

RESPIRO Guide on Socially Responsible Procurement of Building Construction Works

CONSTRUCTION



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Introduction

Socially responsible procurement (SRP) is about using the buying power of public and private organisations to purchase products, works and services that have a positive social impact. This means considering the social impacts over the life-cycle of the product or work in procurement decisions and actions taken. By implementing SRP, purchasers can influence issues such as health and safety at work, respect of international labour standards and quality of employment, labour market inclusion policies, the fight against illegal and child labour, and the ethical procurement of raw materials.

The RESPIRO Guide on SRP of Building Construction Works provides clear guidance for purchasers wishing to procure building construction works in a socially responsible way. Relevant procurements include:

- Construction of new buildings (or the built environment)
- Renovation of existing buildings
- Maintenance and operation works for buildings

The guide suggests ambitious yet carefully checked steps to take in the procurement of building construction works including a series of concrete guidelines providing alternative approaches which may be used.

The RESPIRO guide includes the following sections:

- 1 What does SRP of building construction works mean?**
: An introduction to the social issues at stake
- 2 Corporate Social Responsibility in the Construction Sector**
: Sectoral initiatives as a reference for SRP
- 3 First steps before tendering**
: Recommendations on preparatory activities
- 4 SRP and EU Legislation on public procurement**
: An overview of relevant EU public procurement law
- 5 Minimising legal concerns in SRP**
: Advice on minimising legal uncertainties
- 6 Introduction to the construction tendering process**
: Concrete proposals and examples for wording of tender documents
- 7 Further ideas for SRP promotion**
: Suggestions and links to complementary activities

The RESPIRO guide advocates a holistic approach to SRP. While the guide focuses on social issues, it is recommended that it be used together with guidance developed for environmental considerations for the procurement of building construction works.

The RESPIRO guide brings together the ambitions of public procurers to promote sustainable development

The new Resolution from the European Parliament on corporate social responsibility (CSR) restates that major efforts should be undertaken by public authorities through the opportunities provided by the Public Procurement Directives to support CSR by promoting social and environmental criteria amongst potential suppliers. 2006/2133(INI), 13 March 2007



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through procurement policies with growing initiatives from suppliers in the private sector on corporate social responsibility (CSR, see definition in margin). It has been developed through a cooperation of city networks representing public sector buyers and sectoral social partners representing the suppliers side. By joining forces and expanding the scope of responsible demand and offer, cities and social partners hope to stimulate socially and environmentally friendly innovations.

Awareness in the private sector of the need to work on environmental and social impacts of business operations is increasing; concurrently CSR policies are being highlighted more and more as an important element in public procurement decisions.

Benefits for public and private groups

Contribution to sustainable development goals: SRP can help public bodies to further the social aspects of their sustainable development policies in terms of social inclusion, equal opportunities and global responsibility. Promoting champions of CSR via SRP supports companies in their CSR policies and turns private sector investments in social responsibility into a competitive advantage.

Positive Image and legitimacy: Both public authorities and companies will benefit from positive image gains through SRP. Sustainability reports, political commitments and codes of conduct are important communication tools for public authorities and companies to showcase their achievements to citizens and clients.

Increased efficiency and improved transparency: Integration of SRP criteria into procurement procedures as well as adopting CSR commitments requires strategic rethinking of policies and procedures. While this requires skills and concerted efforts of everybody involved, it can also provide an opportunity to increase efficiency and transparency of operations.

1 What does SRP of building construction works mean?

European public and private sector purchasers are considerable purchasers of building construction works. Local authorities spend approximately 40% of their procurement budgets on the built environment. Given that the sector is one of Europe's largest industrial employers, it has far-reaching social responsibilities. The opportunities to make a significant impact on the supply chain in terms of fostering more socially responsible behaviour and practices are considerable, e.g. going beyond the minimum requirements of the law for the improvement of health and safety standards. SRP in construction includes the following issues:

- Health and safety
- Corporate social responsibility (voluntary)
- Trade ethics (supply chain and respecting the Conventions of the International Labour Organisation, ILO)
- Supplier diversity (social economy)
- Healthy buildings (for all users)
- Life-cycle approach

These issues are examined below in relation to two aspects of construction the built environment, as such and the execution of the construction work.

CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Main features are:

- CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it in their long-term interest;
- CSR is intrinsically linked to the concept of sustainable development: business need to integrate the economic, social and environmental impact in their operations;
- CSR is not an optional "add-on" to business core activities – but about the way in which businesses are managed.

Communication from the Commission concerning CSR: a business contribution to sustainable development, COM(2002) 347 final

Some facts about the construction industry:

- Represents 10.4% of GDP in the EU
- Made up of 2.7 million enterprises, 95% of them are small and medium sized enterprises (SMEs) with fewer than 20 employees – Counts for 7.2% of total employment in the EU – 15 million workers depend, directly or indirectly, on the sector (approx. 100 million globally).

More information:
www.fiec.eu

Improving the built environment by, for example:

► Designing buildings for all

Buildings that are accessible for all are designed in a way to allow full accessibility to all people. "Design for all" is a philosophy and a process to achieve universal access, that is: environments, products and services that are not discriminatory, safe, healthy, functional, understandable and aesthetically pleasing.

Including "design for all" criteria needs to be done regardless of how the project may be divided into lots.

- If the early stages are tendered separately, "design for all" should be included in the service contracts for this work; and
- If there is one tender for the whole work, the needs of taking "design for all" into account may be met by introducing checkpoints at various milestones in the agreed work process for the whole work (the sequences in the planning and the construction work are present regardless of how the tendering may be formally divided into lots). Thus the focus on the early stages can also be handled if the tenders are not divided into lots.

► Using socially responsible building materials

Construction activities consume more raw materials by weight (about 50%) than any other industrial sector.

The construction materials sector accounts for 3-4% of the total EU gross domestic product and directly employs 2.5 million people¹.

