Some of the English Housing Action Trusts used a contractual approach in the early 1990s but there are no known records of the process.

At the time of writing all contractors had completed the monitoring forms although there has been some reluctance by one contractor in relation to the personal information contained in the New Start Personnel Record.

Monitoring requirements and the key performance indicators (KPIs) against which performance is judged should obviously be closely linked. For both it is important to establish standard and well-defined units of measurement.

In GHA the early documents referred to the number of jobs that would be created or available. However, 'a job' in the construction industry can be of short duration and so the standard measure that was adopted by GHA was the percentage of the works undertaken by the target groups. To achieve this the standard unit of measurement of a person-week⁶⁴ was adopted, but the Method Statement required a projection of both person-weeks and the number of staff required (full-time equivalents) to deliver these.

The original contracts tendered by GHA⁶⁵ were developed before the detailed monitoring arrangements were set up. They therefore determined what monitoring and data processing arrangements should be established by both the contractor and the client. This had resource implications for both parties. It was recognised that GHA would have to develop a good database to receive and process the monitoring information that would be required to properly verify the contractors' performance against the employment and training requirements.

A database has been established by GHA. However, the design of the actual monitoring arrangements (and the associated data-base) is different from that anticipated in the early contract documents.

The system that has been established requires a personal record form for all new starts, but not for employees transferred from other sites, and the weekly record of all labour used has been replaced by a quarterly report by each contractor of the total labour used on the contract. These changes to the monitoring system reflected three factors:

- agreement with Construction Glasgow⁶⁶ on their role of providing validation information to verify contractor information provided to GHA;

- the need to prioritise the limited resources within the Regeneration Team;
- the need to develop a workable monitoring system that would not be overly burdensome or complex for contractors.

However, following an external evaluation, Construction Glasgow closed in March 2006 shortly after the commencement of the first GHA contracts that included the targeted recruitment and training requirements.

There are two important implications that arise from the changes to the monitoring system:

- it does not provide a means of checking whether contractors and subcontractors are notifying all vacancies to the named supply agencies;
- it does not provide a means of fully verifying the total labour engaged on the contract, a figure that is used to calculate the percentage of new entrants which is an important KPI in the contracts.

Steps are being taken to remedy this including:

- obtaining confirmation from GHA contract officers that the total time utilised by each contractor is in the range expected, given the volumes of work undertaken each quarter;
- setting up new labour and trainee supply arrangements with agencies (potentially the LDCs⁶⁷), that can also provide confirmation of the numbers of vacancies advised by GHA contractors and the numbers of these vacancies that are offered to their clients;
- validating Apprenticeship information provided to GHA by contractors with SEG.

Improving the robustness of the monitoring and reporting arrangements is important as there must be evidence that the TR&T conditions are being implemented both to ensure contract compliance and to ensure that these contracts are let on an equitable basis.

64 Equivalent to a person working for five days.

65 E.g. Works Type 1 Roofing & External Wall Cladding.

66 See 7 below.

67 Local Development Companies, (LDCs – 8 across Glasgow but restructuring to 5 in 2007-08), and not-for-profit organisations that undertake neighbourhood-based economic development.

To further assist the monitoring and evaluation of GHA's approach to securing targeted training and employment and to support GHA's partnership with SEG, an independent Key Advisor has been appointed.⁶⁸ The commission covers a period of 15 months from November 2005 and includes:

- providing an overview from an independent perspective, on the employment and training partnership;
- ensuring the employment and training processes being developed are effective and offer value for money;
- liaising with key employment and training stakeholders (including contractors);
- preparing reports for GHA and SEG;
- critical analysis of the employment and training process; overall effectiveness and value for money of the training interventions put in place to alleviate constructors skills gaps.

A1.5 OUTPUTS

Table 6 Total Labour used on PPC contracts for the period to 30th June 2006 (person-weeks)

Contract Name	Employee	New Start	Apprentice (A)	Trainee (B)	Total New Entrants (A + B)	% New Entrants
Electrical Rewiring – Domestic	5,109	1,333	416	91	507	9.9%
Environmentals	843	98	0	77	77	9.1%
Kitchens & Bathrooms	8,343	3,121	1,431	155	1,586	19.0%
Roofing & Cladding	6,077	1,105	655	149	804	13.2%
Total	20,372	5,657	2,502	472	2,974	14.6%

Table 6 is the output data produced by the management information system for the first six months of site operations.

The outcome of 14.6% of the person weeks delivered by new entrant trainees is well above the 10% target. Of 14 operating contracts 10 had exceeded the new trainee targets and four had underachieved – although two of

these had only just started on site. There were significant differences between contractors delivering the same type of works, indicating that the approach and/or commitment of the company are important determining factors. This is highlighted in Table 7 and shows that GHA have some work to do with some contractors to ensure that they improve their performance on the training requirements.

Table 7 Comparison of new entrant trainee outputs (% of person-weeks delivered) between types of work and contractors

Type of Work	Average	Highest	Lowest
Electrical rewiring	9.9%	23.0%	3.6%
Environmentals	9.1%	40.0%*	0%*
Kitchens and Bathrooms	19.0%	21.3%	0%*
Roofing & Cladding	13.2%	33.1%	2.6%

* These were on a low level of site activity to date

⁶⁸ The commission was awarded to Professor Alan McGregor from the Training and Employment Research Unit (TERU), Glasgow University.

Table 8 presents the outputs to June 2006 in terms of people rather than person-weeks. This shows that the contractors recruited an additional 297 people in the period – 31% of the workforce on the sites. Of these 141 (47%) were new entrant trainees, and of the latter 79% were apprentices.

This is a very significant achievement for 6 months operation and if maintained will make an important contribution to the achievement of GHAs aims for neighbourhood renewal. Over a number of years it will also add significantly to the supply of suitably skilled labour to deliver the remainder of the GHA investment programme.

Table 8 Total Labour used on PPC contracts for the period up to 30th June 2006

Contract Name	Employee	New Start	Apprentice (A)	Trainee (B)	Total New Entrants (A + B)	% New Entrants
Electrical Rewiring – Domestic	211	72	16	4	20	9.5%
Environmentals	54	14	0	10	10	18.5%
Kitchens & Bathrooms	386	142	59	8	67	17.4%
Roofing & Cladding	310	69	36	8	44	14.2%
Total	961	297	111	30	141	14.7%

The outcomes achieved demonstrate that many contractors have the ability to deliver the required training outcomes and are able to access external resources to achieve this. It can be expected that the targeted recruitment and training outcomes will improve still further as the ‘supply-side services’ of training and job-matching become more established and as GHA concentrates on bringing the low-achieving contractors up to the level of the best contractors. Using KPIs for recruitment and training in the award of future volumes of work will assist in this.

A1.6 INITIATIVES – SUPPLY-SIDE SUPPORT

“Prior to the submission of the supplementary Method Statement, the preferred constructors will be expected to have identified a source for any additional resources they will require to deliver the employment and training requirements, over and above the sum for management and supervision that is included in the tender sum, so that the requirements can

*be met with no additional costs to GHA. The preferred constructors are advised to contact Scottish Enterprise Glasgow and the CITB for information on relevant services and funding.”*⁶⁹

The requirement of the contracts is that contractors must obtain the resources to cover any additional costs they incur – over and above the management and supervision costs that are included in their overheads – to deliver the employment and training requirements. They are referred to Scottish Enterprise Glasgow (SEG), the Construction Industry Training Board (CITB) and (originally) Construction Glasgow as organisations that may be able to assist them. The latter was a part of SEG’s Construction Skills Action Plan and was a partnership of public bodies in Glasgow⁷⁰ that aimed to provide a single point of contact for recruitment for the construction sector in Glasgow.

The provision of information on the ‘supply chain’ for trainees and unemployed people was important is establishing a ‘level playing field’ for contractors that had little knowledge of the ‘supply-chain’. All contractors could access the services of these organisations.

⁶⁹ GHA Works Type 1 Contract, Volume 2.

⁷⁰ SEG, Jobcentre Plus, Careers Scotland, GHA and the 8 Local Economic Development Companies.

In the period when GHA was preparing its tenders there were tensions between GHA's needs as a client – being expressed as obligations that its contractors had to fulfil – and the aims and objectives of the supply-chain organisations. These problems were resolved with a Process Map being agreed by the Chief Executives of SEG and GHA. SEG have established a bespoke programme for funding GHA contractors called Skill to Build. This has a budget of £1m – partly funded by GHA and the European Social Fund – that SEG can use to commission bespoke training required by GHA contractors. The programme is managed on a day to day basis for SEG by a local economic development company and there is a capacity to provide training for 200 long-term unemployed people (30% aged under 25 and the remained 25+).⁷¹

At the time of writing there had been two training programmes run for GHA contractors under Skill to Build. One programme was designed with an external cladding contractor and trained 6 people to fit guttering and down pipes over a 20-week period (including some site experience). The contractors were involved in the selection of the trainees. The latter then received 20 weeks training (including some site experience) while retaining their state benefits. At the end of the training 5 of the 6 were offered employment by the contractors, and after 13 weeks all of these were still employed and some were now undertaking adult apprenticeships. A second programme was designed with an environmental works contractor, with similar outcomes.

Bespoke training programmes arise from a 'partnership meeting' with the contractors delivering each type of works, organised by GHA's Regeneration Team. This is attended by SEG's managing agent for the "Skill to Build" programme.

As a result of the decision to close Construction Glasgow there was no single point of contact for GHA contractors to advise their vacancies (as required by their contracts), and GHA lost one of the critical sources of verification of their contractors' monitoring data. GHA and SEG are taking steps to advise contractors of the replacement agencies that must be advised of all vacancies.

The problem of miss-matched timescales also affected some early SEG training initiatives developed to meet the

anticipated needs of GHA contractors. Speculative training was designed and started at the request of GHA, providing opportunities for 12 kitchen-fitters and 12 external cladding operatives in anticipation of contracts commencing on site in Autumn 2005. A delayed start on site (to early 2006) meant that the promise of a job to the trainees could not be met. Glasgow City Council's Building Services department provided temporary employment for some of the trainees and valuable work experience until contractors were on site. In the end employment opportunities were secured for some trainees through existing contractors to GHA. This proved a valuable lesson that training must be linked directly to the contractors requirements, (skill level and job opportunities).

A1.7 GHA RESOURCES

GHA has invested the following resources in incorporating the employment and training requirements in to the tendering and contract management processes:

- Contribution to funding the Scottish Government CBIP Pilot Programme that provided access to legal and policy information, a toolkit and good practice information (£5000);
- Additional consultancy to prepare bespoke contract documents for the employment and training requirements (approximately £5000);
- Employment of a full-time construction intermediary and a monitoring officer⁷² (approximately £100,000 over three years);
- Significant inputs of time from the Neighbourhood Renewal Manager and Programme Co-ordinator;
- The engagement of the external key adviser;
- £90,000 contribution to the Skill to Build training programme.

It is anticipated that the annual operating cost of the construction employment and training activity will be in the region of £50,000 to cover the salary and on-cost of the officers involved. Over the first five years' investment of £750m it is anticipated that initiating, facilitating and monitoring the employment and training requirements will cost in the region of £400,000. This is approximately half of 1% of the development value.

⁷¹ Castlemilk Economic Development Agency who provide four mentors for the trainees who can help to resolve problems with their training or employment, or with personal issues that are affecting their work.

⁷² initially the IT specialist under a Scottish Enterprise programme.

A1.8 CONCLUSIONS

The approach described in this report represents the most significant pilot for the use of employment and training requirements in construction contracts that has occurred anywhere in Britain. It is significant for:

- being incorporated at all stages of the procurement process;
- the scale, value and range of construction works;
- the numbers of PQOs and tenders that have included employment and training requirements;
- the rigour with which these requirements were incorporated into the contract award process;
- the numbers of jobs and training opportunities that are being created;
- the potential benefits to GHA tenants and neighbourhoods.

The scoring of the Appraisal Questionnaires and Method Statements suggest that many contractors performed well in completing these documents and that the contractors that scored highly on a wide range of suitability and quality issues also scored well on the employment and training requirements.

