

ARGYLL AND BUTE COUNCIL



COMMUNITY BENEFITS CLAUSES IN PROCUREMENT GUIDE

V3.1 – 2018

1. INTRODUCTION

1.1 BACKGROUND

1.1.1 The aim of this document is to provide guidance on Argyll and Bute Council's approach to incorporating Community Benefits Clauses (CBCs) within the Procurement Process where appropriate. The use of CBCs provides a method of including social, environmental and economic sustainability matters in contracts for the supply of goods, services or works that do not conventionally have these requirements as defined or measured outcomes.

1.1.2 The Local Government in Scotland Act 2003 and the Procurement Reform (Scotland) Act 2014 enable public bodies to include Community Benefits in the procurement process, in certain circumstances. This guide provides guidelines for legally incorporating Community Benefits into the tendering process.

1.1.3 This document also aims to standardise and explain in detail the process of incorporating social consideration into procurement activities in order to promote greater use of mandatory CBCs.

1.2 WHAT ARE COMMUNITY BENEFITS CLAUSES?

1.2.1 Community Benefit Clauses provide a means of achieving sustainability in public contracts. The main areas considered to be Community Benefits include targeted recruitment and training, small business and social enterprise development and community engagement.

- **'Sustainable procurement'** is a way of delivering the Government's sustainable development objective;
- **'Social issues'** are part of the still wider concern of 'sustainable procurement';
- **'Community Benefits'** is one element in a wider range of 'social issues';
- **'Targeted Recruitment and Training'** is one element in a wider range of Community Benefits
- **'Priority Group'** is defined as unemployed people or young people not in employment, education or training; for the purposes of delivering Community Benefits within Argyll and Bute Council contracts

1.3 THE CHALLENGE

1.3.1 The Challenge is to identify the products, services and works Argyll and Bute Council procures that generate the greatest capacity to enhance social outcomes. These include activities such as employment, training, knowledge transfer and environmental outcomes.

1.3.2 Through best procurement practice we must ensure benefits are brought both to individuals and to the wider community creating additional and measurable social, environmental and economic improvements.

1.4 LEGAL SUMMARY

1.4.1 The Scottish Government summarise¹ the legal requirements as follows:-

- 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.

1.4.2 If varying the standard wording within this guide, procurement officers should seek legal advice to ensure that the CBCs they wish to use are within the parameters of their competence and comply with EC Treaty principles.

1.5 TRANSPARENCY AND NON-DISCRIMINATION

1.5.1 The principle of transparency and non-discrimination are crucial to ensuring that Community Benefits are legally incorporated within the tendering process.

1.5.2 The aim of achieving Community Benefits as part of the Council’s tendering processes must be made clear from the start. The Community Benefits statements should be included within the Contract Notice indicating that the contract to be awarded may include the provisions to achieve Community Benefits.

1.5.3 It is important to ensure that the inclusion of Community Benefits do not directly or indirectly disadvantage or discriminate against bidders outwith Argyll and Bute. Procurement officers should ensure that that Community

¹ Scottish Government (2008) *Community Benefits in Public Procurement* [available online] <http://www.scotland.gov.uk/Resource/Doc/212427/0056513.pdf>

Benefits do not directly or indirectly discriminate against individuals and groups covered under the protected characteristics of Equality Act 2010.

1.6 SUPPORT AND GUIDANCE

1.6.1 The Procurement Team will offer support and guidance by providing direction and assistance in the identification, evaluation, capture, monitoring and reporting of CBCs throughout the life of a contract. This will require minimum effort from the procurement areas while offering a maximum impact from the contract.

1.6.2 Procurement officers will ensure that appropriate monitoring arrangements are in place to monitor the Community Benefits element of the contract. The following monitoring information should* be requested and included in the contract management documentation:

- Single point of contact within the organisation who will be responsible for ensuring the delivery of the Community Benefits;
- A clear statement of the actual outputs to be monitored;
- The frequency of monitoring information arrangements;
- A means of verifying the monitoring arrangements

*if it is not possible to request this information in the contract document, it should be provided to the Sustainability Lead Officer after agreement with the contractor, preferably at the contract implementation meeting.

1.7 COMMUNITY BENEFITS COMMITMENT

1.7.1 Argyll and Bute Council is committed to maximise Community Benefits from its procurement activities.

1.7.2 In respect of the contracts with an estimated value of:

- **Services >£100,000**
- **Supplies >£100,000**
- **Works >£2,000,000 (or <£2,000,000 if the tender is advertised using the Open or Restricted procedure rather than the Quick Quote procedure)**

prior to commencement of the procurement process, the procurement officer in conjunction with the Sustainability Lead Officer must consider whether a CBC can be included in the contract. As a part of the Commodity Sourcing Strategy requirements sustainability factors are taken into account as well as the sustainability test, which require to be completed by the procurement officer with assistance from the service, and will determine what sustainability factors will be included within the procurement process. Where, after consideration, it is decided that a CBC will not be included in any tender (as per values above) the reasons will be recorded in Community Benefit

Monitoring Spreadsheet and reported in the Contract Award Recommendation Report.