Preference should be given to products fulfilling the criteria included in certification schemes that include social responsibility issues in the production of building materials, such as natural stones and timber products. Products carrying the label of the Forest Stewardship Council (FSC), Natureplus or PEFC for timber products, or the Xertifix label for natural stones are good examples, however, the availability of products may vary depending on the EU Member State.

Furthermore, compliance with the requirements set by recognised governmental and non-governmental (type 1) label schemes that reward significant environmental or integral sustainability advantages, e.g. Miljøkeur, Blauer Engel, natureplus (BAT-approach). The standards and criteria covered by these schemes could also be taken to define SRBM for each individual product group.

► Ensuring healthy indoor conditions

It is important how people feel inside a building. The selection of the building site is part of a wider perspective of sustainable (urban) planning, whereby accessibility both of the building itself and planning of infrastructure (mobility) to reach necessary social infrastructure play an important role. Other significant aspects that ought to be considered include daylight output, ceiling height, ventilation, heating and other factors that influence general wellbeing, satisfaction and even productivity and add to the general indoor comfort of a building.

Guidelines for inclusive urban development: City of Feldkirch, Austria

The City implements several groundbreaking articles in new buildings and essential renovation works. For instance: special considerations made regarding child-friendly, senior-friendly and accessible design for people with disabilities (most recently for the blind and visually impaired). The City also undertakes to adapt all other public buildings (within the confederation and region) to the "design for all" requirements.
More information: www.build-for-all.net

"Design for all" is:
- A process of proofing decision-making for the achievement of social inclusion;
- Design for human diversity, social inclusion and equality;
- Aims to enable people to have equal opportunities to participate in every aspect of society.
More information: Build for All Reference Manual, visit www.build-for-all.net

¹ Competitiveness of the Construction Industry. An Agenda for Sustainable Construction in Europe. Brussels, May, 2001. <http://www.ceetb.org/docs/Reports/Sust-con-final.pdf>

More and more contracting bodies carry out indoor air quality tests:

- to ensure that the amount of total volatile organic compounds (TVOCs) do not exceed a recommended amount
- after the completion of the construction work, for example, and consider excluding toxic building materials in the construction phase.

The issue of health and buildings is indeed important for social responsibility, however it is an area that can only be effectively addressed in public procurement through the inclusion of environmental considerations and hence is outside the scope of this guide.

Improving the construction process by, for example:

► Promoting equal opportunities for workers

Promoting labour market inclusion has two principle objectives: promoting the inclusion of people excluded from the labour market and preventing people from becoming excluded in the first place. Labour market inclusion addresses the following, where reasonably feasible:

- Unemployed persons (including long-term unemployed)
- Disabled people
- On-site vocational training or training measures for young people
- Sheltered workshops²
- Gender equality

Social economy enterprises, such as sheltered workshops, are interesting alternatives, particularly for renovation and maintenance works in buildings. A public authority can support employment opportunities for disabled people by reserving specific contracts for so-called sheltered workshops or supported workplaces. Such a provision – a unique opportunity under EU Public Procurement law³ which otherwise prohibits to reserve contracts for special types of companies – must be stated in the contract notice.

► Contributing to improved health and safety

In terms of health and safety at work, the construction sector is the sector most at risk of accidents in the EU⁴. The lack of enforcing health and safety regulations facilitates their non-respect and, consequently, increases the risks of accidents. Checks and controls have to ensure that law-abiding contractors and workers do not have to suffer competitive disadvantages. Respecting the health and safety regulations in force is an obligation for everyone.

2 Corporate social responsibility in the construction sector

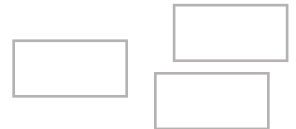
Buying responsibly requires a market that produces to responsible standards and clients who are willing to invest accordingly. The definition of such standards is pursued by actors both within and outside the sector and constitutes an indispensable reference point for SRP activities.

² Recital 28 of Directive 2004/18/EC states: “employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. Sheltered workshops and sheltered employment programmes contribute effectively towards the integration or reintegration of people with disabilities in the labour market”.

³ Article 19, Directive 2004/18/EC

⁴ The State of Occupational Safety and Health in the European Union – Pilot Study, 2000. European Agency for Safety and Health at Work.

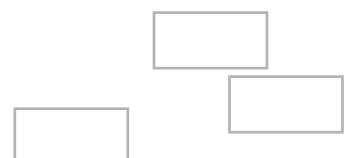
Including social clause for promoting employment: City of Nantes, France
Extra points were awarded in procurement contracts for works (construction and renovation) and service contracts to bidders (companies) who demonstrated a voluntary commitment to allocate a higher number of working hours for unemployed people than required.
More information: www.nantes.fr



In 2003 the European Commission launched a pan-European campaign to reduce work accidents in the construction sector. The campaign was carried out simultaneously in the 15 pre-expansion Member States and consisted of awareness raising actions followed by a series of inspections, evaluation and reporting of the results achieved.
More information: http://ec.europa.eu/employment_social/health_safety/docs/news2_en.pdf



The Belgian Social Label



The only acceptable accident figure is "zero".

Although realistically seen, this is an unlikely figure to be achieved, it remains a general vision carried by a "zero tolerance" approach.

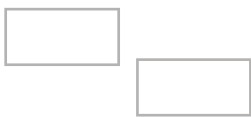
Extract of the FIEC and EFBWW Joint Declaration, signed in Bilbao on 22/11/2004.



The FIEC (European Construction Industry Federation) Principles for Sustainability:

FIEC calls upon clients, authorities, and all other stakeholders, to make use of the sector's capacities in order to achieve maximum progress, while ensuring that society's needs in terms of buildings and infrastructure networks are increasingly carried out in a sustainable manner.

Download principles at www.fiec.eu



Local policy to support procurement of sustainable timber: City of Barcelona, Spain.