The contractors have been required to obtain the resources they needed to meet the employment and training targets by utilising existing management and supervision, obtaining external funding (e.g. SEG and CITB), and obtaining good productivity from the trainees. This means that the recruitment and training outputs are truly 'added-value' for GHA.

Under their Wider Action budget GHA has funded consultancy to help develop the approach, the Regeneration Team that has implemented it and support for some vocational training.

The most difficult aspect of the approach for GHA has been aligning with external agencies so that they provide the services that the GHA contractors need if they are going to fulfil their employment and training obligations. There was also a reliance on these agencies to help verify the outputs being claimed by contractors. There are two reasons for these problems:

- external agencies are driven by their own policies, programmes and priorities: they will support GHA where this suits their priorities but cannot easily bend their activities to meet the needs of GHA or their contractors;
- the external agencies 'geared-up' to respond to a GHA investment timetable that was then delayed for a range of reasons, leaving the supply-side agencies with insufficient demand for their services and resources – an outcome that impacts on their project delivery and planned outputs.

However, SEG have secured funding from the £25 million Construction Skills Action Plan which provides flexibility in funding new entrant opportunities and workforce development packages for GHA contractors over a seven year period.

Recruitment demand from GHA contractors still appears weak – in part because it is still quite early in the delivery programme and in part because GHA and SEG still have work to do to ensure that contractors are notifying all vacancies to the named agencies and recruiting their trainees via these agencies.

From a procurement perspective the approach has been described as having the following benefits:

- it enables GHA to achieve its wider objectives and sustain this across the whole investment programme;
- it has promoted joint working between the Regeneration and Procurement Teams;

- it has given GHA access to professional advice and good practice (through the CBIP Pilot Programme and consultancy);
- lessons learnt relating to the tendering process include:
 - definitions of qualifications required for trainees should be included in ITT;
 - give precise definition of experience sought i.e. Community Benefits, Social Inclusion vs. general Personal Development Plans for staff;
 - define quotas in terms of person weeks (also define 'person-weeks');
 - test Method Statement in house by completing and scoring;
 - Table 7 demonstrates that there is still work to do to ensure that under-performing contractors (in relation to recruitment and training) achieve their targets and start to deliver at the level of the best performing contractors. The monitoring information will allow them to do this.

Beyond this, attention should be given to how the process is delivered and monitored as GHA starts to consider the 'second stage transfer' of its operations to the neighbourhood level. There needs to be a sharing and transmission of systems and expertise, and probably the continuation of a centralised monitoring and management information function as a service to all the project development teams. Maintaining the funding for this team – at approximately £50,000 per year will be critical.

Likewise, there needs to be continuity in the provision of resources for bespoke training and job matching. The external agencies that provide the resources for these actions work within priorities and organisational structures that are subject to frequent change – relative to the long development programme that GHA has embarked upon. The Construction Skills Action Plan is an important exception to this pattern, securing £25 million for construction skills training to meet the diverse needs of contractors over a seven-year period.

In this context continuity of funding to meet the GHA training and recruitment outcomes will be achieved by a continued partnership with SEG and by ensuring that there is a demand for training and job-matching services from the construction employers engaged by GHA. As can be seen from Skill to Build, a clear demand from employers is a powerful tool in ensuring that training and employment services are designed and delivered in appropriate ways.

It should be remembered that the provision of access to supply-side agencies is required to maintain 'a level playing field' for non-local contractors that may otherwise be disadvantaged in the tendering process because they don't have knowledge of the labour market and training resources. This is important at the tendering stage to ensure compliance with the EU Procurement Directives.

APPENDIX 2: RAPLOCH CASE STUDY

RAPLOCH URBAN REGENERATION COMPANY (STIRLING)

A2.1 PROCUREMENT – STIRLING WESTERN ACCESS ROAD (SWAR)

The SWAR contract was for the building of a road that would effectively take through traffic around Raploch. The procurement process commenced before the staff of the Shadow URC came into post and a contract Notice was published without reference to community benefit requirements⁷³ but respondents to the public notice were advised that they would be required to demonstrate how they would deliver community benefit requirements.⁷⁴ The following extract is from the contract conditions and form of tender:

“In accordance with the Stirling Community Plan and the objectives of the Raploch Partnership the client is seeking to maximise the contribution of the Stirling Western Access Road contract to social inclusion. It is therefore a requirement that the Community Benefits Method Statement that is included at Appendix E to Form of Tender is completed and returned with each valid tender.

The Community Benefits Method Statement will form part of the Tender assessment. This will be carried out in a two-stage threshold basis:

Stage 1: Community Benefits Method Statement must be deemed acceptable before proceeding through to Stage 2.⁷⁵

Stage 2: Base on lowest compliant and satisfactory tender price.”⁷⁶

The requirements were further explained at a briefing session for the seven contractors that expressed an interest in bidding for the works.

The targeted recruitment and training requirements in the contract were based on the Draft CBIP Toolkit but amended during the course of discussions between the Raploch team and the procurement team from Stirling Council. Changes suggested by the latter related, in particular, to the number of trainees and the duration of the site work that should be required, and the removal of requirements relating to SME supply-chain opportunities.⁷⁷ In both cases the rationale for reducing the requirements was based on the procurement team's judgement on what targeted training and recruitment requirements could be delivered within the scale and duration of the contract.

As indicated above each bidder had to provide with their tender a Community Benefit Method Statement using a pro-forma provided. This was required to show how the contractor would achieve the following requirements:

- Fully participate in a Community Benefits Working Group;
- Participate in the training programme of four people identified by the Community Benefits Working Group partners and provide a total of 52 person-weeks of appropriate site experience to the trainees;
- Within one week of commencement on site, in consultation with the Community Benefits Working Group partners, to complete a written training plan for each trainee that will lead to some or all of the following:
 - Construction industry certification
 - Civil engineering road works certification
 - Plant operations
 - Plant maintenance
 - Highways and utilities operations
 - Health and safety
 - The enhancement of the trainee's personal, IT and job-search skills;

⁷³ because the value of the contract was below the threshold value of £3.8m it was deemed unnecessary to advertise the contract in the OJEU. This situation has changed and contracting authorities and utilities which are public undertakings, (“contracting bodies”), are bound to comply with the rules and principles of the EC Treaty when awarding contracts. Even where the contract is exempt from the detailed rules of the Directives on public procurement (e.g. because the contract is below threshold value, is for a Part B service or is otherwise exempt) EC principles apply.

⁷⁴ This action is not allowed in terms of EU rules therefore emphasising the importance of considering the scope/suitability of including Community Benefit and other social clauses at the outset of the procurement.

⁷⁵ ITT clause 81.2.

⁷⁶ Tenders can be awarded on the basis of lowest price or most economically advantageous tender (MEAT). It is Scottish Government policy to apply MEAT. It would be more consistent to give this criteria as MEAT.

⁷⁷ Care needs to be taken when including SME requirements in social clauses in order to avoid local bias. All EU member states are viewed as a single market and there should be no discrimination on the basis of location.

- The training plan to be updated monthly and available for inspection at any time;
- Each trainee to be encouraged and assisted in securing permanent employment or support in setting up as a self-employed person, including consideration for employment on site;
- Every vacancy, including those with sub-contractors, to be notified to the Community Benefits Working Group and the Community Benefits Development Manager at least 2 days before being notified to other agencies or filled from other sources;
- To interview a minimum of three candidates put forward by Employment Connections or Employability Stirling⁷⁸ (where suitable candidates are put forward) before making a recruitment selection;
- Operate a formal complaints procedure in relation to incidents of discrimination;
- Maintain a Site Personnel Record (including full home address, employer, start and finish dates on site) that includes a statement allowing the employer to disclose personal information to the Contracting Authority, i.e. Stirling Council for contract monitoring purposes;⁷⁹
- Maintain insurance for people aged 16 and over who are gaining work experience on site.

The invitation to tender also included the following 'disclaimer':

“The inclusion of community benefit requirements does not comprise or imply any promise on the part of the Employer⁸⁰ or their agents or the Raploch Partnership (Shadow URC) to provide suitable trainees or labour. Within this context the employer and the Raploch Partnership will work with agencies to help facilitate the achievement of these community benefit requirements.”

As can be seen above the principle community benefit required from the SWAR contract was the provision of a minimum of 52 weeks of work experience and training for a minimum of 4 trainees recruited through the partners in the Raploch Community Benefits Working Group This was considered a condition that could be met by any contractor.

A key characteristic of the Raploch approach was that the trainees were 'free on site' to the contractor. They were selected (after a newspaper advertisement) from a population that were eligible for the Jobcentre Plus New Deal programme (for long-term unemployed people aged under 25) or the Work Based Training For Work programme (long-term unemployed people aged 25+). The Jobcentre funding was matched to European Social Fund money to provide additional resources. This funding was accessed through a local programme called Joblink that was run by Employment Connections. Raploch URC did not take responsibility for recruitment of the trainees required.

Joblink is an employer-based programme where the participants are selected to meet an Employer's specification and then go through a bespoke training programme that will help provide the participants with the skills and qualifications that the employer requires. In this case the contractors appointed for the SWAR had to participate as an employer.

The trainees retained their state benefits during their training and site experience and received an additional £10 per week plus a travel and subsistence allowance.

The contractor worked with the partners in the Community Benefits Working Group – that included the Community Benefits development manager from the URC and Employment Connections – to devise a training programme. This set out day by day for the 13 weeks what the trainees would be doing and included:

- 10 days of pre-site training that included health and safety, manual handling, vehicle banksman operations and use of abrasive wheels;
- 41 days of site work experience;
- 7 days of additional off-site training;
- days of personal development training and support;
- 2 days of interview and exit review activity.

⁷⁸ These are two employment projects operated by Stirling Council.

⁷⁹ To comply with the Data Protection Act.

⁸⁰ The Employer in this context is the client for the works e.g. Stirling Council.

The training was provided by an organisation that is regularly used by the contractor but was paid for by Joblink.

The Working Group met monthly over the duration of the contract to review the progress with the training programme.

The results of the process were outstanding. At the conclusion of the first 13-week programme all four trainees were employed by the contractor, Stirling Council Roads Maintenance (SCRM). They then took a further four trainees for 13 weeks, of which one was employed by SCRM and two elsewhere in Stirling Council. So the contractor delivered double the contractual requirements – in part because they were willing to place the trainees on other contracts as well as the SWAR – and 87.5% of the participants moved from long-term unemployment to a permanent job.

From the contractor's perspective the incorporation of the training requirements in the contract reminded them that there could be benefits in giving opportunities to people that would normally be considered difficult to place in employment. This example demonstrated that with the right support in place the hiring of long-term unemployed people could actually enhance a contract rather than being a difficulty. SCRM had complied with the contract requirements because they needed to maintain a good relationship with their clients, but the process supported a business need which was to recruit more staff to service their expanding business. The provision of the trainees 'free on site' and with good training and support effectively gave them a 13-week assessment period prior to the actual recruitment.⁸¹

From the Employment Connections perspective the inclusion of the community benefit requirements in the contract significantly increased the efficiency of the Joblink provision. On this contract they were able to place 8 trainees with one contractor. Normally they would have to work with 4 or more contractors to achieve the same outputs.

A2.2 PROCUREMENT OF A DEVELOPMENT PARTNER

The major procurement being undertaken by the URC is for a development partner that will 'deliver the Board's vision' (for Raploch) and specifically undertake housing renewal (800 units) and public realm works. The OJEU Notice gave an estimated value of £75m for the works and includes the following statement in relation to Community Benefits.

The partner will be expected to embrace the concept of sustainable development and community benefit and will be required to work with the partners to deliver employment/training opportunities and other Community Benefits.

This text makes clear that the delivery of Community Benefits – and specifically employment and training – is part of the subject of the contract that is being procured.

Respondents to the OJEU Notice were invited to a Bidders Conference where the requirements – including the community benefit requirements – were discussed. Documentation provided at the conference included a Pre-Qualification Questionnaire (PQQ) that included the following:

“Community Benefit

The Applicant should demonstrate previous involvement in community benefit initiatives such as:

- *supporting economic development*
- *community consultation/capacity building*
- *training and employment opportunities*
- *partnership work with local people and other appropriate local agencies*

Please provide the CV(s) of person/persons responsible for delivery of Community Benefits/partnership working in your organisation.”