- 1.7.3 There is no formal requirement for the consideration of Community Benefits in contracts with an estimated value of less than the above-mentioned values for supplies, services and works contracts, but it is strongly recommended to consider Community Benefits for each contract and apply these where appropriate. It may be possible to achieve creative Community Benefits as part of relatively low value contracts, when considering a wider approach rather than focusing on employment and training.
- 1.7.4 The Procurement and Commissioning Team will work with the Scottish Procurement and Commercial Directorate and Scotland Excel to incorporate Community Benefits into as many Category A and Category B contracts as possible
- 1.7.5 This commitment applies to Contracts and Framework Agreements.
- 1.7.6 The Procurement and Commissioning Team will report on a quarterly basis to the Procurement Board on Community Benefits achievements (see Appendix B for the Reporting requirements).

1.8 IDENTIFYING POTENTIAL COMMUNITY BENEFITS

- 1.8.1 There are three conditions that must be met prior to including Community Benefits in contracts:
- Community Benefits are directly related to the 'core purpose' of the contract.
 - Community Benefits do not directly or indirectly, disadvantage or discriminate against any bidder.
 - Community Benefits are in line with Argyll and Bute Council Policy.

2. TYPES OF COMMUNITY BENEFITS CLAUSES

2.1 APPROACHES

2.1.1 The appropriate Community Benefits Clause will differ depending on the specification of the project, but for the purpose of this guide we can split the types available into 3 approaches: Evaluated CBCs, Non-evaluated CBCs and the Client Based Approach.

Contract Type	Contract Value		
Works (Open/Restricted tenders only – N/A for Quick Quotes)	Between £50,000* and £2,000,000**: • Non-evaluated CBC	Between £2,000,000 and OJEU Threshold**: • Evaluated CBC • Non-evaluated CBC	Over OJEU Threshold: • Client-Based Approach • Evaluated CBC
Supplies / Services	Between £50,000 and £100,000*: • Non-evaluated CBC	Over £100,000: • Evaluated CBC • Non-evaluated CBC	

* The inclusion of a Community Benefits Clause in contracts below £100,000 is not mandatory, but it is strongly recommended to consider Community Benefits for each contract and apply these where appropriate.

** For Works contracts, CBCs should only be included in contracts below £2,000,000 if an Open or Restricted process is used (generally only in exceptional circumstances, CBCs are not relevant for Works Quick Quotes due to the short term and relatively low-value nature of these projects) – if the contract value is over £100,000 an Evaluated CBC should be given preference.

2.1.2 The Community Benefits Process Flowchart in Section 3 should be followed in order to aid this decision.

2.1.3 It is essential that Community Benefits are directly related to the ‘core purpose’ of the Contract. For example, it is not appropriate to include Community Benefits requiring suppliers to provide training across all of their operations when only one of their operations is relevant to the delivery of the contract.

2.2 EVALUATED CBCs

2.2.1 For all Supplies/Services contracts with an estimated value of over £100,000 and all Works contracts with an estimated value between £2,000,000 and OJEU Threshold the recommended approach to Community Benefits is the use of an Evaluated CBC. This provides an objective methodology for the inclusion and evaluation of Community Benefits within a tender.

- 2.2.2 For each tender, the procurement officer should aim to follow the Community Benefits Process Flowchart in Section 3, and evaluate Community Benefits proposals as part of contract award criteria wherever possible.
- 2.2.3 When evaluating Community Benefits as part of the tendering process, procurement officers should set a specific weighting for Community Benefits proposals within the defined contract award criteria (e.g. 5% Community Benefits).
- 2.2.4 In order for Community Benefits to be evaluated against objective criteria, procurement officers should follow the process outlined in the document 'Evaluated Community Benefits Clauses: Guidance for Tenderers' to allocate a minimum expected value of Community Benefits Points from the Community Benefits Points Matrix. Tenderers should then offer a Breakdown of Community Benefits to match or exceed this value, based on the Community Benefits Points Menu; a Community Benefits Method Statement and a Delivery Timetable. This will also ensure that performance against these proposals is measurable during contract monitoring post award.
- 2.2.5 Procurement officers should also discuss any decision to evaluate Community Benefits proposals with the Sustainability Lead Officer.

2.3 NON-EVALUATED CBCs

- 2.3.1 The decision to evaluate Community Benefits as part of contract award criteria should be considered on a case by case basis. In some circumstances, the evaluation of Community Benefits proposals may not be appropriate.
- 2.3.2 As an alternative, the Council will seek to include contractual Community Benefits provisions without evaluating these as part of contract award criteria.
- 2.3.3 For this process, procurement officers should ensure that Community Benefits proposals within a Tenderer's submission are not scored, evaluated or taken into account when determining the winning tender. However, where a contract is awarded to a Tenderer whose Tender Submission includes Community Benefits, these will be enforceable as part of the contract.