Since July 2004, the City of Barcelona's responsible procurement practices have been supported by a Mayoral Decree promoting the purchase of sustainably certified timber.

More information: www.bcn.es/agenda21/oficinaverda

The basic reference point for workers' rights around the world are the Conventions of the International Labour Organisation (ILO). Founded in 1919, the ILO is a tripartite body bringing together governments, employers and workers and promotes decent work, employment rights, job-related security and better overall living standards. The ILO Conventions are standards that define basic labour rights. Once adopted by the ILO and ratified by the signatory countries, Conventions are binding in nature.

There are an increasing number of CSR initiatives that have been developed within the construction sector, and others which have a cross sectoral approach addressing social and environmental challenges in the global supply chain of the sector.

This section presents a selection of the key CSR initiatives relevant for the sector as a reference point for companies.

Codes of Conduct are public commitments to CSR that announce the principles of social and environmental responsibility that a company commits to adhere to. Codes of conduct can be either developed by the industry (individual company or by sectoral actors) or externally (by a civil society organisation or a multi-stakeholder initiative).

The **European Social Partner representing the European construction industry (FIEC)** developed through its member federations (33 national member federations in 27 countries) a set of Principles for Sustainability for implementation by construction enterprises on a voluntary basis.

Certifications and labels are systems which certify, through independent bodies, the implementation of CSR policies. Relevant certifications and labels in the construction sector include SA 8000 certification, Belgian Social Label, Natureplus, Forest Stewardship Council label, Xertifix, ISO 14001 and EMAS.

Code of Good Practice of the ISEAL Alliance is a leading example of promoting collaboration between existing labelling initiatives, in preference to the creation of new social labels, at the national or European level. Compliance with this Code means that the process by which a standard is developed is credible.

3 First steps before tendering

Before undertaking the tendering process, it is strongly recommended that public authorities perform a series of **preparatory activities**. Properly communicated throughout the awarding procedure, and with relevant stakeholders, these will provide transparency, clarify objectives and thus legitimate the inclusion of SRP.

1

Develop a specific policy or strategy ► how serious are we about SRP?

An initial needs assessment and market analysis should be carried out to prepare the policy/strategy development. To enhance transparency and non-discrimination, and legitimise the inclusion of 'social' criteria in the actual tender, it is advisable to define a comprehensive strategy in support of SRP. In addition, the contracting authority could adopt a political commitment at the municipal level in order to send a clear signal of what the social priorities are for purchasing officers and potential bidders. It is therefore important to publicise the strategy or commitment on the internet and in relevant newspapers and journals to give a clear signal to the market and increase the number of bidders.

2 Carry out a needs assessment ► what are you looking for?

Using a systematic approach which should include an analysis of the current situation and the definition of the desired or necessary outcome. Problems, deficits, strengths, opportunities and new directions must be evaluated before setting priorities and identifying solutions.

3 Set up a dialogue with relevant stakeholders ► interest in potential SRP tender?

It is important to communicate the SRP approach to relevant stakeholders and to inform them about the upcoming tender and its social aims. From a legal point of view, it is recommended to invite relevant associations rather than single companies to avoid discrimination.

4 Analyse the market ► what's on the market?

This step should follow the needs assessment looking at the readiness of the market to meet the future tender requirements (also related to social responsibility). Before tendering, the contracting authority should be confident that the criteria are sufficiently realistic and can be met by the local, regional and European markets.

4 SRP and EU legislation on public procurement

Transparency, equal treatment or non-discrimination and best value for money are the three key principles underpinning the EU Public Procurement Directives⁵, which are binding to public authorities in all Member States. In addition, the free movement of goods and services within the Internal Market is one of the fundamental aims of the EU as laid down in the Treaty of Amsterdam; the Directives therefore require a competition-based awarding of public contracts. Companies from all Member States have to be able to tender for public contracts, regardless of their country of origin; their bids should be evaluated in an objective and transparent procedure.

Any criteria used in public tenders to address social concerns have to follow these principles. Whereas options for integrating environmental concerns into public buying decisions (green procurement) are explicitly mentioned within the revised Directives, and have been detailed extensively in a handbook produced by the European Commission⁶, guidelines for procurement are far less clear, leaving room for debate and interpretation by legal experts. Legal advice on SRP therefore builds both on experiences gained with green procurement and on clarifications achieved by case-law handed down from the European Court of Justice (EC), see text in margins). An official EC handbook on social procurement announced for 2008/2009 should bring further clarification on SRP.

5 Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (hereinafter: Directive 2004/18/EC) and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (hereinafter: Directive 2004/17/EC).

6 Buying Green! A Handbook on Environmental Public Procurement. European Commission, 2004

International Labour Organisation (ILO) Core Conventions

Freedom of association:

- 1) Freedom of Association and Protection of the Right to Organise (No. 87)
- 2) Right to Organise and Collective Bargaining (No. 98)
- 3) Forced Labour (No. 29)
- 4) Abolition of Forced Labour (No. 105)

Equality:

- 5) Discrimination (Employment and Occupation) (No. 111)
- 6) Equal Remuneration (No. 100)

Elimination of child labour:

- 7) Minimum Age (No. 138)
- 8) Worst Forms of Child Labour (No. 182)

Labour standards are the rules that govern how people are treated in a working environment. They come in a variety of forms and originate at the local, national, and international levels. Taking account of the spirit of labour standards does not necessarily mean applying complex legal formulae to every situation; it can be as simple as ensuring that basic rules of good sense and good governance have been taken into account.

More information: www.ilo.org/public/english/standards/norm/index.htm

Non-economic benefits as award criteria: the Concordia Bus Case

In a landmark ruling, the European Court of Justice (ECJ) ruled in favour of the City of Helsinki that non-economic benefits, such as environmental quality (i.e. the quality of the bus fleet and the operator's quality and environmental management) could be used to define the most economically advantageous offer. In addition, it is interesting to note that in this case, the notion of 'economically advantageous offer' related not only to the awarding authority as a single entity but to the benefit of a whole community. Furthermore, the ECJ explicitly stated that the award criteria must be clearly linked to the subject matter of the contract.