This text illustrates that in this procurement 'Community Benefits' extended beyond employment and training to incorporate community consultation, community capacity building and partnership working.

The PQQs were evaluated by a multi-disciplinary panel that included the URC's Community Benefits development officer. The latter prepared a scoring sheet describing the types of information that could be expected to be provided in relation to question 3.4. Each member of the panel scored each response to the PQQ independently. These scores were then combined within a weighted framework.

⁸¹ The comments from SCRM are taken from a case study prepared by Anthony Collins Solicitors for a DTI's manufacturing Forum study of social issues in procurement.

As can be seen from Table 1 their highest scoring responses to the PQQ overall were also the highest scoring in relation to the community benefit questions. These three were invited to tender for the contract.

Table 1 PQQ Scoring: comparison of overall ranking and Community Benefits ranking

PQQ Scoring – All Questions		PQQ Scoring – Community Benefits	
Rank	Average Score	Rank	Average Score
1	75	3	61
2	73	1=	73
3	69	1=	73
4	55	6	41
5	54	4	58
6	53	5	42
7	30	7	18

The Invitation to Tender (ITT), below, included community benefit requirements relating to training and employment, equal opportunities, social enterprises, small business, monitoring and reporting, sub-contractor compliance, and insurances, plus the disclaimer (similar to that used in the SWAR contract). Each bidder was required to provide information on these matters on a pro-forma method statement that was included in the ITT information (see below). The use of the standard questions and format was intended to make it easier to evaluate the community benefit proposals from the bidders, although on this occasion only one of the bidders completed the pro-forma.

The evaluation of the bids was undertaken by 5 panels, including one for the Community Benefits. The latter consisted of the principal public sector bodies with an interest in regeneration (including social housing, training, and health) plus the Council, the URC's Community Benefits development manager (who chaired the panel) and a representative from the local community. The other four panels scored the bids on Technical, Finance, Legal, and Innovation criteria.

Each section of the Method Statement was given a score out of 100 (see Table 2). Each question within each section was then given a score.

Having established this scoring framework each member of the panel scored each of the three Method Statements. The panel met to validate the scores they had given.⁸² The scores of the different panel members were combined and an average of all panel members produced. This average score was passed to the external consultants who combined it with the scores for other elements of the bid coming from other panels. The community benefit scores were weighted as 10% of the overall scores.

As can be seen from Table 2 the highest community benefit weighting was given to the information relating to training and targeted recruitment. Bidders were scored most highly on their responses to questions about equal opportunities and their management arrangements. They scored significantly less well on the information they provided about the net cost of meeting the community benefit requirements.

The preferred bidder overall was scored second-highest by the Community Benefits scoring panel.

Table 2 Scoring the Community Benefits Method Statements

Section of Method Statement	Weighting %	Average score of bidders	Highest score of bidders
Training opportunities	35	65.8	78.5
Targeted recruitment	20	67.2	75.5
Equal opportunities	5	80.0	92.0
Social enterprises	10	66.7	76.0
Small Businesses	10	63.6	74.0
Monitoring and reporting	10	66.0	80.0
Performance information	5	60.6	78.0
Management	2	75.0	95.0
Cost information	3	58.9	66.6
Total for the CB Method Statement	100	66.4	76.3

An examination of the method statements submitted by the bidders shows dramatic differences in their predicted outcomes (against the community benefit requirements) and the costs they included in the tender.

⁸² That had not at this stage been shared with other Panel members.

Clarification with the preferred bidder suggests that contractors may have over-complicated their response to the community benefit requirements rather than merely responding to the questions that were asked. The approach to cost was especially significant. The Method Statement, (see below), actually asked for the net cost after deducting grants obtained and the value of work undertaken. Only one of the three bidders appears to have worked on this basis, while the others showed the predicted financial benefit to the community rather than the net cost to the client.⁸³

The difference in 'cost' shown in the community benefit method statement was not carried forward to the total cost submitted by each bidder and did not impact on the award of the contract.⁸⁴

This outcome suggests that despite the initial briefing for potential bidders and the offer of the opportunity to request more information at the bidding stage, some bidders will not address the requirements in the tender and provide the information that is requested through a pro-forma method statement. In this context it is important to ensure that community benefit requirements are costed in bids in a uniform way.

The successful developer, R3 (a Cruden Homes/George Wimpey consortium) signed-up to:

- 1 225 Training and Employment new entrant places over the 10-year programme
- 2 Support and mentoring for small businesses
- 3 Ring-fencing of £2 million for suitable sub-contracting works
- 4 Support and mentoring for social enterprises – £900K ring-fenced to take forward projects

A2.3 CRITICAL SUCCESS FACTORS

The URC's Community Benefits Development Manager was previously the manager of Joblink in Stirling and therefore has long experience of seeking training and job opportunities for long-term unemployed people from contractors working on major projects in the City. Where employment and training requirements were put into the procurement process and the works contract a much more positive engagement was obtained from the contractor than experienced for voluntary arrangements.

It might be assumed that the SWAR example may be atypical since the contractor was a part of Stirling Council. However, despite Joblink having operated for many years as part of the Council the contractor had not previously sought to recruit from this source. It might also be fair to comment that it is too early to judge the impact of the community benefit requirements in the development partner contract since nothing had been delivered at the time of writing. Raploch URC also believe that testing community benefit clauses on the SWAR contract helped with their use in the main contract.

In this case the contractor benefited from the experience and resources of Employment Connections and their Joblink project. They had already packaged the resources from Jobcentre Plus and the European Social Fund to allow the SWAR contractor to have access to trainees at no cost, and had a well-established system for recruiting and supporting the trainees and their employer. The URCs lead worker had an intimate knowledge and good relationships with Joblink, and the contractor had good experience of purchasing appropriate training.

The URC wanted to have a greater involvement in the selection of short-lists than Joblink are accustomed to, with candidates potentially coming from several sources not just Joblink and Employment Connections.

Another critical ingredient for the SWAR contract was the operation of the Community Benefits working Group. This provided a forum for integrating the training and resource knowledge of Employment Connections and Joblink with the detailed construction programme and road operations training knowledge of the contractor. It provided a positive forum for discussion of issues and outcomes, and provided the contractor with the assurance that they were operating in a supportive environment: they were not left on their own to deliver the requirements and sort any problems.

The experience of the Working Group for the SWAR contract has given the URC confidence that a similar approach can work with the development partner. This will be important because there is a wider range of requirements that need to be addressed, and because over a longer contract period there will be changes in the resources available for training and job-matching – a problem that was not encountered in the 30-week SWAR contract.

⁸³ Tenders cannot be evaluated on the basis of predicted economic benefit.

⁸⁴ That was based on 70% quality and 30% cost.

The scoring of the PQQ and Method Statements for the development partner contract has been a very significant learning process for all those concerned. None had previous experience of scoring Community Benefits in such a rigorous way. The contribution of the local resident was especially important since they remained very focused on how the proposals of the bidders would work in the community. The process enabled the community benefit requirements set out in the OJEU Notice to be part of the award process.

In relation to value for money the judgement in relation to the SWAR is that the inclusion of the Community Benefits requirements increased value for money since additional client objectives were met at nil cost – or even a reduction in cost – to the client. This was achieved because the trainees were ‘free on site’ and any additional supervision costs were covered by their 328 days of site work.

A good practice lesson is that where multi-faceted community benefit requirements are to be included in the tender process there needs to be strong guidance given on what is expected.

A2.4 EXTRACTS FROM RAPLOCH TENDER DOCUMENTATION

Part 10

COMMUNITY BENEFIT CONDITIONS

1 Training and Employment

1.1 Employed status new entrant trainees will comprise either a minimum of 10% of the person-weeks required to deliver the works or a minimum of 157 (no.) whichever is the greater, and that wherever possible such new entrant trainees will be recruited from Employment Connections, EmployAbility Stirling or another agency named by the URC where:

- a) A **person-week** is the equivalent of one person working for 5 days either on site, or through a mix of on-site work and off-site training. The total person-weeks utilised on the contract to include time provided by management and professional staff, trades and operative staff, and ancillary staff.

- b) A **new entrant** trainee is a person that is leaving an educational establishment (e.g. school, college or university) or a training provider, or a non-employed person that is seeking employment that includes on-site training and assessment or offsite training, or a mix of these.
- c) “Employment Connections” is an employment and training information project with offices at 4 Woodside Road, Raploch, Stirling, FK8 1RF.
- d) “EmployAbility Stirling” is an advice employment project for those with disabilities, with offices at Langgarth, Viewforth, Stirling FK8 2ET.

1.2 Each new entrant trainee is to have a written Training Plan. This Training Plan is to be updated on a monthly basis and made available for inspection by the client representative at any time.

1.3 Every vacancy on site, including those with sub-contractors, is to be notified to Employment Connections and EmployAbility Stirling (and/or other agencies named by the client representative⁸⁵).

1.4 Provide unwaged work experience places for those people participating in national construction training programmes such as New Deal Training for Work, Skillseekers and Modern Apprenticeships.

1.5 Provide employment opportunities for people with a disability, wherever possible recruited from EmployAbility Stirling (and/or other agencies named by the client representative).⁸⁶

2 Equal Opportunities

2.1 In response to the Race Relations (Amendment) Act 2000 the Developer must implement equal opportunities practices on site that satisfy the following minimum requirements:

2.2 All vacancies on site to be notified to Employment Connections and EmployAbility Stirling and/or other agency named by the client representative.

⁸⁵ ibid 2 above.

⁸⁶ ibid.

2.3 The operation of a formal complaints procedure, backed up by appropriate disciplinary action, for incidents of discrimination or abuse relating to race, colour, gender, religion, age and disability: this procedure to be made known to all personnel on site and to include records that are available for inspection by the client or their agent at any time.

3 Social Enterprises

3.1 The URC supports the Scottish Government's policy on social enterprises, (see the notes on social enterprises included as an Addendum to this Part of the Schedule) and believes that social enterprises have a distinct and valuable role to play in helping to create a strong, sustainable and socially inclusive economy. It is therefore a requirement that the following actions for the development of social enterprises in the Raploch area are undertaken:

3.1.1 Investigate and discuss social enterprise opportunities with the client representative.

3.1.2 Make proposals on how sustainable social enterprises can be created and developed within Raploch.

3.1.3 Take appropriate action to support the creation, development and good management of social enterprises in Raploch.⁸⁷

4 Small Businesses

4.1 The contractor is required to provide opportunities for small businesses, (SBs), wherever possible identified through Forthconstruction Forum or other named agencies. It is therefore a requirement that each year the capacity of a number of additional SMEs is assessed and activities undertaken to develop their capacity to undertake work on the Raploch developments. In complying with this condition:⁸⁸

4.1.1 An SB is a firm that employs or otherwise engages less than 50 people.

4.1.2 "Forthconstruction Forum" is an initiative to assist SBs, which is based at Stirling Council Economic Development, Viewforth, Stirling FK8 2ET.

5 Monitoring and Reporting

5.1 The contractor is required to maintain a Site Security Record that includes the following data for each person engaged on site in any capacity:

5.1.1 The date they commenced on Site.

5.1.2 Their home address (rather than a local accommodation address) including the full post-code.

5.1.3 Their employer (or who they have been engaged by if self-employed).

5.1.4 Their trade/occupation.

5.1.5 The date they finished working on Site.

5.2 The contractor is required to comply with the Data Protection Act and the Site Security Record must include a statement authorising the contractor to disclose personal data from the Site Security Record to the URC or their agent for the purposes of contract monitoring. This statement is to be signed by each person listed on the Site Security Record.

5.3 The Site Security Record must be available to the client representative or their agent at any time.

5.4 Prior to each Monthly Site Meeting the contractor must prepare a schedule showing outcomes for each of the following for both the Month and cumulatively.

