

AGENDA ITEM 7**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL****CABINET****22 OCTOBER 2015****ADOPTION OF AN ETHICAL PROCUREMENT POLICY (AS RECOMMENDED BY THE ZERO HOURS SCRUTINY WORKING GROUP)****Author: Mrs A Edwards – Scrutiny Support Officer****Tel: 01443 424102****1. PURPOSE OF REPORT**

To provide Cabinet with the findings and recommendations of the Council's Scrutiny Working Group formed to consider the issue of 'Zero Hours' contracts.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1 adopt the draft Ethical Procurement Policy as set out at Appendix 2;
- 2.2 Subject to 2.1 above, that consideration be given to a joint press release with the trade unions;
- 2.3 Subject to 2.1 above, that the WLGA be informed of the policy for the purpose of circulating to other Welsh councils as an example of best practice.

3. BACKGROUND

- 3.1 Cabinet Members will recall the under-mentioned Notice of Motion which was considered by Council at its meeting held on the 4th March, 2015 standing in the names of County Borough Councillors P.Jarman, C.Davies, I Pearce, E Webster, S.Evans-Fear, M Weaver, S.Rees-Owen, K.Morgan and G.Davies:-

"That this Council, in an effort to end exploitative zero hours contracts, instructs that our Contract Procedure Rules be varied.

The variation to provide for contract specifications based on a community benefit approach. This would require a social return on investment by disallowing delivery of the contract by staff on zero hours contracts of employment.

This Council further orders a review of current contracts to examine the possibility of varying them in a further effort to end exploitative zero hours contracts.”

Council **RESOLVED** that the matter be referred for consideration to the appropriate Scrutiny Committee and a report therefrom be reported to a future meeting of the Council.

- 3.2 As a result, a scrutiny working group was formed comprising County Borough Councillors M Norris (Chairman), J David, S Rees-Owen, G Stacey, (Mrs) J S Ward, E Webster, C Willis and R Yeo.
- 3.3 The Working Group met on two occasions, ie 9th July and 2nd September 2015 and received information from the Service Director, Procurement and the Human Resources Manager. The Working Group also obtained the views of the Joint Trade Unions, with Mr P Crews (Unison) and Ms L Davies (UNITE) attending the meeting of the working group held on 2nd September and spoke on behalf of all the Joint Unions. The Working Group also considered guidance provided by the WLGA which had been agreed jointly under the auspices of the local government Joint Council for Wales (attached as Appendix 1).
- 3.4 On 22nd July, an interim report of the Working Group was presented to Council when it was resolved:
- (i) to note the contents of the progress report of the Scrutiny Working Group;
 - (ii) that the final report and recommendations of the Scrutiny Working Group be presented to Cabinet in due course.
- 3.5 In summary, the Working Group was informed that Zero Hours contracts do not have any legal definition and can in fact encompass a range of different employment arrangements. The WLGA Guidance defines Zero-Hours Contracts as “An agreement between two parties that one may be asked to perform work for another but there is no set minimum level of work or pay.”
- 3.6 The Working Group learnt of the importance of using ‘casual’ workers in areas such as home care services and in the residential care setting as a way of managing staff holiday entitlements and sickness absence and in many cases this arrangement suits both the employer and the employee. The use of casual staff is also a useful tool in reducing the number of agency staff needed. However, there is a need to guard against exploitative practices such as:
- Preventing the individual from working for others;
 - Giving insufficient notice of work;
 - Giving insufficient notice of cancellation of work;
 - Insisting any work offered must be accepted;
 - Penalising those who turn it down;
 - Evading obligations on sick pay and holiday pay.

- 3.7 In considering what the Council itself is able to do, the Working Group was informed that the Council could ensure that its own practices for casual workers/short term/part time workers are in line with best practice. Secondly, it could ensure that its suppliers and providers avoid the use of exploitative practices through the adoption of an Ethical Procurement Policy (via EU Treaty and Public Contract Regulations 2015). Research undertaken by the Service Director, Procurement had identified Southampton Council and the Department for Education & Skills as best practice examples and both had instigated such a policy.
- 3.8 The Service Director for Procurement informed the Working Group that ethical procurement is a subject which is now of a high priority amongst private and public sector organisations because it demonstrates a commitment to act with integrity and fairness in an organisation's processes and minimises risk of reputational damage and service delivery failure. It also ensures greater accountability for business to take action to ensure compliance with its principles.
- 3.9 In March 2015 a landmark Modern Slavery Bill to eradicate modern slavery received Royal Assent. The new legislation significantly enhances support and protection for victims, gives law enforcement the tools they need to target today's slave drivers, ensures perpetrators can be severely punished, and includes a world leading provision to encourage business to take action to ensure their end-to-end supply chains are slavery free.
- 3.10 Members learnt that an Ethical Procurement Policy could include provision for the following issues some of which are also covered by UK law:
- Acting with integrity and honesty
 - Safe Working Conditions
 - Promotion of Good Health
 - Employment freely chosen
 - Working hours not excessive
 - Avoid blacklisting practices
 - Minimum wages
 - Training provided
 - No discrimination
 - Has a disputes procedure
 - Child Labour is eliminated
 - No inhumane treatment allowed
 - Eradication of Modern Slavery.