(Concordia Bus Finland Oy Ab versus Helsingin kaupunki, HKJ – Bussililikenne. 2002)



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Conservative vs. progressive interpretation of legislation

The European Public Procurement Directives⁷ explicitly mention an opportunity to introduce social clauses only at the level of contract performance clauses (Directive 2004/18/EC, Art. 26). In particular, EU law mentions the possibility for buyers to request at this stage the performance of the contract in accordance with International Labour Organisation standards (Directive 2004/18/EC, Recital 33).

To be safe, conservative interpretations advise including criteria on social responsibility only in the contract performance clauses of the tender. The impact of contract performance clauses - limited to imposing social clauses for the purpose and duration of the relevant contract only – can however only be narrow, in particular considering the often global supply chain involved in the textiles and clothing sector.

However, in light of the increased interest and pressure for cities⁸, particularly, to include social issues in their procurement decisions, legal interpretations of EU law are becoming increasingly more progressive. The more progressive interpretation applies the legal principle of analogy to SRP and sustains that there is enough legal basis to adopt some of the same legal reasoning to SRP criteria as for green procurement criteria. This approach allows to take into account the wide-reaching and complex process with global dimensions that lies behind sustainable and socially responsible production and consumption.

Building on the Wienstrom case in particular (see text in margin), which acknowledged the relevance of (clean) production methods for the purchasing authority even if they are not visible in the final (green) product, considerations related to ILO Core Conventions would be legally valid as they would imply a different (more equitable) production process leading to a different final (socially fair) product⁹. This holds, in particular, if such green or SRP practices can significantly support an overall sustainability policy endorsed by a public body.

In a further analogy, provided there is a clear linkage to the 'social' subject matter, as stated in recital (1) of the Directives, SRP issues can then also be integrated in the technical specifications or award criteria. Obviously, any criteria must always be formulated according to the principles of transparency, objectivity and non-discrimination. This approach allows taking into account the wide-reaching and complex process with global dimensions that lies behind sustainable and socially responsible production and consumption.

Case law from the European Court of Justice

Decisions handed down by the ECJ have delivered essential guidance on the inclusion of social and environmental considerations in public procurement, and hence represent the legally binding interpretation of the law on sustainable public procurement.

⁷ Directives 2004/17/EC, and 2004/18/EC

⁸ Over 80 public authorities in Germany have adopted a formal council resolution against products produced through the use of child labour, 12 others have a motion in place to do the same in the City Council.

⁹ For a detailed essay supporting this position see A.-L. Durviaux et F. Navez (2006): *Marché public et paradigme concurrentiel : état du droit* (Les dossiers d'ASBL Actualités : les marchés publics, 2/2006). Departing from economic theory that regards production as a function of the two factors: "labour" and "capital". The authors build on the Wienstrom case that confirmed the "invisible" factor capital as relevant for the evaluation of a product to be purchased. In analogy, concerns around the factor labour can thus also be a relevant quality consideration even if they are not visible in the end product.

The most relevant ECJ deliberations on public tenders and sustainability clauses are listed below and have been integrated in the revised procurement Directives.

- The Beentjes case, The Netherlands
- The case of Nord-Pas-de-Calais, France
- The Concordia Bus case, Finland
- The Wienstrom case, Austria

5 Minimising legal concerns

The legal concerns that some experts voice with regard to SRP predominantly relate to the objective formulation of social requirements and the non-discriminatory treatment of bids. These can be minimised by embedding activities in a strategic policy approach and being as transparent as possible to potential bidders about the objectives of the contract in question. Some suggestions:

Make a political commitment

Backing up responsible procurement practice with a strategic commitment of the administration or a resolution of the council provides for a policy reference framework that can be referred to in tender documents and internal communication.

Go public with your SRP activities

Going public with information on SRP activities of the organisation (e.g. websites, bulletins and newspapers) as well as providing potential bidders with relevant policy documents will raise awareness of SRP and effectively communicate your purchasing strategies to eligible suppliers. The more widely you publicise (official bulletins, newspapers) your actions, the more transparent they are.

Choose a title that communicates social responsibility

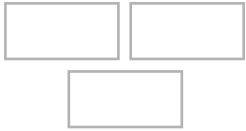
When taking social responsibility into your purchasing decisions, it is important that the objective is made clear from the very beginning of the tendering process. It is strongly recommended to provide a clear definition of the work or service making explicit reference in the title or subject matter to the social issue(s) to be addressed (see page 11 for examples of subject matter wording).

Maintain a clear link to the subject matter

After having clearly defined the subject matter of the contract, ensure that a clear link to the subject matter throughout the different tendering phases is maintained, such as, in the technical specifications, selection criteria, award criteria and the contract performance clauses.

Social clauses used to award a contract: the Beentjes and Nord-Pas-de-Calais cases
At the end of the eighties, the Beentjes Company challenged a decision of the Dutch government to award a contract to a company that could fulfil a social clause mentioned in the call for tender rather than to the company offering the cheapest price for a land consolidation work. The ECJ ruled that the social clause requested in the call (employing at least 70% of workforce for the contract among long-term unemployed) was compatible with European law, correctly mentioned in the call for tender and respected the non-discrimination principle.