5.4.1 Person-weeks delivered by new entrant trainees split between those from named agencies and others.

5.4.2 Number of new entrant trainees that have been recruited split between those from named agencies and others.

5.4.3 Person-weeks delivered by people with a disability.

5.4.4 No. of vacancies notified to the named agencies.

5.4.5 No. of vacancies filled by persons referred by the named agencies.

5.4.6 Total value of support to social enterprises.

5.4.7 Value of funding provided to social enterprises.

5.4.8 Number of additional SBs that have been assessed as a potential supplier split between those contacted via Forthconstruction Forum* and others.⁸⁹

5.4.9 Number of orders placed with 'additional SBs', split between those contacted via Forthconstruction Forum* and others.

5.4.10 Value of contracts placed with additional SBs, split between those contacted via Forthconstruction Forum*, and others.

* or another named organisation/list

⁸⁷ Care must be taken with clauses like this to ensure they do not discriminate against businesses with ongoing equivalent activities. They should reflect potential in the market.

⁸⁸ The Scottish Government would not advocate exclusive use of named agencies to select subcontractors.

⁸⁹ As per our earlier footnote, it is not appropriate to limit opportunities to named agencies.

5.5 The contractor/consortium must have available for inspection at any time, evidence to support the information given to the Monthly Site Meeting. This will be subject to periodic review.

6 Sub-contractor Compliance

It is the contractor/consortium’s responsibility to develop a working method that will deliver the Community Benefit requirements and the related records and monitoring data, and obtain the full co-operation of sub-contractors.

7 Insurances

The Developer must provide insurance that includes cover for people aged 16 and over and for staff from employment and training organisations when visiting the site.

8 Action by the URC

The inclusion of Community Benefit requirements does not comprise or imply any promise on the part of the URC or their agents to provide suitable trainees, labour or SBs. Any action taken by the URC to broker relationships between the contractor/consortium and local individuals/firms/agencies does not imply and should not be deemed to imply that the URC or their agents consider the individual/firm/agency as suitable for engagement by the contractor/consortium. Within this context the URC will work with local agencies to help facilitate the achievement of these Community Benefits requirements.

ADDENDUM TO SECTION 10

Social enterprise explained

A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community rather than being driven by the need to maximise profit for shareholders and owners.

Social enterprises tackle a wide range of social and environmental issues and operate in all parts of the economy. By using business solutions to achieve public good, the Government believes that social enterprises have a distinct and valuable role to play in helping create a strong, sustainable and socially inclusive economy.

Social enterprises are diverse. They include local community enterprises, social firms, mutual organisations such as co-operatives, and large-scale organisations

operating nationally or internationally. There is no single legal model for social enterprise. They include companies limited by shares; some organisations are unincorporated and others are registered charities.

Types of Social Enterprises

“Employee-owned businesses” range from the small, niche ‘lifestyle’ co-operatives, to medium-sized or large social enterprises that combine social goals with strong economic performance. The common feature of all successful employee-owned businesses is an “ownership culture”.

“Community Businesses” are trading organisations set up, owned and controlled by the local community and which aim to be a focus for local development and ultimately create self-supporting jobs for local people. The term ‘Community Business’ is normally used for Social Enterprise that have a strong geographical definition and focus on local markets and services.

“Social Firms” are business created for the employment of people with a disability or other disadvantage in the labour market. It is business that uses its market-orientated production of goods and services to pursue its social mission. These firms are active in new sectors such as ICT and Tourism for disabled people to become economically independent. Paying wages at market rate is an important aspect of Social Firms where the aim is to have a minimum of 25% of people employed will be disabled.

www.scotland.gov.uk/library5/social/rose-00.asp for further information.

Part 10⁹⁰

COMMUNITY BENEFIT METHOD STATEMENT – FORM

Contract Title

Name of Company

Address of Company

.....

Contact Name

Position

Telephone numbers

E-mail address

Period covered to

90 Of the Invitation to Tender.

I confirm that this Method Statement sets out the actions that will be undertaken to ensure the achievement of the Community Benefit requirements as set out in Clause [5.14 and 5.15] and in Part [10] of the Schedule to the Regeneration Agreement between the URC, the Developer and Forth HA. It is recognised that this document will be evaluated as part of the tender assessment and contract award procedure, and that delivery of the Community Benefit requirements is a contract condition.

Signed.....

(Print Name)

Date

Please provide information in each of the following sections. This document must be submitted in relation to each individual Site.

1. Training

Describe the steps that will be taken to ensure that employed status new entrant trainees will comprise either a minimum of 10% of the person-weeks required to deliver the works or a minimum of 157 (no.) whichever is the greater, and that wherever possible such new entrant trainees will be recruited from Employment Connections, EmployAbility Stirling or another agency named by the URC.⁹¹

1.2 Please complete the Tables below in relation to the whole development and then the next two 12-month periods.

Table 3 Total person-weeks to be delivered by new entrant trainees (excluding work placements)

Occupation	Labour Requirement		Person-weeks delivered by New Entrant Trainees						
	Total for Contract		Apprentices		Other Trainees		Total No.		% of total P/wks
	P/wks	No	P/wks	No	P/wks	No	P/wks	No	
e.g. carpenters									
Total									

⁹¹ This was accepted in this instance for the pilot. Care needs to be taken when limiting sources of recruits. It is appropriate to suggest sources, but not to limit the contractor to named sources. This comment applies to the whole of Appendix 2.

Notes

P/wks – A person-week is the equivalent of one person working for 5 days either on site, or through a mix of on-site work and off-site training. The total person-weeks utilised on the contract to include time provided by management and professional staff, trades and operative staff, and ancillary staff.

No. – enter here the number of individuals that you anticipate using for each occupation and category.

A **new entrant trainee** is a person that is leaving an educational establishment (e.g. school, college or university) or a training provider, or a non-employed person that is

seeking employment that includes on-site training and assessment or offsite training, or a mix of these.

An apprentice is a person registered as an apprentice with an industry recognised body. Each apprentice can be counted as a ‘new entrant’ for up to 104 weeks.

Other Trainees – people that have a trainee contract or a contract of employment or self-employment that are not apprentices. Each ‘other trainee’ can be counted as a ‘new entrant’ for up to 52 weeks.

Total P/wks & No. – total the P/wks and total the numbers in each row for “B – apprentices” and “C – other trainees”.

Table 4 Person-weeks to be delivered by new entrant trainees – next 2 x 12-month periods

Occupation	1st 12-month period				2nd 12-month period			
	Apprentices		Trainees		Apprentices		Trainees	
	P/wks	No	P/wks	No	P/wks	No	P/wks	No
e.g. carpenters								
Total								

1.3 Describe the steps that will be taken to provide work experience for unwaged trainees for the whole development, and provide a breakdown of opportunities that will be made available where this is requested.

Table 5 Total Un-waged Work-experience Opportunities

Occupation/Activity	No. Person-weeks
Total	

1.4 Describe how you will achieve any compliance from sub-contractors that will be necessary to meet the training and work experience requirements.

1.5 Describe how the requirement to create and maintain Training Plans (as defined in the Regeneration Agreement) will be achieved.

1.6 Describe any arrangements for ensuring that trainees progress with and complete their training programmes, including any arrangements for on-site assessment and training and liaison with training providers.

2. Targeted Recruitment

2.1 Describe the steps that will be taken to ensure that all vacancies, including those with sub-contractors, are notified to Employment Connections and EmployAbility Stirling or other named agencies.

2.2 Describe the steps that will be taken to ensure that suitable applicants from Employment Connections and EmployAbility Stirling are interviewed by the prospective employer.

2.3 Describe the steps that will be taken to ensure that information on the numbers of vacancies filled by candidates from Employment Connections and EmployAbility Stirling are recorded for monitoring and reporting purposes.

2.4 Please complete the Table below setting out the numbers of person-weeks of employment that could be made available to a person with a disability. Consultations with EmployAbility Stirling may be useful before completing this Table.

Table 6 Opportunities for people with a disability

Occupation/Activity	No. Person-weeks
Total	

3. Equal Opportunities

3.1 Describe arrangements that will be in place to ensure the recording of complaints or incidents relating to discrimination or abuse on the basis of race, colour, gender, age, religion, or disability, including sub-contractor compliance.

3.2 Describe what disciplinary procedures will be operated in relation complaints of discrimination or abuse.

3.3 Identify who will be responsible for ensuring the achievement of the equal opportunities requirements in the contract, including sub-contractor compliance.

4. Social Enterprises

4.1 Describe any experience or evidence from other areas that has influenced your thinking on support for social enterprises.

4.2 Describe the support you will give to social enterprises, including any development support, business management and funding.

5. Small Businesses⁹²

5.1 Describe activities that you will undertake to identify Small Businesses (SBs)⁹³ from Forthconstruction Forum or other organisations/lists agreed by Raploch URC and assess their capacity to deliver works, services or supplies that are required for the contract.

5.2 Describe any actions you will undertake or otherwise support to assist SBs from the Forthconstruction Forum or other agreed organisations/lists to obtain contracts in relation to the Development in the Raploch.

5.3 Describe any experience from other areas that has influenced your approach to the provision of opportunities for SBs.

6. Monitoring and Reporting

6.1 Describe the arrangements you will make for creating the site security record and for complying with the Data Protection Act in relation to the provision of monitoring information to the URC.

6.2 Describe the arrangements that will be made for recording the information needed to complete the schedule to be presented to each Monthly Site Meeting (as defined in the Community Benefit requirements within the Regeneration Agreement) including sub-contractor compliance.

6.3 Describe the administrative and management arrangements that will be operated in relation to the monitoring and reporting requirements.

7. Predicted Outcomes – Key Performance Indicators

Indicate below the anticipated outcome for each Community Benefit requirement, including outcomes to be delivered by sub-contractors.

Table 7 Predicted Outcomes – Key Performance Indicators

Requirement	Unit of Measurement	Predicted Outcome
Person-weeks delivered by new entrant trainees	Person weeks	
Number of new entrant trainees that will be recruited	No. of people	
Person-weeks delivered by people with a disability	Person-weeks	
Vacancies to be notified to the named agencies	No. of vacancies	
No. of vacancies to be filled by persons referred by the named agencies	No. of people recruited	
Total value of support to social enterprises	£	
Funding to be provided to support social enterprises	£	
Number of additional SBs that will be assessed as a potential supplier, split between those via Forthconstruction* and others	No. of firms ForthCons.* Other	

*Refers to Forthconstruction Forum (ForthCons) or another organisation/list named by Raploch URC from time to time.

92 While suggestions may be made as to possible sources of subcontractor, these sources should not be limited; to name sources would be discriminatory to other small businesses not registered with the named agency. This note applies to all instances in Appendix 2 where an agency has been named.

93 “Additional SB” means a firm that employs or otherwise engages less than 50 people and that has no previous experience of contracting or sub-contracting with the contractor/consortium.

8. Management

8.1 Who will be responsible for ensuring that the Community Benefit requirements are met, including discussions with the client, the preparation of Method Statements, and the collection and presentation of monitoring information?

8.2 What administrative and Site staff will be involved in ensuring delivery of the Community Benefit requirements and providing monitoring information?

9. Costs

Complete the table below to show the net costs* that have been included in the tender sum in relation to the Community Benefits requirements.

Table 8 Costs

Type of expenditure	Net Cost* £	Basis of calculation
Management		
General administration		
Supervision of training, targeted recruitment and equal opportunities		
Training costs (excluding wages)		
Trainee wages subsidies		
Support for social enterprises		
Support for SBs		
Additional insurances		
Other (please detail)		
Total		

* NET COST IS AFTER DEDUCTING FUNDS OBTAINED FROM OTHER SOURCES (E.G. CITB AND SCOTTISH ENTERPRISE, JOB CENTRE PLUS, ETC.), AND IN RELATION TO WAGES AFTER DEDUCTING THE VALUE OF WORK CARRIED OUT BY TRAINEES.

APPENDIX 3: INVERCLYDE COUNCIL CASE STUDY

A relatively low level of commitment, despite policy commitments, was reflected in the way these pilots were undertaken. Officers in economic development and regeneration negotiated with procurement officers for the inclusion of the targeted recruitment and training requirements in the procurement for the pilot sites. Appropriate wording was included, but it appears that the procurement officers did not give the matter any priority in the award and management of the contract. Unfortunately, the lead officer for the work (within Economic Development) was transferred to another post early in the pilot process but continued to manage the Community Benefits pilot within the new remit.