An ethical procurement policy applies to the Council's entire supply chain and sub-suppliers some of which material for which may be sourced in other countries where UK law does not apply.

- 3.11 The Working Group learnt that an Ethical Procurement Policy would include the use of supported businesses, for example the Council has an exemplar supported business, namely, Vision Products. Such a policy could also include the use of Fair Trade products, continuing to provide opportunities for micro, small and medium enterprises, minority enterprises, fair payment and the elimination of fraud and corruption by ensuring open transparent and fair procurement processes.
- 3.12 Members learnt that whilst there was no evidence that any of the Council's suppliers were involved in unethical practices, the introduction of a policy would provide a way of managing such situations. The Working Group concluded that an Ethical Procurement Policy would be the foundation to demonstrate the Council's intent for implementing changes to the Council's Procurement processes such as prequalification of suppliers and contractors, its tenders and contract terms and conditions, Contract Procedure Rules and ongoing contract management and monitoring processes so eliminating any unethical and exploitive practice.
- 3.13 As a result, the Working Group requested the Service Director of Procurement to draft an Ethical Procurement Policy and also agreed that the views of the trade union groups be sought.

4. DRAFT ETHICAL PROCUREMENT POLICY

- 4.1 On 2nd September 2015, the Working Group met to consider the draft Ethical Procurement Policy presented by the Service Director for Procurement.
- 4.2 Following consideration of the document, the Working Group concluded that the draft policy incorporated all of the key principles which had been discussed and agreed at the earlier meeting. However, Members wished to have the views of the trade unions before making any final recommendations.
- 4.3 Mr Crews thanked the Working Group for the invitation to attend on a matter which the Joint Unions had been trying to deal with for some time the trade unions groups were pleased that Rhondda Cynon Taf was taking a lead on an issue that would benefit the Authority and the local community. He set out the reasons why the Joint Trade Unions are clear in their view that zero hours contracts do not benefit anyone. Whilst there was no issue if individuals wished to remain on zero hours contracts there was an issue if there is lack of choice.
- 4.4 The Human Resources Manager reported that the Council had held discussions with the Joint Trade Unions regarding the Council's casual workers to ensure that there is no exploitative practice and he pointed out that a 'casual contract' could be beneficial to both the employer and the employee.
- 4.5 Mr Crews referred to social care as an area where private sector contactors use zero hour contracts but also explained that it could be an issue in the voluntary sector as well. In addition unions had on-going issues in relation to employees not being paid for travelling time between calls.

- 4.6 When asked for his views on the proposed policy Mr Crews pointed out that it would be important for the Council to be clear on the clauses it wished to introduce, pointing out the companies are keen to give reasons why something is not feasible or will point to the increase in cost. However, in practice adopting an ethical approach does not always increase costs and he cited an example of procurement in the health service which had a positive outcome.
- 4.7 The Chairman asked whether it would be legally possible to ask that companies have a Whistle blowing contract in place.
- 4.8 The Council already has in place Supplier/Contractors Whistle Blowing policy published on its website and this is currently being reviewed to ensure it meets best practice and to consider how this can be communicated more widely only amongst contractors and their employees and subcontractors in our supply chains
- 4.9 Mr Crews reported that a number of key social care cases had come to light as a result of whistle blowing. However, whilst such policies can be put in place, he pointed out that in practice it can be very difficult for those with unscrupulous employers to come forward when they know that if they do complain they will not be given the working hours that they need.

5. CONCLUSION

- 5.1 There is no evidence that any of the Council's suppliers are involved in unethical practices. However, the introduction of a policy would provide a way of committing them through our contracts to ethical practices and also committing second and third tier suppliers to the same either through tender processes or beyond by voluntary and post award reviews' and agreements and would also support the ethical management of 'zero hours' contracts.
- 5.2 It is understood that should Cabinet chose to adopt this ethical procurement policy then Rhondda Cynon Taf would be the first Council in Wales to introduce such a policy.
- 5.3 The Working Group would therefore advocate that Cabinet considers the introduction of the draft Ethical Procurement Policy and the draft policy is attached for consideration at Appendix 2.
- 5.4 The Working Group would also suggest that subject to Cabinet approval, such a positive move might merit a joint press release with the trade unions and that with the assistance of the WLGA, the policy be distributed to all Welsh Councils as an example of best practice.