The scope for including social and environmental criteria was widened further following the ECJ's decision in the Nord-Pas-de-Calais case, whereby the European Commission challenged the French Republic for including in a call for tender for construction and maintenance work an award criterion requiring contractors to recruit workforce from a local employment project. The ECJ ruled that by choosing the most economically advantageous offer, the local authority could in fact take into account employment policy objectives, provided that it was correctly included in the tender and respected the fundamental principles of Community law. (Gebroeders Beentjer v The Netherlands - 1998; European Communities v French Republic - 2000)



Green criteria related to the production method: the Wienstrom case. In this case, the ECJ decided about a contract for the supply of green electricity. The decision acknowledged the legality of using an environmental criterion related to the production method in the delivery of a product. The Court held that the environmental criterion does not have to change the product visibly. The ECJ clearly stated the limits also:

- Environmental claims must be verifiable by the contracting authority; and
- Award criterion can only be used to take into account the share of renewable energy supplied for the amount required by the contracting authority, i.e. not energy supplied to other customers. (EVN AG and Wienstrom vs Republik Österreich. 2003)

Clearly define verification mechanisms

In order to guarantee equal competition, the tender documents also should state how the bidder can demonstrate compliance with the requirements (i.e. labels, certification bodies, etc. which your requirements relate to). However, make sure to always mention that equivalents to the suggested schemes will also be accepted as proof of compliance.

Consider the financial relevance of the contract

There are a large amount of contracts that are not covered by the EU Public Procurement Directives. The current threshold amounts above the Directives for public works contracts are € 6.242 million and for most public service contracts are €249,000 for local authorities and €162,000 for central government authorities. Contracts below the thresholds present significant opportunities for businesses – 85% of contracts fall into this category - particularly for small and medium sized enterprises (SMEs)¹⁰.

6 Introduction to the construction and tendering process

There are differences in the way building projects are managed and set up in the different Member States, however the general construction process consists of:

- ▶ **Project initiation** - define the needs, the scope, vision and the organisation.
- ▶ **Project preparation** – includes, needs assessment, site selection and orientation, financial budget, size (e.g. room allocation plans), construction design (e.g. light weight or solid construction), materials to be used and standards for energy performance.
- ▶ **Design phase** – architects competition (depends on size of project and country), revised preliminary design, preliminary selection of superstructure, building materials and construction.
- ▶ **Tendering phase** – tendering for the design and for the construction work can be done in the one and same tender or as separate tenders.
- ▶ **Remaining stages** - construction, operation, maintenance and facilities management and demolition / dismantling.

There are different ways in which social considerations can be included in the procurement process for building construction works. Each option has its own strengths and the choice made will determine the degree of positive social impact. The following sections provide recommendations to use when defining the subject matter of the contract, technical specifications, selection and award criteria, and contract clauses, which may be used directly in the tendering documents.

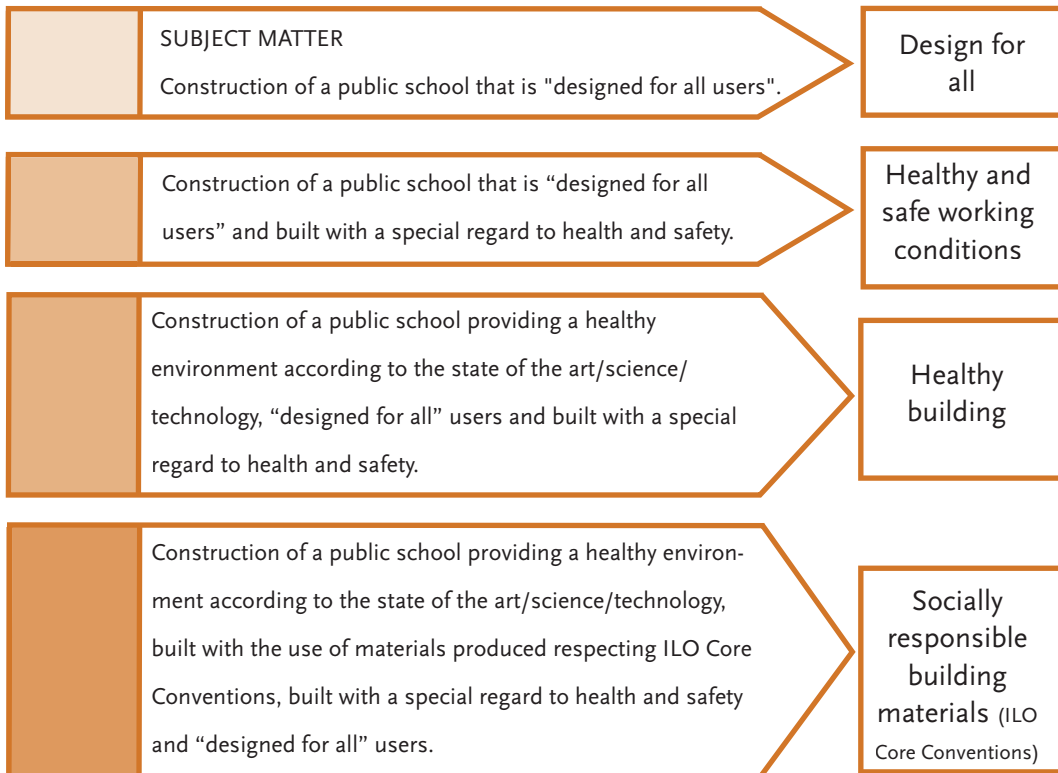


¹⁰ For more information and guidance from the European Commission, refer to the Interpretative Communication from the European Commission (2006/C 179/02)