Consideration is now being given to whether the Council should be asked to agree a new policy paper providing support for the inclusion of targeted recruitment and training requirements in future works contracts.

A3.1 HOMEZONE ROBERT STREET CONTRACT

This contract was for approximately £1m in streetworks in an area with high levels of deprivation. The procurement officer agreed that it should be a CBIP pilot and included clauses prepared by a consultant to the CBIP programme. This was done with minimal (telephone) discussion between the consultant and the Council officers involved. The clauses were then passed to the Council's contract agents who converted them to the text included below as CBIP Requirements for the Robert Street Contract.

The lack of discussion about the recruitment and training clauses and the 'system' they inserted into the contract may help to explain the lack of engagement with the targeted recruitment and training part of the tender by the contract officers, and the implications for how this element of the contract should be managed.

As can be seen, the requirement was for an Employment and Training Method Statement to be submitted as a part of the tender using the pro-forma provided. This requirement was not complied with by all bidders and it is understood that there was no scoring of the method statements. The result of the procurement process was that a contractor was appointed that had made no prior commitment to the employment and training requirements. Outputs were achieved through direct negotiations between the Council's

employment officers and the contractor. This resulted in two long-term unemployed local residents obtaining 18-20 weeks of work experience on site. One of these was then retained by the contractor.

The outcomes were the result of quasi-voluntary action⁹⁴ and a commitment to the general principle of giving unemployed people a chance. The matter was raised at site meetings and all parties felt that the outcome was satisfactory: 2 people had jobs out of a workforce that varied between 7 and 20 people: so a 10% target was reached. However, the contractor and the Council's contracting team did not implement the following specific requirements of the contract:

- time was to be measured in person-weeks not numbers of people;
- recruits should be employed by the contractor in addition to work placement opportunities (the recruits were on work experience);
- the contractor had to notify all vacancies to local Job Centres;
- the contractor had to provide a report setting out key performance indicators at each site meeting.

It is estimated that had the recruits been employed on the contract, they would have contributed 5.7% of the total labour time required to deliver the contract.⁹⁵

A3.2 POTTERY STREET

The second Inverclyde pilot contract also related to streetworks. These were on a redevelopment site that the Council was preparing for the market. This was the subject of an OJEU Notice and PQQ process in 2003 (before the CBIP Pilot Programme commenced) that made no reference to employment and training requirements. The contract had a value of £839,000.

The Bill of Quantities for the works included a section entitled "Compliance with Employer's Targeted Training & Recruitment Programme – Partnering Agreement" that comprised:

- details of the Council's objectives in promoting 'well-being' and combating social exclusion;
- a requirement that all vacancies be advertised in the Port Glasgow area (a contact at the Job Centre was given);

⁹⁴ They had not demonstrated any awareness or commitment to the requirements up to that point.

⁹⁵ Based on a contract officer's estimate of the total time used on the contracts and the numbers of weeks of work experience provided.

- a requirement that a site security system be adopted that would record data on people engaged on the site;
- a disclaimer similar to that in 1.4 of Appendix 1;
- a requirement that tenderers submit a Method Statement with their tender showing how they will implement the above;
- a requirement that data on recruitment be reported to the Council or their agent four-weekly in a format to be agreed with the Council;
- a requirement that the cost of delivering the Method Statement be identified in the Preliminaries Bill, including a breakdown of how this was calculated.

The key difference between these requirements and those for Homezone was the absence of targets for new entrant trainees and work placement opportunities, and that the Council did not provide a pro-forma Method Statement to ensure that all bidders provided the same types of information. This may have been because this was a partnering contract and the goodwill of the contractor was expected to maximise the outcomes.

It appears that all of the bidders did submit a Method Statement and that all submitted a zero cost for the targeted recruitment and training elements. It is understood that this was because they were told that additional costs would be met from employability budgets. In terms of securing VfM, it was not appropriate to make this commitment.

The Method Statements were assessed by the independent consultants that were advising the Council on the procurement. Their tender assessment notes that the preferred contractor merely included their Equal Opportunities Statement in response to the requirement to submit a Method Statement and the consultants ask the Council to “advise if this does not satisfy the requirements of the Inverclyde Council Targeted Training Programme”. It appears that this response – that is unlikely to have satisfied the above requirements – was not contested.

Minutes of the Site Meetings for the contract show that the employment and training matters were raised at each meeting and through this the contractor was encouraged to meet with a Council employment team member. The minutes of the site meeting eight months after the contract started notes that two work-placement trainees had been recruited

with the intention of offering them employment at the end of their work experience. The reason for the delay in taking these recruits appears to have been the specialist nature of the early works that included the removal of a lot of contaminated material. There is no evidence that data on the people engaged on site was ever presented to a site meeting.

A3.3 CONCLUSIONS

The Inverclyde pilots demonstrate the dangers of seeking to implement a CBIP approach without sufficient understanding and commitment from the officers and consultants involved, and without an ‘employment champion’ that has the time and backing to ensure that the requirements are implemented.⁹⁶

The outcome from the two pilots – 4 work placements for long-term unemployed people employed by Inverclyde Community Development Trust on an ‘intermediate labour market scheme’ – are considered good. It seems that three of these beneficiaries obtained permanent employment with the contractor, which is a very positive and probably life-changing outcome for these individuals.

A positive outcome is that the Council has included targeted recruitment and training requirements in one additional contract (that is held up awaiting funding) and has included a requirement to include 12 trainees on another contract that has been let in conjunction with British Waterways. At the time of writing, six work-placement opportunities have been provided for long-term unemployed people obtained from the Inverclyde Community Development Trust (CRT), and five of these have since been employed by the contractor. It has enabled the Council to better achieve their Economic Development Strategy commitments.

Inverclyde Council is currently reviewing the scope for using Community Benefit clauses in its schools development programme. External funding has been obtained via the Community Planning Partnership for the engagement of a “construction intermediary” to support contract officers and link construction contractors and training providers.

Community benefits from construction represent a major challenge and opportunity for Inverclyde over the next decade. Major investments are planned and it is vital to ensure these generate a high volume of opportunities for disadvantaged residents.

⁹⁶ Funding for the recruitment of a construction intermediary has now been approved by the Council.

Staff within the local authority are working to link opportunity to need, developing formal linkages between supply and demand in the labour market. As a result of lessons learned from the pilot programme, community benefits have become integral to the new schools construction programme and discussions are ongoing with the Riverside Inverclyde Urban Regeneration Company and Riverclyde Homes. There are plans to recruit a dedicated “champion” of community benefits.

A3.4 EXTRACT FROM INVERCLYDE TENDER DOCUMENTATION

CBIP REQUIREMENTS FOR THE HOMEZONE ROBERT STREET CONTRACT

Extracts from APPENDIX 1/25: Training and Recruitment Requirements

1. It is the intention of Inverclyde Council in accordance with its aims to combat social exclusion and deprivation within Inverclyde by promoting opportunities for vocational training, education and employment for long term unemployed. The Contractor must be able to demonstrate its intention to integrate trainees and long term unemployed persons into the labour market without distinction of sex, marital status, race, ethnic origin or political or religious beliefs.
 2. Inverclyde Council also specifically wishes to encourage and intends to support the education and training of young people in order that they can be equipped to work successfully in the building and construction industries. The Contractor is therefore encouraged to recruit and train such young people.
 3. It is the intention of Inverclyde Council that all vacancies on the site (including those of the Contractor and all sub-contractors) should be filled through a recruitment process that accords with best equal opportunities practices.
 4. The Contractor is required to operate a site security system that records the following data for each person engaged on site in any capacity:
 - The full post code of their home address (rather than a local accommodation address);
 - Their gender;
 - Their ethnic origin (using categories provided by the Employer⁹⁷ or their Agent);
 - If they are registered on a training programme; and
 - Whether they were employed for over 25 weeks or engaged on a full time training programme (12 hours per week or more) immediately prior to engagement on site.
- A summary of this data must be provided to Inverclyde Council or their Agent, in the format they request, on a weekly basis, not more than one week after the completion of the recording period.
- The above information is required for Inverclyde Council as this project is subject to external audit by the third party European funding sources. This information is part of the basis for the grant funding of the project and requires to be addressed by Inverclyde Council and the successful Contractor.
5. The performance of the Contractor in relation to training and recruitment will be an item on the agenda of each Employer’s site meeting.
 6. The inclusion of employment and training requirements does not comprise or imply any promise on the part of the Employer or their agents to provide suitable labour/firms. Any action taken by the Employer to broker relationships between the Contractor and local individuals/firms/ agencies does not imply and should not be deemed to imply and should not be deemed to imply that the Employer or their agents consider the individual/firm/ agency as suitable for engagement by the Contractor. Within this context the Employer will work with local agencies to help facilitate the achievement of the employment and training elements of this specification.
 7. Tenderers shall submit a Method statement or Service delivery plan with their tender showing how they will implement each of the above objectives, including management and monitoring arrangements.⁹⁸
 8. The Contractor is required to provide a cost (after allowing for potential grant income from the CITB and other sources) for implementing service delivery plan or method statement relating to the Employers requirements on employment, training and equal opportunities, including a breakdown of the price between management/administration, training costs, and any wages subsidy element relating to the engagement of operatives who are not yet fully productive. The basis of calculation for each element must be provided. This figure will be used to calculate a provisional sum for training and employment to be included in the contract in series 100 of the Bill of Quantities.

97 In this case the term ‘Employer’ refers to the contracting authority.

98 A pro-forma was provided, based on the Method Statement used by Glasgow Housing Association.

APPENDIX 4: DUNDEE CITY COUNCIL CASE STUDY

A4.1 CONSTRUCTION PILOTS

The City Council was keen to support construction training and employment initiatives and selected the £3 million+ refurbishment and extension of Forthill Primary School as a pilot project. The council was able to draw on the experience of Hillcrest Housing Association which had included training and employment requirements in its house-building contracts. With access to a well-established construction training provider based in Dundee, Hillcrest Agency Services, the Council sought to create opportunities for a 'Hillcrest model' scheme in the Forthill contract. This involved consultation with the Hillcrest Agency Services manager but there was no input from the CBIP Procurement Group.

The contract notice in the Official Journal of the European Union used the 'model clause' from the CBIP Toolkit. However, there was no requirement for the contractors to submit a method statement with their tenders detailing how the TR&T requirements would be fulfilled.

The training and employment element of the specification for the Forthill School partnering contract was based on that used successfully by Hillcrest Housing Association for their house-building contracts. It required the contractor to deliver the following outcomes:

- 26 weeks of unwaged site experience opportunities for 12-15 general construction operative trainees that would be supervised on site by a trainer provided by Hillcrest;
- a further 12 weeks initial paid employment for 12-15 trainees with the contractor or their sub-contractors (either on the Forthill site or elsewhere);
- the provision of materials for the trainees;
- supply of a trainees' site hut with an office for the trainer.

In addition, the Invitation to Tender referred to the support of the Council for the Tayside Local Labour Initiative (TLLI), and a requirement that the contractor submit a training and employment statement to the TLLI manager if requested to do so. It appears that there was no request for this since the TLLI were unaware of the contract.

Discussion with the contractor indicates that they are aware of the training and employment requirements of the contract and had discussions with Hillcrest Agency Services about how they could fulfil the requirement in the context of the

contract works and timetable. The contract started on site in August 2004 but by December there had been no opportunities to take the team of trainees onto the site. The barriers to this were:

- the type of work was not conducive to a 12-15 strong team of trainees on site: there would be insufficient suitable work (at any time) for this team given the nature of the works being carried out;
- the work progressed more slowly than anticipated which has meant a somewhat stop-start progression with the early sub-contractors.

Despite the existence of the contract condition and the willingness of Hillcrest Agency Services to work with the contractor, no trainee opportunities were ever offered by the contractor. The targeted recruitment and training (TR&T) contract obligations were not met.