2.4 CLIENT BASED APPROACH

- 2.4.1 For appropriate Works contracts with an estimated value in excess of the OJEU Threshold the Council has adopted the National Skills Academy for Construction Client Based Approach. The National Skills Academy guidance provides a toolkit to deliver targeted recruitment and training Community Benefits (e.g. apprenticeships, jobs, leadership training etc.) across a variety of construction project values and construction project types (e.g. residential houses, highways and roads, schools, house repairs etc.).

2.4.2 A flowchart for achieving Community Benefits via the National Skills Academy approach is provided in Section 3 of this Guide.

2.4.3 Once suitable targeted recruitment and training Community Benefits have been identified via the National Skills Academy guidance. The procurement officer, in conjunction with the Sustainability Lead Officer, will implement the National Skills Academy approach and include the appropriate CBC within the construction project tender documentation.

3. PROCESS FOR THE INCLUSION OF COMMUNITY BENEFITS CLAUSES WITHIN CONTRACTS

Commodity Sourcing Strategy:

- Complete Sustainability Section of CSS with input from UIG, to identify potential Community Benefits
- CBC should be considered if contract value meets thresholds in SECTION 2.1 (discuss with Sustainability Lead Officer to confirm appropriate approach)
- Ensure Potential Community Benefits are in line with the Council's Corporate Plan priorities.
- If Evaluated CBC to be used, weighting to be included in CSS



ITT development:

- Include relevant CBC Special/Supplementary Condition/Z Clause
- Include CBC requirement in Tender Assessment and Evaluation section (with weighting if relevant)
- Include Community Benefits in Response Section/Technical Envelope of ITT
- Ensure all relevant attachments are included in ITT documents (Evaluated CBC Guide/CBA documents)



Tendering process:

- Include Community Benefits Statement in the Contract Notice on Public Contracts Scotland
- Carry out evaluation of CBC where appropriate, **ensuring all tenderers have provided responses**
- Contract award in line with Standing Orders and Procurement Manual.



Contract Management:

- Community Benefits included as standard item in meeting agendas
- Delivery of Community Benefits monitored by agreed responsible officers



Reporting:

- Planned and achieved Community Benefits recorded by Sustainability Lead Officer

APPENDIX A - COMMUNITY BENEFITS CONTACT LIST

Contact	Service/ Organisation	Community Benefit Remit	Email	Contact No.
Elaine Appleby	Procurement and Commissioning Team, Argyll and Bute Council	Sustainability Lead Officer	Elaine.appleby@argyll-bute.gov.uk	01369 708594
Sharon Renton/ Jean Paterson	Development and Infrastructure Services – Economic Development, Argyll and Bute Council	Targeted Recruitment and Training	Sharon.renton@argyll-bute.gov.uk / jean.paterson@argyll-bute.gov.uk	Sharon: 01586 559018; Jean: 01586 559019; Office: 01586 555990
Arlene Cullum, Senior Development Officer	Social Enterprise Team Leader, Argyll and Bute Council	Community Benefits – Supply Chain Initiatives (Third Sector)	Arlene.cullum@argyll-bute.gov.uk	01436 658 727
Kate Fraser	Business Gateway	Community Benefits – Supply Chain Initiatives (SMEs)	Kate.fraser@argyll-bute.gov.uk	01546 60 4550
Roddy Stewart	Ready For Business	Public Sector Support for Community Benefits	roddy.stewart@ceis.org.uk	0141 425 2914
Third Sector Team	Argyll and Bute Third Sector Interface	Support to third sector organisations	info@argylltsi.org.uk	01369 700 100

APPENDIX B – COMMUNITY BENEFITS REPORTING

The Procurement and Commissioning Team will report on a quarterly basis to the Procurement Board on Community Benefits achievements in all appropriate contracts. The Best Practice monitoring information to be included in reports are detailed below:

For contracts awarded:

Use of Community Benefit Requirements in Procurement
Total Number of Contracts Awarded
Total Number of Contracts Awarded Over £4 million
Total Number of Contracts Awarded with Community Benefit Requirements
Total Number of Contracts Awarded over £4 million with Community Benefit Requirements

For completed contracts:

Key Contract Information
Total Value of Contract
Total Number Recruited to Deliver Contract
Number of Jobs Filled by Priority Groups
Total Number of Apprenticeships Recruited to Deliver Contract
Number of Apprenticeships Filled by Priority Groups
Number of Work Placements for School Pupils, College and University Students
Number of Work Placements for Priority Groups
Number of Qualifications Achieved Through Training by Priority Groups
Number of Qualifications Achieved Through Training by Other Employees
Total Value Sub-Contracted
Total Value of Works Sub-Contracted to SMEs
Total Value of Works Sub-Contracted to Social Enterprises
Total Value of Works Sub-Contracted to Supported Businesses
Community Engagement Activities

For relevant completed contracts:

Short-Term Sustainability Indicators
Number of Recruits from Priority Groups Employed at 26 Weeks After Job Start
Number of Apprenticeships from Priority Groups Employed at 26 Weeks After Apprenticeship Start
Number of Work Placements for Priority Groups Subsequently Recruited by Contractor/Sub-Contractor