Defining the subject matter

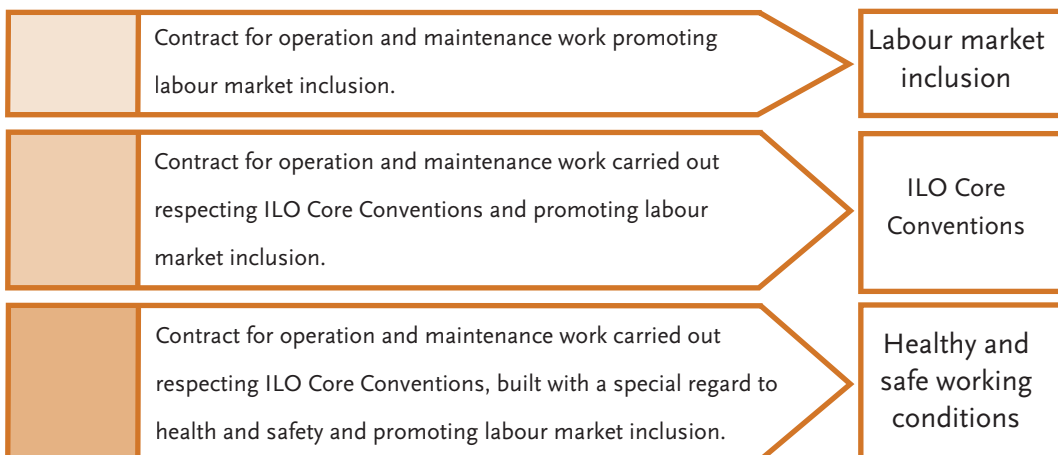
Below are two examples of how the subject matter of a tender can be formulated depending on the social aim of the procurement and on the type of procurement, i.e. works or services. The shading of the first column represents a less ambitious (lightest) to a more ambitious level (darkest).

Example 1: Tender for construction of public school*



*NOTE: The above mentioned SRP issues may not be applicable for renovation works, or the extent of their application may be limited.

Example 2: Tender for operation and maintenance works*



*NOTE: Operation and maintenance works include services and works needed to keep a building running and operational.

Defining the subject matter: Explicitly phrasing the subject matter of the contract in such a way so that it integrates the social objective that is to be achieved by the contract is an important first step to take in the tendering process. The choice of subject matter made by the contracting authority must be initially reflected in the technical specifications¹¹. Clear wording must be chosen to communicate the social goals of the contract as long as they are linked to what is being purchased.



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¹¹ See Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement. COM(2001) 566 final



Technical specifications: The technical specifications provide detailed information on the functionality, quality and specific characteristics of the product to be purchased. Including social criteria in the technical specifications is a direct way to be socially responsible, however the current legal scope for including social requirements in this phase of the tendering process is indeed very limited (for a more detailed explanation please refer to the reference included in Footnote 11). Technical specifications can include requirements related to public health concerns and accessibility, for example.






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Technical specifications

Below are a list of technical specifications that can be included for different works contracts as well as maintenance contracts. The specifications are accompanied by verification schemes for contracting authorities to follow as well as supplementary information to assist implementation included in the Implementation Notes.

<p>Tender for:</p>  	<p>The construction project should be designed in a manner that allows it to be equally accessible for people with disabilities and designed for all users, as required by the EU Public Procurement Directive 2004/18/EC (Article 23, §1) and/or national legislation (such as Disability Acts).</p> <p>VERIFICATION:</p> <p>The contracting authority will ask a relevant target group (e.g. association of the blind) beforehand, during and after completion of the building to carry out an access check of the building. A negative find will result in breach of contract requirements.</p>
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Design for all




<p>Tender for:</p>   	<p>The following materials will not be used in the construction work:</p> <ul style="list-style-type: none"> - Timber that is not from sustainable sources <p>The tenderer must declare that all virgin wood from forests, plantations and partially replanted forests originates from forests and plantations that are managed so as to implement the principles and measures aimed at ensuring legal and sustainable forest management. In Europe, the principles and measures referred to above shall at least correspond to those of the Forest Stewardship Council (FSC)¹².</p> <p>VERIFICATION:</p> <p>Products bearing the label of the Forest Stewardship Council (FSC) are presumed to comply with the technical specifications concerning the sustainability of timber. Depending on the country and hence the market availability of products, products labelled with the Programme for the Endorsement of Forest Certification schemes (PEFC)¹³ may also be accepted as deeming to comply with the technical specifications. Any other appropriate means of proof, such as a technical dossier from the manufacturer or a test report from a recognised body will be accepted.</p>
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Socially responsible building materials (SRBM)


¹² www.fsc.org

¹³ www.pefc.org

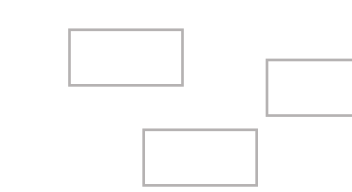
<p>Tender for:</p>	<p>- Stones produced without child labour</p> <p>The tenderer must demonstrate that products from regions outside the EU, which are typically used in construction, such as natural stones and paving stones, have been produced or manufactured without the use of child labour according to the ILO Convention N° 182.</p>
 	<p>VERIFICATION:</p> <p>Products bearing the Xertifix¹⁴ label are presumed to comply with the technical specification. Any other appropriate means of proof, such as a technical dossier from the manufacturer or a test report from a recognised body will be accepted.</p>

<p>Key:</p>   	<p>New construction</p> <p>Renovation work</p> <p>Operation and maintenance work</p>	<p>* Limited application for one of the above, i.e. new construction, renovation work or operation and maintenance work</p>
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Implementation notes



Including relevant references to the ILO Conventions: Rather than limiting the application of the ILO core Conventions to Convention Number 182 (excluding use of child labour) the contracting authority may decide to extend SRP to include references to further ILO Core Conventions (see box on page 7). Please note, however, that European case law on the use of these kinds of social considerations in the technical specifications currently does not exist. Regarding verification for other ILO Core Conventions: the contractor should be asked to submit independent certification or, if not possible, a self-commitment or self-declaration of relevant code of conduct/affiliation that proves compliance with the requirements mentioned in the technical specifications.



Banning procurement of goods produced by exploitative child labour: the City of München, Germany.

Since April 2003, the City of München set a regulation in place to prevent the procurement of goods made by means of exploitative child labour. The regulation concerns products such as textile products, natural stones, low-price products from wood, sports equipment, and agricultural products. In all relevant tenders, the City asks for independent certification or a declaration of self-commitment on the side of the bidding companies demonstrating that exploitative child labour was not involved in the production process.