There appears to have been a mismatch between the opportunities that could be provided by the contractor given the nature of the building works, and the opportunities required in the approach being offered by the Hillcrest. The latter's approach had been developed on housing contracts where there were essentially repetitive functions delivered by a team of sub-contractors carrying out traditional trades. The Forthill School contract had some refurbishment work, which required trades and trade trainees rather than General Construction Operative (GCOs) and then numbers of specialist sub-contractors that were on site for short periods. This problem would probably have been identified if the procurement officers had undertaken an analysis of the labour content of the contract or if the bidders had been required to produce a method statement with their tender setting out how they would meet the requirements.

The contract clauses from the Forthill contract were used on a £12 million refurbishment contract of St John's High School. This was more successful with Hillcrest Agency Services recruiting and training 4 long-term unemployed people who were subsequently retained by the contractor. However, this pilot encountered a number of problems that limited its achievements:

- the funding for the training elements (provided by Scottish Enterprise Tayside) limited recruitment to people aged 25+ who were eligible for 'Training for Work' (TFW, a training programme run by Scottish Enterprise);

- eligibility for TfW required applicants to be put forward by Job Centre Plus. In the training manager's view insufficient people, and too many inappropriate people, were put forward;⁹⁹
- the contractor was not pro-active and only approached Hillcrest at a late stage – so there was insufficient time to undertake proper promotion of and recruitment to the scheme.

The two pilot construction contracts have been successful in demonstrating that the Council has the legal and policy basis for including targeted recruitment and training matters in its contracts. It seems that in both contracts the contractor was not sufficiently engaged or committed to devise a method that would ensure that the Council's targeted recruitment and training requirements were met. This lack of pro-active engagement may also apply to some of the supply-side staff agencies that the Council relied on to help deliver successful pilots.

The result was that one of the pilot contracts, which was worth of £3 million, achieved no outcomes and the other, which was worth £12 million, achieved 4 outcomes.

A4.2 THE SOCIAL CARE PILOT

The following text is an extract from a Council report setting up the pilot project:

“4.6 Dundee City Council Social Work Department proposes that new contracts should incorporate community benefit requirements, but existing contract holders are encouraged to comply on a voluntary basis until contract renewal. The pilot will be managed via the Social Work Department Contracts Section, together with Service Development Managers. A selection of existing contracted providers will be involved in the pilot stage. In the event the pilot phase proves successful the principle of including Community Benefit clauses in all local Social Work Department/Dundee City Council contracts, would be pursued.

4.7 The pilot will commence on 1st September 2004 for one year. Outcomes will be evaluated and reported to the Social Work Committee by December 2005. Outcomes will

determine the level of activity/expectation that should be included in any contractual clauses, post pilot. Attention will be paid to any financial disincentives, particularly in the area of employment of people with disabilities, experienced by social care providers involved in the pilot. Issues will be highlighted in the evaluation report and will inform recommendations.

4.8 The pilot will engage with a selected range of providers in the city who deliver support and care to people with learning disabilities, in their own accommodation. The majority of individuals receive support over 24 hours. All providers are on the DCC SWD¹⁰⁰ Approved Provider List and are undergoing registration with the Care Commission as Housing Support providers/Support providers/Care at Home providers.

4.9 The pilot will focus on two areas of Community Benefit:

- *The employment of people with disabilities, including those with learning disabilities;*
- *The provision of in-service training: establishing a minimum requirement for all providers.*

4.10 Within the social care sector a key target group for anti-poverty action is people with disabilities, including those with learning disabilities. These citizens face particular disadvantage in achieving both the income and the self-esteem that comes from engagement in the labour market. These barriers mean that social investment in education and training is not leading to employment and improved quality of life. Recent Scottish Government publications: ‘Same as You’ and ‘Working for a Change’ highlight these issues for people with learning disabilities.

4.11 To achieve these providers will be required to:

- *Advertise all vacancies in the local Job Centre Plus;*
- *Advertise all vacancies in the local Employment Disability Unit;*
- *Adopt the Dundee City Council guaranteed job interview scheme;*
- *Provide placements to students with disabilities undertaking training;*
- *Offer job tasters to people with disabilities.*

⁹⁹ There was a high rate of drop-out – five of the nine people referred left the programme before completion.

¹⁰⁰ Dundee City Council Social Work Department.

Placements are defined as – a placement in the workplace of up to 12 weeks, which includes job coaching, support and weekly site visits via the Supported Employment Team/E.D.U. A placement may lead to permanent employment.

Job tasters are defined as – a period which can be 1 day or up to 2 weeks, which purely enables an individual to experience the concept of work, in the specific setting. This may or may not lead to permanent employment.

Providers will demonstrate how they achieve the inclusion of people with disabilities in their workforce (voluntary, temporary & permanent) by submitting a Disability Monitoring Schedule (Appendix A).

4.12 Dundee City Council, under its duty of ‘best value’ is required to take steps to ensure that the quality of its care services whether provided or purchased, can be continuously improved. To achieve this, will require service providers to provide training to agreed standards for their staff, including those aspiring to more senior positions. These requirements will enhance and contribute to requirements of registration from the Care Commission.

4.13 To achieve this providers will be required to submit a Staff Training Schedule which will demonstrate how they will ensure that a minimum of 33% of their workforce are engaged in training (appendix B). The term workforce is to include roles covered by sub-contractor's staff and/or agency staff. It is anticipated that at least 50% of the training will lead towards recognised qualifications in the care sector. Other training can include basic skills, catering, health & safety, administration and management. (in-house & external training).

5.1 Individuals in Dundee with disabilities will benefit from initiatives, which facilitate social inclusion and anti-poverty action.

5.2 The proposed Community Benefit & Procurement social care pilot will ensure increased opportunities for individuals with disabilities including those with learning disabilities, to consider and experience work in the social care sector. The pilot will seek to use existing systems to support people with disabilities into the workplace and as a result will increase choice and opportunity.

5.3 The pilot will also contribute to the short and long-term skill development of the local social care workforce. This will ultimately contribute to the capacity of Dundee City Council and its partner organisations to recruit and retain staff in order to enable local people with support/care needs to be maintained in their own homes.”

It is understood that all of the suppliers to the Council agreed to take part in the pilot on a voluntary basis. Three months later, monitoring of the programme produced the following information:

- although five of the six participants had advertised for staff and some had notified the Job Centre of vacancies, none had notified the Employment Disability Unit as required;
- none of the providers had made contact with Dundee College or the Employment Disability Unit to offer work experience opportunities (as required);
- all providers had staff that were undertaking training, but several expressed scepticism that the target of one-third receiving training could be sustained either in terms of staff availability or cost.

The above suggests that the agreement to participate in the pilot was made by the providers without working through the implications and there does not appear to have been a sufficient commitment to the pilot to change the way that the providers operated. Comments from the providers indicated doubts in three areas.

First, the potential of the Employment Disability Unit to provide people with suitable skills for the vacancies that are becoming available. This may be because the providers under-estimated the capacity of people available through the Unit. There was no evidence for this assumption.

The pilot was switched from residential care to home care to test a new hypothesis: that people with disability will have more empathy with, and provide a better service to, others with a disability.¹⁰¹ Providers of residential care services to the Council may have been better placed to deliver the requirements because they could offer a wider range of opportunities.

¹⁰¹ The CBIP consultant was originally asked to draft requirements that would be suitable for contractors managing care homes.

Secondly, there was a view that the target of 33% of staff undertaking some form of training was excessive because it implied too many staff undertaking off-site training. This raises three questions:

- what would be an acceptable target?
- what forms of training were considered within the wide specification?
- why were these problems not raised by the contractors when first consulted?

The final issue was the cost of training. The view from existing providers was that they could not afford to pay for training at the rate required. If the requirement was included in the specification then the questions about cost would change. This would shift the focus to how far the Council is willing and able to pay for the training outcomes. This is a best value issue for the Council.

It is understood that the pilot was not pursued and that the intention to introduce targeted recruitment and training requirements in social care contracts lapsed.

A4.3 CONCLUSIONS

Through the efforts of the Community Benefits in Procurement Group and the officers involved in each pilot Dundee City Council has established the principle, in terms of legal powers and Council policies, that targeted recruitment and training outcomes can be sought through the procurement of works and services. However, neither pilot delivered any significant additional Community Benefits.

The key reasons for the lack of outputs are essentially common to both pilots. Firstly, the requirements were not appropriate for the type of works/services that were to be delivered. This is most obvious in relation to Forthill School, but also applies to the social care provision where the requirements and targets would be much more relevant to a residential care provider than a home care provider.

Secondly, the processes used to obtain a commitment from the providers were not sufficient to ensure that they thought seriously and practically about how they would deliver the requirements. In the other CBIP pilots the contractor has been required to provide a method statement saying how they would deliver the requirements. This forces them to pay serious attention to what is being asked for and how they will build this into their operations and costs.

Thirdly, the Council did not make sufficient connections internally. For example, there appears to have been little connection between the Forthill School contractor and the Council-led Tayside Local Labour Initiative. In addition, the Council's recruitment team (that work with one of the social care providers) was not consulted about the deliverability of the recruitment requirements and was not made aware of the changes required by the pilot to its normal procedure. Finally, the main focus of the Social Work Department was the development of the Dundee Social Care Academy – a new entry-level training facility that required access to trainee jobs to achieve its goals. The potential of using contractual leverage to secure these trainee jobs from suppliers to the Council does not seem to have been recognised.

These are the key explanations for the relative failure of the Dundee pilots that could be considered. However, there are a number of other issues which contributed to the outcome. The first is the Council's reliance on the providers' goodwill rather than contractual relationships.

The second issue is that in each case the pilot was implemented by Procurement Officers in Architectural Services and Social Work. These Officers have a wide range of obligations and were taking this on as an additional responsibility. The commitment of these Officers should be commended but clearly they had wider issues and concerns to consider. Their efforts to progress the pilot do not appear to have been sufficiently embraced at a strategic level within the organisation. This is in contrast to other CBIP pilots where there was stronger resource commitment and more clearly identified project champions.

APPENDIX 5: FALKIRK COUNCIL CASE STUDY

A5.1 THE FALKIRK APPROACH

It was agreed that management of the community benefit initiatives should be through the Community Regeneration Theme Group of the Falkirk Community Planning Partnership. However, practical responsibility for implementing the strategic objectives rests with a project manager based within the Council's Procurement Services but funded from its regeneration budget. The role of the project manager has been described as:

- to explore the scope and potential for the inclusion of voluntary agreements and contractual clauses with suppliers of goods, works and services;
- to oversee the progress of all the pilot work streams;

- to identify future contract areas for implementation;
- to encourage Community Planning partners and private developers to adopt a similar approach.

Three streams of activity have been identified to implement this approach:

- to embed the requirements in the procurement process;
- to test the legal framework for incorporating Community Benefits into contracts through pilot projects;
- to build the capacity of local SMEs to become suppliers to the Council.

Proposed actions are summarised in the table below:

Table 1 Proposed actions of Falkirk Council

Key Activities aimed at achieving our strategic objectives	Key Recommendations
How do we spend more locally?	Policy guidance to change procurement behaviour with the Council; Work with key suppliers to open up the supply chain to SME's; Engage with SME's to understand and overcome any trading barriers they face.
How do we increase the level of local labour?	Policy guidance to change procurement behaviour within the Council; ¹⁰² Use of contracts, planning agreements and voluntary conditions; Undertake supply side activity to provide local labour.
How do we increase the level of youth engagement in work?	Use of voluntary agreements in contracts. ¹⁰³
How do we decrease the number of long term economically inactive?	Identify opportunities for "real work" placements on Council contracts; Encourage suppliers to work with excluded groups to fill vacancies.
How do we increase the number of training opportunities?	Use contracts, planning agreements and code of practice.
How do we increase the level of inward investment?	Use contracts to request cooperation in marketing the Council area.

¹⁰² Procurement can influence sources of trainees, but not of recruits in terms of local labour.

¹⁰³ Voluntary agreements bring their own difficulties – there is no entitlement to enforce these and construction bodies have stated a preference for Community Benefit clauses to be included at the outset in procurements to facilitate a level playing field for bidders.