More information: www.muenchen.de



Selection criteria:

The Selection Criteria assesses the reliability and capability of potential suppliers. In order to be eligible for the contract, bidders must demonstrate certain technical, financial and professional qualifications. Only tenders from eligible suppliers proceed to the next stage; the others are excluded. Social technical relevance is very pertinent for building construction contracts, given the nature of the work, e.g. high safety and health risks, and the fact that the ultimate users of the building are people – where the issues of accessibility and health are fundamental.



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Selection criteria

Tender
for:

TECHNICAL AND/OR PROFESSIONAL ABILITY OF THE
TENDERER:

The tenderer shall demonstrate ability to deliver construction work meeting the required accessibility criteria (required by national legislation) and “design for all”.



The inclusion of the process of “design for all” will ensure that account is taken of:

- The sustainability and the accessibility of the built environment;
- The rights of all people across all grounds of the Equality Agenda including migrant workers;
- Corporate social responsibility;
- New employment opportunities; and
- Health and safety measures extended to all people who are protected by equality legislation and regulations.

VERIFICATION:



The tenderer is required to submit a document including the following information:

- A list of the accessible works carried out over the past five years;
- An indication of the specialised accessibility technicians or technical bodies involved;
- Possession of quality certifications and membership of qualification lists (assessed by certification bodies established under national public or private law) of approved Economic Operators undertaking public works, including accessibility;
- A description of the technical facilities and measures for ensuring quality and respect of accessibility criteria;
- The educational and professional qualifications of the persons who will be chosen to deliver the expertise required in the execution of the contract; and
- A list of any relevant policies or code of practice regarding accessibility and / or “design for all” that has been put into practice.

Design
for
all

Tender for: TECHNICAL AND/OR PROFESSIONAL ABILITY OF THE TENDERER:

The tenderer must demonstrate having sufficient past experience with sustainable building design.

  *
VERIFICATION:
 Tenderer is required to submit a 2-page document outlining past experience in the following areas (indicative list):

- Use of socially responsible building materials; and
- Environmental requirements, e.g. energy efficient construction design according to the European Energy Performance of Buildings Directive (EPBD)¹⁵; bioclimatic architecture to achieve energy efficiency, (e.g. light supply with daylight systems); reduction of CO₂ and/or consumption of primary energy.

Socially responsible / Sustainable building design




Tender for: EXCLUSION CRITERIA:

Exclusion of bidders that have breached national social legislation: Tenderers are excluded from participating in a contract where the tenderer;

- Has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate; and
- Has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority.


Professional misconduct and breach of social legislation

Key:

-  New construction
-  Renovation work
-  Operation and maintenance work

* Limited application for one of the above, i.e. new construction, renovation work or operation and maintenance work

Implementation notes

 **Exclusion criteria:** A full list of standard exclusion criteria are included as part of Article 45 of Directive 2004/18/EC. The exclusion criteria on breaches of social security legislation and professional misconduct form part of the standard list.

Taking an integrated approach to SRP in construction: the Canton of Zürich, Switzerland. The integrated approach taken by the Canton of Zürich on sustainable construction has a special focus on social issues. All public and/or publicly funded buildings must comply with a range of social criteria for timber and wood products (FSC certified, where possible) and barrier-free buildings have also become normal practice (and are included in the Canton's Building Code). Indoor air quality in public buildings is regularly tested, thus ensuring the health of employees in these buildings.

More information: www.zh.ch



The Forest Stewardship Council (FSC) is an international membership based organisation promoting responsible stewardship of the world's forests.

Award criteria:

Under a progressive interpretation of the EC procurement law, social criteria can also be included in the award phase as one of the criteria for deciding on which offer to accept in addition to price. When inserting SRP criteria in tender documents, the contracting authority must mention in the tender documents that it awards the contract on the basis of the “economically most advantageous tender” and not on the basis of the “lowest price”, where such a choice is foreseen by national law.

If social criteria are only included as award criteria (i.e. and not in addition to technical specifications), depending on the weighting they are given, the signal to the market is that a socially responsible product is “preferred” but not “obligatory”, generally speaking. If, however, social criteria are also included as technical specifications then the tendering authority can ensure a minimum socially responsible outcome.

Award Criteria

Below are two different examples of how SRP criteria can be included as award criteria in a tender for construction works. The examples are based on two possible tenders:

- **Example 1:** where social considerations have been included in the technical specifications, i.e. minimum requirements that must be met. In this case, extra points are awarded to tendering authorities that go beyond the requirements in the technical specifications.
- **Example 2:** where social considerations have not been included in the technical specifications nor in the selection criteria. In this case, extra points are awarded to tendering authorities fulfilling a minimum requirement.

Example 1: Extra points awarded for going beyond the minimum requirements in promoting labour market inclusion for construction works

The contract will be awarded to the most economically advantageous tender. The contract will be awarded to the offer scoring the highest number of points according to the following matrix:

10 (out of 100 points)	Social responsibility: additional points awarded for the offer that includes a higher percentage of workers/employees from the social economy (e.g. sheltered workshops). Example: 1 point is awarded for every 10% increase in the number of workers employed from the social economy above the minimum requirement (see Implementation Notes below for more information).
90 (out of 100 points)	Awarded for other aspects including price.

Example 2: Preference given for socially responsible construction works

The contract will be awarded to the most economically advantageous tender. The contract will be awarded to the offer scoring the highest number of points according to the following matrix:

20 (out of 100 points)	Socially responsible building materials: Additional points awarded for the percentage of materials used in construction (by value) including social responsibility issues in the production process. Example: 20 points will be awarded to the offer with the highest percentage, for other offers every 1% decrease in percentage decreases the number of points by 1% (see Implementation Notes below for more information).
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80 (out of 100 points)

Will be awarded for other aspects including price.

Implementation notes



Point scheme and distribution: The exact point scheme used and the aspects considered will depend on the contracting authority. Due to greatly varying market conditions and varying availability of sheltered employment programmes in different EU Member States it is not possible to recommend specific amounts for this criterion.



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Contract performance clauses

Below are a list of contract performance clauses that are recommended be included in tender documents.

The following should also be considered:

- It is recommended that the two final issues presented below – labour market inclusion and building materials produced without the use of child labour - only be included as contract performance clauses if they have not already been included in other stages of the tendering process, namely, as technical specifications and/or as award criteria.
- It is recommended that the successful contractor respect all Core Conventions of the ILO and that these be included as a contract performance condition as suggested below (grouped under “ILO Core Conventions”). However, contracting authorities may choose to require that only selected Core Conventions are respected, such as No. 182 (worst forms of child labour). See example provided below*.

Contract performance clauses:

Contracting authorities can impose adherence to social standards by including social considerations in the contract performance clauses – these are binding on the company winning the bid during the performance of the contract. A wide range of SRP criteria can be included here to address issues such as improved working conditions - health and safety measures or training and education for staff or those defined by the core Conventions of the ILO. Contract performance clauses must also be published in the contract notice.

Tender for:






The contractor must provide that its employees are trained on issues concerning the social impact of their work and the social (or environmental or sustainability) policy of the authority (e.g. health and safety issues, accessibility, non-discrimination) in whose building (or construction site) they will be working. Training must be provided by a professional trainer qualified in the relevant issues and must take language related needs into account.

Training on relevant social issues






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Tender for:

-  The contractor shall submit a detailed Health and Safety Plan at the start of the contract period detailing how health and safety issues of workers will be taken into account during the contract duration. The Plan should also include health and safety issues with contracted/subcontracted enterprises as far as possible.
- 
-  The contracting authority reserves the right to carry out random checks to verify that the contract is being performed in accordance with the original offer regarding health and safety conditions.

Healthy and safe working conditions


Tender for:

-  The contractor shall demonstrate that the standards included in the ILO Core Conventions have been respected throughout the construction process and the product supply chain (including subcontracted companies). Core ILO Conventions are: No. 87, No. 98, No. 29, No. 105, No. 111, No. 100, No. 138 and No. 182.
-  *
-  *

The contractor is required to submit independent certification or, if not possible, a self-commitment or self-declaration of relevant code of conduct/affiliation that proves compliance with the above-mentioned requirements.

ILO Core Conventions

Tender for:

-  The contractor adheres to the employing at least X% of the work force from social economy enterprises, e.g. sheltered workshops.

The contractor is required to submit the relevant certification from the respective enterprise/authority to demonstrate fulfilment of the employment.

Labour market inclusion

Tender
for:



Example: The contractor shall demonstrate that products from regions outside the EU, which are typically used in construction, such as natural stone and paving stone, have been produced or manufactured without the use of child labour according to ILO Core Convention N° 182.

The contractor is required to submit independent certification or, if not possible, a self-commitment or self-declaration that, for the construction work concerned, and regarding the above-mentioned products or materials from regions outside outside the EU, it will only use products or materials produced without the use of child labour according to ILO Convention N° 182. In the case that a self-commitment or self-declaration is provided, the contractor is also required to declare in a binding manner that he/she will carry out active measures to make sure that the use of child labour will be excluded for the production of the above-mentioned products along the relevant supply chain.

* Focus on the exclusion of child labour from building materials

Key:



New construction



Renovation work



Operation and maintenance work

* Limited application for one of the above, i.e. new construction, renovation work or operation and maintenance work

Implementation notes



Labour market inclusion: Due to the varying conditions, as well as the size and purpose of the contracts (and different national legal obligations), the contracting authority should fix the percentage following research into this option.



Training on relevant social issues: The contracting authority is recommended to undertake research into possible price increases associated with training.



Benjamin Pütter / AGEH
– Misereor

RESPIRO GUIDE ON SOCIALLY RESPONSIBLE PROCUREMENT OF BUILDING CONSTRUCTION WORKS

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Further ideas for SRP promotion



Join a Campaign on issues related to Socially Responsible Construction. For example:

German campaign against child labour where over 80 public authorities in Germany have already adopted a formal council resolution against the purchase of products generated through the use of child labour. More information: www.aktiv-gegen-kinderarbeit.de

Join a Campaign to support “design for all”, for example:

The “Flag of Towns and Cities for All” by the Design for All Foundation offers municipalities the opportunity to join a growing group of towns and cities that have committed to improve their public space, their facilities, transports, buildings and services, improving the life quality of their citizens and visitors.

Keep an eye out for social labels on socially responsible production to assist with SRP. For example: the Xertifix label and the Belgian Social Label

The XERTIFIX label is currently the only independent label worldwide guaranteeing that natural stones are produced without the use of child labour. More information: www.xertifix.de

The Belgian social label is the first government label which a company can use for a specific product or service to show consumers it was developed respecting employees' rights throughout the production chain.

More information: www.social-label.be

Some interesting initiatives and links to further information

- European Commission – Key documents on EU Public Procurement legislation: http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm
- CARPE – Cities as Responsible Purchasers in Europe: www.eurocities.eu/carpe-net
- The Build for All Reference Manual: www.build-for-all.net
- The Procura+ Manual – A Guide to Cost-effective Sustainable Public Procurement: www.procuraplus.org
- European Commission – CSR: http://ec.europa.eu/enterprise/csr/index_en.htm
- European Federation of Building & Woodworkers: www.efbww.org
- European Construction Industry Federation: www.fiec.eu
- Social Accountability / SA 8000: www.sa-intl.org
- The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance: www.isealalliance.org
- Global Reporting Initiative: www.globalreporting.org
- Ethical Trading Initiative: www.ethicaltrade.org