From the above it can be seen that the Scottish Government's CBIP Pilot Programme has stimulated Falkirk Council and its Community Planning partners to re-examine how they can use their financial leverage to increase employment and training opportunities, especially for those experiencing social exclusion. The result is a number of initiatives that include voluntary actions by suppliers and a focus on increasing the capacity of local SMEs to become suppliers to the public sector, as well as the development of pilot 'new procurement' projects.

The first major pilot procurement including targeted recruitment and training is at an advanced stage of the procurement process. This is considered below.

A5.2 PROCUREMENT CASE STUDY – COMMUNITY SCHOOLS 2008

Falkirk Council has appointed Gateway Consortium (consisting of Ogilvies, FES Ltd and AL King) to work with it to design, build and provide defined services (a large proportion of the services are being retained by the Council in-house), to four replacement Secondary Schools under a Non Profit Distributing Organisation (NPDO) framework, (a variant of Public Private Partnership). The construction cost is expected to be in the region of £100 million and the Council is seeking to achieve targeted recruitment and training opportunities in the construction and maintenance of the facilities.

As mentioned above, the community benefit requirements were included from the very earliest stages of the procurement process.

Under this project the PPP contractors are required to actively participate in the economic and social regeneration of the locality of and surrounding the place of delivery for the project. Accordingly, contract performance conditions may relate in particular to social and environmental considerations.

The above is a quote from the additional information section of the OJEU Notice issued by the Council. The wording was taken from the CBIP Toolkit.¹⁰⁴ This was followed up by the

following requirement in the Pre-Qualification Questionnaire (PQQ) issued to all parties who notified interest in response to the OJEU Notice:

The applicant should set out its approach to supporting the Council's Targeted Training and Recruitment Initiative.

All of the short-listed firms responded to this PQQ question.

Finally, the targeted recruitment and training requirements were included in the tender specification using the wording below (31A). This is based on a set of model clauses included in the English equivalent to the CBIP Toolkit¹⁰⁵ amended to suit local conditions and preferences. This approach is helpful because it sits within the model documentation provided to procuring bodies by Government Agencies – so there is no need to seek agreement to amend the Government standard wording – while utilising the leverage that is provided by the main contract to help secure compliance.

Examination of the amendments made by Falkirk Council raises the following observation.

By identifying a target of 52 weeks per £10m in contract value the Council has reduced the target by 90% compared with the original NAPP model. The rationale for the Council's requirements was to reflect the scale, nature and complexity of the project. Delivery within a tight timescale was also an important consideration for the Council: the construction element of the project is to be delivered in 12 to 18 months.

However, the Council's aim was always to maximise the number of training and employment opportunities and discussions to this effect with the contractor have now concluded.

Outcomes

The Targeted Recruitment, Training and Equal opportunities clause within the contract provides for a method statement from the contractor during both the construction and facilities management phases which detail how the contractor aims to achieve and manage the recruitment, training and employment objectives during both phases.

¹⁰⁴ Agreed by the Scottish Government.

¹⁰⁵ Anthony Collins Solicitors and Richard Macfarlane. *New Approaches to Public Procurement (NAPP) Toolkit May 2005. Appendix 4 Model Clauses for a PFI or PPP Contract.*

The outcomes detailed below relate specifically to the construction phase of the contract where the method statement provided by the Gateway Consortium agreed to

deliver the targeted recruitment and training outcomes as outlined in Table 2 below:

Table 2: Proposed Training and Employment Outcomes

Opportunity	No	Sub Total weeks	Construction Phase Total weeks	Post Construction weeks	Cum Total
General Construction Operative (GCO)	5	78	390	0	390
Joinery Apprentice	3	78	234	390	624
Bricklaying Apprentice	2	78	156	260	416
Electrician Apprentice	6	78	468	780	1,248
Plumber	2	78	156	260	416
Heat and Vent Apprentice	2	78	156	260	416
Adults	2	78	156	0	156
Plant Operator	1	78	78	0	78
Business Administrator	1	78	78	0	78
Supernumery GCO	3	78	234	0	234
Total	27		2,106	1,950	4,056
Full Time Equivalent			40.5	37.5	78

Note Full Time Equivalent (FTE) is 37 hours @ 52 weeks

The method statement provides for the achievement of 27 trainees obtaining a total of 4,056 person weeks of training. The total number of weeks equates to 78 FTEs of which 37.5 FTEs are beyond the anticipated construction period. The targeted training and employment outcomes proposed if fully realised would be well in excess of the minimum contractual requirement of 10 FTEs.

At the time of writing this Report, the Consortium has employed 16 school leavers as Modern Apprentices and 5 unemployed adults from Community Regeneration areas as General Construction Operatives (GCO).

A5.3 THE SUPPLY-SIDE CHAMPION

While support from the Council Policy and Resources Committee and the Falkirk Community Partnership has been important in developing the commitment to the community benefits initiative a key driver for the process of change has been the Council's Employment and Training Unit (ETU). This has:

- acted as the project champion;
- been able to offer a range of employment and training schemes that will allow developers and contractors to achieve their community benefit commitments without significant additional costs.

The ETU has a budget of £3 million per year of which 43% is Council funding and 57% external funding e.g. contracts with Jobcentre Plus, Scottish Enterprise Forth Valley and European funding. With this funding they run a variety of training and job-search programmes for non-employed Falkirk residents, with between 200 and 300 beneficiaries ‘on programme’ at any time. Some of these programmes allow them to provide trainees and returners to the labour market ‘free on site’ to contractors. This reduces the risk to the contractor since the targeted recruits can be on work experience prior to employment, and/or the employer can obtain a wages subsidy that will off-set any additional costs incurred by taking on a new entrant.

It is through the combination of access to contractors via the procurement/client relationship and the services and support that the ETU was able to offer employers that the Council has been successful in securing voluntary commitments to recruit and train ETU beneficiaries from existing contractors.

A5.4 CRITICAL SUCCESS FACTORS

Officers of Falkirk Council have highlighted the following:

- You won’t make progress with achieving community benefits through contracts until the client officers and the procurement officers have bought into the concept and really believe in it;
- It is important to get a consistent, corporate, ‘business as usual’ approach, and not be too reliant on an individual’s decision to participate (or decide at what level to participate) or otherwise;
- A good ‘supply-side’ service is important: this will help win the support of suppliers (they will see that they are not ‘on their own’ with the commitment) and off-set additional costs, this should be balanced against the Authority taking responsibility for trainee skills;
- It is important to introduce the community benefit provisions at the very earliest stage in a way that will require bidders to take cognisance of them.

A5.5 EXTRACT FROM THE FALKIRK COMMUNITY SCHOOLS PPP TENDER DOCUMENT

31A TARGETED RECRUITMENT & TRAINING, AND EQUAL OPPORTUNITIES

31A.1 Construction

31A.1.1 The Contractor has provided the Council with a Construction Training and Employment Method Statement (the “**Construction Method Statement**”) detailing how they will aim to achieve and manage the following recruitment, training and employment objectives during the Works Period:

- (a) 52 person-weeks of employment for ten new construction trainees and/or unemployed persons returning to the labour market, who are recruited from a source¹⁰⁶ agreed by the Contractor with the Authority (the “**Scheme**”);
- (b) each construction vacancy on the Sites (including those in subcontractor organisations), be advertised in Job Centreplus in the Falkirk Council area and, at the cost of the Authority, in the Falkirk Council Employment and Training Unit (“FCETU”);
- (c) the application of good equal opportunities recruitment procedures and management practices by the Contractor and subcontractors;
- (d) the development of an operating framework to encourage sub-contractor compliance in order to achieve these recruitment, training and employment objectives;
- (e) that local ¹⁰⁷SME’s are offered the opportunity to tender on a level playing field basis for all appropriate packages of the Works; and
- (f) the provision of quarterly and cumulative annual (1 April to 31 March) monitoring information in respect of the following, thereby evidencing the implementation of the Construction Method Statement:
 1. The number of new construction trainees employed in connection with the Works, including their length of employment, gender, postcode district and ethnic origin

¹⁰⁶ As stated in Appendix 2, it is not appropriate to limit sources of recruits to named agencies.

¹⁰⁷ Local preference breaches procurement legislation, this note applies to the whole of this section (A5.5) It is also worth noting that this type of commitment would be difficult to adhere to in any case in terms of capturing the whole market of available businesses.

2. Salary costs (including national insurance) incurred in respect of those new construction trainees
3. External training costs in respect of those new construction trainees and, where available, internal training costs in respect of those new construction trainees
4. A register of vacancies advertised in accordance with the requirements of Clause 31A.1.1(b)
5. A register of works packages tendered including the identity of the successful tenderers, as referred to in Clause 31A.1.1(e)

Provided that the Contractor shall not be required to divulge any Personal Data and/or sensitive personal data within the meaning of the DPA.

31A.1.2¹⁰⁸ In the event that the Contractor, in relation to the Works during the Works Period, does not:

- (a) provide 520 person-weeks of employment in accordance with the Scheme (in calculating whether 520 person-weeks of employment have been provided, no single trainee may count for more than 52 person-weeks), the Contractor shall pay to the Authority within 14 days of written demand the sum of £76 per person-week not so provided;
- (b) advertise each construction vacancy in accordance with the provisions of Clause 31A.1.1(b), (other than where the Contractor has given FCETU details of the relevant post and FCETU has failed to advertise the post) the Contractor shall pay to the Authority within 14 days of written demand the sum of £250 per vacancy not so advertised;
- (c) provide the quarterly/annual information in accordance with the provisions of Clause 31A.1.1(f), the Contractor shall pay to the Authority within 14 days of written demand the sum of £2,000 per occurrence,

provided that, in each case, the Authority has first served a notice on the Contractor notifying it of its non-compliance with this Clause 31A and the Contractor has failed to rectify that non-compliance within 20 Business Days of such notice and further provided that, in the case of Clause

31A.1.2(c), if the relevant information is provided to the Authority after the Authority has levied the £2,000 charge but within one month of the Authority's written demand relevant to Clause 31A.1.2 (c), that £2,000 charge shall be refunded in full to the Contractor by the Authority within 14 days of written demand.

31A.1.3 The Authority's exclusive and sole remedy in respect of a breach of Clause 31A.1 shall be the payments provided for in Clause 31A.1.2. Notwithstanding the foregoing, the Contractor's maximum liability in terms of this Clause 31A.1 shall be the sum of £50,000 in aggregate.

31A.2 Services

31A.2.1 The Contractor shall, not less than 26 weeks prior to the first Service Availability Date provide a Facilities Management Training and Employment Method Statement ("**the FM Method Statement**") detailing how they will aim to achieve and manage the following recruitment, training and employment objectives for roles/staff wholly or substantially engaged in the provision of the Services to the Project Facilities ("**the Posts**"):

- (a) at least 30% of the Posts shall initially be offered in writing to persons from priority groups (as such priority groups are notified by the Authority to the Contractor from time to time) who meet the recruitment criteria set by the FM Contractor, acting reasonably, for the relevant roles/staff and are unemployed and/or returning to the labour market (such persons being hereinafter referred to as "**Priority Persons**")¹⁰⁹
- (b) except where at least 30% of the Posts are, at the relevant time, already filled by persons previously Priority Persons, each vacancy in the Posts shall be advertised in Job Centreplus in the Falkirk Council area and (at the cost of the Authority) in FCETU;
- (c) except where at least 30% of the Posts are, at the relevant time, already filled by persons previously Priority Persons, the operation of a guaranteed interview scheme whereby disabled applicants and Priority Persons who meet all of the recruitment criteria for the job, will be guaranteed an interview;¹¹⁰

¹⁰⁸ The Falkirk pilot is the only contract to make use of limited liability clauses. It is important when applying such clauses that they are proportionate and do not constitute penalties as the courts would be unlikely to enforce penalties.

¹⁰⁹ It is not appropriate to specify the source of recruits as this would be construed as local preference. In addition, care should be taken in defining beneficiaries to ensure compliance with procurement and equality obligations.

¹¹⁰ This requirement may be difficult to enforce as the risk for the recruiting lies with the contractor, and they are likely to set recruitment criteria.

- (d) the application of good equal opportunities recruitment procedures and management practices during the period of implementation of the FM Method Statement;
- (e) the development of an operating framework to encourage sub contractor compliance in order to achieve the recruitment, training and employment objectives;
- (f) the use, where reasonably possible, of local SME's¹¹¹ within the supply chains supporting the provision of the Services together with provision of evidence of such use to the Authority; and
- (g) the provision of monitoring information that will provide evidence of the implementation of the FM Method Statement, this to be quarterly from the first Service Availability Date until the end of the second Contract Year and annually thereafter. This information shall be provided to the Authority within four weeks after the completion of the applicable recording period.

31A.2.2 In the event that the Contractor does not during the Operational Services Period in relation to the Posts:¹¹²

- (a) initially offer in writing 30% of Posts to Priority Persons in accordance with Clause 31A.2.1(a), the Contractor shall pay to the Authority the sum of £4000 per Post not so offered to Priority Persons;

- (b) advertise any relevant vacancy where required by Clause 31A.2.1(b) (other than where the Contractor has given FCETU details of the relevant post and FCETU has failed to advertise that post), the Contractor shall pay to the Authority the sum of £500 per Post not so advertised;
- (c) provide a guaranteed interview where required by Clause 31A.2.1(c), the Contractor shall pay to the Authority the sum of £50 per Post in respect of which no such interview is offered;
- (d) provide the quarterly/annual information in accordance with Clause 31A.2.1(g), the Contractor shall pay to the Authority the sum of £2000 per occurrence

provided that, in each case, the Authority has first served a notice on the Contractor notifying it of its non-compliance with this Clause 31A and the Contractor has failed to rectify that non-compliance within 20 Business Days of such notice and further provided that, in the case of Clause 31A.2.2(d), if the relevant information is provided to the Authority within one month after the Authority has levied the £2,000 charge, £1,000 of that charge shall be refunded to the Contractor within 14 days of written demand.

31A.2.3 The Authority's exclusive and sole remedy in respect of the breach of Clause 31A.2.1 shall be the payments provided in Clause 31A.2.2.

111 See footnote 108 above.

112 See footnote 109 above.

APPENDIX 6: LEGAL FRAMEWORKS – CASE LAW

A6.1 INTRODUCTION TO CASE LAW

There have been some important cases decided in the European Court of Justice concerning social clauses in public contracts which have had a bearing on the new Consolidated Directive and which continue to develop the shape of the law as it is interpreted by the national courts. Not all the cases are easy to reconcile with each other or with current European Commission guidance.

A6.1.1 C-31/87 *Gebroeders Beentjes B.V. v The State (Netherlands)*:

In *Beentjes*,¹¹³ the European Court of Justice ruled that a condition of contract performance which required the successful contractor to employ long-term unemployed persons could be compatible with the procurement directives if it complies with all the relevant provisions of Community law, in particular the principle of non-discrimination, and is mentioned in the contract notice. The ECJ stated that such a condition has no relation to: (a) the pre-selection criteria applied at PQQ stage which is aimed at verifying a contractor's suitability relating to its economic and financial standing and its technical knowledge and ability; and (b) the award criteria based on MEAT. Nevertheless, The ECJ held that a condition in a procurement contract requiring the employment of long-term unemployed persons would be acceptable if it was non-discriminatory, both directly and indirectly, in the light of all the circumstances of the case.

A6.1.2 C-225/98 *Nord-Pas-de-Calais Region (Commission v the French Republic)*

In Nord-Pas-de-Calais Region the contracting authority had included in its contract notices a reference to the ability of the contractors to combat local unemployment as an award criterion (i.e. in relation to MEAT). The Commission attempted to differentiate the case from *Beentjes*, arguing that while employment-related matters may be regarded as a condition of contract performance, such matters could not be characterised as an award criterion. The ECJ rejected the Commission's argument, holding that contracting authorities could use such an award criterion provided that it was consistent with the fundamental principles of Community law, in particular the principle of non-discrimination; and it was expressly referred to in the contract notice. However, as the Commission had not

presented an argument to the effect that the criterion was discriminatory or that it had not been published in the contract notice, its complaint on this point was rejected.

Rather than referring to the criterion as one relating to local unemployment, the judgment refers more vaguely to "the campaign against unemployment". As such the ECJ did not say that a local labour condition was compatible with the directive.

The Commission argues at Section 1.4.2 of its Interpretative Communication on social considerations in public procurement that such an award criterion can only be applied as an "additional criterion" where the MEAT assessment of the bids on a purely economic basis has revealed "two or more economically equivalent tenders".

The judgment and the conclusions that the Commission adopted from it should be treated very carefully. The court's reasoning in the case is open to criticism. It relied on *Beentjes* even though the ECJ did not suggest in *Beentjes* that employment matters could be characterised as award criteria. The idea contained in the Commission's Interpretative Communication of a second type of award criteria which is non-decisive, but which can be used to decide when bids are otherwise equal, is inherently contradictory. While that argument was advanced by the French Government in this case, the court did not approve it as such.

A6.1.3 C-513/99 *Concordia Bus Finland (Concordia Bus Finland Oy Ab (formerly Stagecoach Finland Oy Ab) v (1) Helsingin Kaupunki (2) HKL-Bussiliikenne (2002))*

This judgment is interesting in that it appeared to acknowledge that a contracting authority was entitled to include environmental considerations in its award criteria. Firstly, the ECJ was clear that award criteria need not be purely economic in nature:

*"Article 36(1)(a) [of Directive 92/50] cannot be interpreted as meaning that each of the award criteria used by the contracting authority to identify the economically most advantageous tender must necessarily be of a purely economic nature. It cannot be excluded that factors which are not purely economic may influence the value of a tender from the point of view of the contracting authority."*¹¹⁴

113 *Gebroeders Beentjes BV v The State (Netherlands) C-31/87*.

114 *C-513/99 – Concordia Bus Finland Oy Ab (formerly Stagecoach Finland Oy Ab) v (1) Helsingin Kaupunki (2) HKL-Bussiliikenne (2002)*, para 55.

The ECJ further held that the principle of equal treatment does not preclude the taking into consideration of criteria connected with protection of the environment, such as those at issue in the main proceedings. On this point the judgment states:

*“In the light of ... Article 6 EC, which lays down that environmental protection requirements must be integrated into the definition and implementation of Community policies and activities, it must be concluded that Article 36(1)(a) of Directive 92/50 does not exclude the possibility for the contracting authority of using criteria relating to the preservation of the environment when assessing the economically most advantageous tender.”*¹¹⁵

The judgment lays down the conditions under which such criteria may be used. Firstly, it sets out that *“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, in particular the rules on advertising”*.¹¹⁶ 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;
- comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.¹¹⁷

A6.1.4 C-448/01 – (1) EVN AG (2) Wienstrom GMBH v Republic of Austria (2003)

In EVN the ECJ confirmed the Concordia Bus Finland case judgment, in particular the fact that *“Directive 92/50 cannot be interpreted as meaning that each of the award criteria used by the contracting authority to identify the most economically advantageous tender must necessarily be of a purely economic nature”*. Therefore, ecological criteria could be taken into consideration under the conditions laid out in the Concordia Bus Finland case. The particular criterion used in this case, requiring that the

electricity supplied under the contract be produced from renewable energy sources, was acceptable as a matter of broad principle. Provided the criteria comply with the Treaty principles, contracting authorities are free to choose both their award criteria and the weightings attached to them, provided that the weightings enable an evaluation of the most economically advantageous tender to be made.

However, the ECJ held that the actual criterion used was not permissible on the basis that it infringed, for a number of reasons, the principle of equal treatment and transparency. This included the premise that *“an award criterion which is not accompanied by requirements which permit the information provided by the tenderers to be effectively verified is contrary to the principles of Community law in the field of public procurement”*. The accuracy of the information sought from tenderers must be capable of being verified so as to preserve the objectivity and transparency of the procedure.

In the case, which concerned a procurement of electricity from sustainable sources for the regional administration’s office buildings in Carinthia, points were given for the amount of excess supply – above the needs of the offices – that the suppliers could generate, supposedly with a view to ensuring reliability of supplies. The ECJ stated in its judgment that such an award criterion was not permissible because *“an award criterion that relates solely to the amount of electricity produced from renewable energy sources in excess of the expected annual consumption, as laid down in the invitation to tender, cannot be regarded as linked to the subject-matter of the contract”*.¹¹⁸ As such, the ECJ rules that award criteria which are not linked to the subject-matter of the contract were not permissible.

A6.1.5 C-234/03 Insalud (–Contse SA v Insalud (Now Ingesa) (2005))

This case concerned the procurement of the supply of home respiratory treatments and assisted breathing techniques within two provinces in Spain. Tenderers were required to have at least one office open to the public for a minimum of eight hours a day, five days a week, in the provincial capital at the time the tender was submitted. In addition to this, points were scored where the tenderer, at the time of submitting the tender, satisfied the following criteria:

¹¹⁵ *ibid.*, para 57.

¹¹⁶ *ibid.*, para 62.

¹¹⁷ *ibid.*, para 64.

¹¹⁸ C-448/01 – (1) EVN AG (2) Wienstrom GMBH v Republic of Austria (2003), para 68.

- Owning at least two oxygen-producing factories situated within 1000km of the province.
- Owning at least one cylinder-conditioning plant and at least one oxygen-bottling plant situated within 1000km of the province.
- The existence of offices open to the public for certain minimum hours in three particular towns in the province.

The ECJ ruled that such provisions were discriminatory and were not justified by imperative requirements in the public interest. A contractual undertaking to have an office available throughout the life of the contract would not have been prejudicial in the same way. It was felt that to have those offices available at the time of the tender was disproportionate, and favoured those tenderers who were already locally established in the marketplace. Similarly, the existence of production, conditioning and bottling plants in the region would require a substantial investment on the part of any tenderer and on the court's investigation was not essential for the delivery and performance of the contract.

There is a further ruling in the judgment on a feature of the award criterion relating to annual production capacity levels, which gave more points to a tenderer depending on how high its absolute production levels were. The court rules that this criterion could not be regarded as linked to the objective of the contract, even if it was said to be necessary to guarantee reliability of supplies, because points were given for production levels way in excess of those required under the contract. On this point the judgment states "*the evaluation criteria relating, in this case, to the award of extra points for an ever-increasing production capacity, cannot be regarded as linked to the objective of the contract and even less as suitable for ensuring that it is attained*".¹¹⁹

A6.1.6 C-21/88 *Du Pont de Nemours Italiana SpA v Unità Sanitaria Locale No. 2 Di Carrara* [1991] 3 CMLR 25; *Laboratori Bruneau Srl v Unità Sanitaria Locale RM/24 De Monterotondo* [1991] 1 CMLR 707

In this case Italian legislation required all public bodies to obtain at least thirty percent of their supplies from undertakings established in the Mezzogiorno region as a reserved quota. In accordance with this law a local health authority published a contract notice for the supply of radiological films and liquids. The health authority divided the contract into two lots: the first, which was equal to 30% of the total amount, was reserved to undertakings established in the Mezzogiorno region, and the second lot was for the rest of the supplies. Du Pont de Nemours Italia challenged the procurement on the ground that it had been excluded from the tendering procedure for the first lot because it was not established in the Mezzogiorno region. The ECJ held that the Italian legislation discriminated against products originating in other Member States and, consequently, violated the EC Treaty.

A6.1.7 C-3/88 *EC Commission v Italy* [1991] 2 CMLR 115

Italian legislation dictated that only companies in which all or a majority of share capital was in public ownership could be awarded certain contracts involving the purchase of equipment, supplies and design of some data-processing and technical management systems.

The ECJ held this legislation to be discriminatory in that restricting tenders for public works to state controlled organisations discriminated against non-Italian State controlled organisations. Consequently, the legislation was found to be contrary to the EC Treaty, as well as the Directive in force at that time which coordinated the procedures for the award of public supply contracts.

¹¹⁹ C-234/03 – *Contse SA v Insalud (Now Ingesa)* (2005), para 70.



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