Appendix 1

Zero-Hours Contracts – Guidance

This guidance has been drafted and agreed jointly under the auspices of the local government Joint Council for Wales and is commended to all councils in Wales on this basis to guide their own practice and for promotion with their contractors as relevant.

Definition of Zero-hours Contracts

Zero-hours contracts do not have any legal definition. The term 'zero-hours contracts' can in fact encompass a range of different employment arrangements, taking a number of different forms which also may be referred to in different ways. However, zero-hours contracts can be simply defined as:

'An agreement between two parties that one may be asked to perform work for another but there is no set minimum level of work or pay'.

There are three main types of employment status in law:

- Employee
- Worker
- Self-employed

In principle an individual on a zero-hours contract could be an employee, worker or self-employed (although it is unlikely that an individual on zero-hours contract will be self employed). The actual category they fall into will in practice depend on what the contract says and how the working arrangements operate in practice. The tests to determine the correct status of an employee, worker or self-employed person are established by case law.

Staff working on a zero-hours basis will often be *casual workers* rather than employees. The defining feature of work undertaken on a casual basis is generally the absence of *mutuality* of obligation. In practice, this means workers are able to turn down jobs or shifts they are offered.

Staff can also work under zero-hours *employment* contracts. As employees, they have the same rights and entitlements as permanent members of staff; except there are no guarantees on the minimum number of hours' work that they will be offered. Employees on zero-hours employment contracts will be entitled to all the usual employment benefits including holiday and sick pay on a pro-rated basis and, in practice, may be working a significant number of hours.

Two examples of 'zero hours' contracts are given below:

'Bank Staff' Arrangement

The hirer maintains a list of those willing to work
 The hirer contacts anyone on a list to offer work
 There is no obligation to accept
 There is no mutuality of obligation
 Minimum employment rights may not apply*

(*Casual workers who establish a pattern of working over an appropriate extended period will gain employment rights).

Umbrella Contract

The worker is engaged on a series of individual contracts
 An overarching contract is in place which exists between the individual engagements
 Assignments are usually longer
 They are likely to be employees

Benefits of Zero Hours Contracts

Zero hours or casual working arrangements can provide flexibility for the employer enabling effective coverage during periods of peaks and troughs in demand, annual leave and sickness absence.

These arrangements can also suit the employee or casual worker. It is not uncommon for people working in this way to already have a main post with their employer or a different one. They then undertake additional casual work as and when required i.e. a PE Teacher who may also be a casual sports coach on weekends, or a steward that is called on for specific events, or a session tutor.

Some use casual work as a route to permanent hours through the opportunity to gain experience for example students who may intend to pursue a career when qualified. This is of benefit to both the casual worker and the employer as it means that such workers are better trained and experienced when they are taken on as employees, and that there is a bigger pool of suitably trained casual workers.

Many casual workers want the flexibility of working every now and then, and councils report that some have turned down permanent contracts to maintain their flexibility

Problems with Zero-hours Contracts

It is important that zero-hours or casual contracts are not used in a way that is exploitative or seeks to minimise employer obligations. In particular the employer should not:

- Prevent the individual from working for others
- Give insufficient notice of work
- Give insufficient notice of cancellation of work
- Insist that any work offered must be accepted
- Penalise those who turn work down
- Evade obligations on sick pay and holiday pay

It is also important to be aware that regardless of what the contract says an Employment Tribunal will consider what happens in practice. Therefore if the reality of the employment relationship is that there is regular work and mutuality of obligation, the fact that the contract says 'zero hours' or 'casual' and 'no mutuality of obligation' may not count for a great deal.

Alternatives to Zero-hours Contracts

While zero-hours and casual contracts, if properly used, can be a legitimate means of providing flexibility, it is important to recognise that they are not the only options. Permanent contracts can provide certainty regarding employment status for employers as well as employees and flexibility can be achieved by including appropriate provisions. These would include ensuring that:

- Job descriptions are non-contractual to allow for changes
- Flexibility, mobility and variation clauses are included in the contract itself (though not carte blanche to vary the contract willy-nilly)
- Rotas are used imaginatively to ensure flexible and effective management

Other contractual options that can be used include:

- Part-time contracts with minimal hours
- Short fixed-term contracts
- Annualised hours contracts

Review of Zero-hours Contracts

Where councils wish to continue with zero-hours contracts, the Joint Council for Wales (JCW) recommends that councils conduct a review of their zero-hours arrangements to ensure that they incorporate the following:

- Making it clear to the worker what a zero-hours contract means including their employment rights
- Ensuring comparable pay with staff doing same or similar work on permanent contracts
- Giving reasonable notice of work
- Giving reasonable notice of cancellation of work
- Providing compensation for work cancelled at very short notice
- An effective system of holidays and holiday pay
- Permitting employment with other organisations
- Allowing individuals to turn work down
- Ensuring fair and non-discriminatory methods of selecting workers for work
- Ensuring that new contracts are issued where the employment relationship changes (e.g. from worker to employee)
- Training of line managers to ensure that the reality of the employment relationship is consistent with the contract and associated employment rights of zero-hours workers
- Regular review of the appropriateness of such contracts for the nature of the work and the balance of flexibility for employer and employee

The benefits of carrying out such a review and adjusting practices where appropriate are that:

- i) the council will be more likely to be able to comply with any conditions or Code of Practice that may be introduced following the BIS review: and
- ii) this should result in a more committed and reliable workforce for the employer

Joint Council for Wales - April 2014

APPENDIX 2

Rhondda Cynon Taf County Borough Council Draft Ethical Procurement Policy Statement

Introduction

This statement sets out Rhondda Cynon Taff (RCT) CBC's policy on ethical procurement. It is based largely on the following principles with advice on how to put them into practice:

- Working conditions are safe;
- Good health is promoted;
- Employment is freely chosen;
- Working hours are not excessive;
- Wages meet at least national legal standards;
- Training is provided;
- Modern Slavery is eradicated
- No discrimination is practised;
- Diversity and good workforce practices are encouraged;
- Child labour is eliminated;
- No inhumane treatment is allowed.

The Welsh Government principles of good employment practice for public sector organisations and suppliers as part of the Welsh Government Procurement Policy Statement issued in June 2015 are reflected in this statement.

Purpose

Rhondda Cynon Taff CBC is working within the legal framework governing public procurement to purchase goods, services and works that support Local Government policies to achieve value for money the Public Contract Regulations 2015

This includes promoting good governance, social cohesion and a fairer world by encouraging participation, inclusion and equal opportunities and engaging people's creativity, energy and diversity.

Research conducted by the Harvard Business School's Institute for Strategy and Competitiveness, for example, shows that by growing and mentoring suppliers in their communities: large organisations can enhance the efficiency of their supply chains giving them not only a competitive edge but also achieving local benefits in terms of employment, career ladders and improving economies. The Community Benefits Toolkit developed by Welsh Government provides the authority with guidance and processes to make the most of the benefits for Rhondda Cynon Taf communities.

Legal framework

All public procurement must be carried out in accordance with the EC Treaty and EC Public Procurement Directives 2015.

This legal framework requires contracting authorities to award certain contracts, whether these are subject to the procurement rules or not, in line with EC Treaty principles, including the principles of non-discrimination, equal treatment, transparency, procedural fairness, mutual recognition and proportionality.

In accordance with the procurement rules, it is therefore necessary to ensure that ethical issues are relevant to the subject matter of the contract and consistent with the Government's

procurement policy based on value for money. This excludes public bodies from considering within the procurement process how companies providing the goods and services manage their business generally, beyond relevant legal obligations such as on health and safety and employment.

Ethical considerations that are “relevant“ to the subject matter of the contract may arise where there is a risk to the Council from a supplier being unable to deliver the product or service to time and of sufficient quality due to say insufficient health and safety provisions for its employees. If a clear link can be established between poor conditions of employment and the ability or motivation of an employee to maintain required quality standards, this will be relevant to the delivery of services or manufacture of products.

Wider benefits

The championing of ethical practices along supply chains – particularly in those companies operating in developing countries – can bring wider benefits to society and the taxpayer.

For instance, the pursuit of ethical practices can help tackle environmental degradation, resource depletion, economic exploitation and poor education and training that through, for example, poverty, food deficiency, conflicts and inequity contribute to movements of populations. Such movements can affect the quality of the natural environment, increase the likelihood of further conflict, and reduce social cohesion between ethnic groups.

Where ethical considerations are not directly relevant to the subject matter of the contract: they may be considered in partnership with the supplier outside the procurement process to identify solutions and to anticipate and resolve problems in a constructive and collaborative way.

Principles

The Council expects its suppliers to maintain high standards of integrity and professionalism in their business dealings, adhering to the laws of the countries where they operate and taking action where necessary to minimise negative impacts and potential risks.

The Council therefore asks its suppliers to abide with the following principles where proportionate and directly relevant to the subject matter of the contract. These are not normally included in the subject matter of contracts as most are governed by labour law within the EU and, as such, are legal requirements which if breached would be grounds for excluding the supplier for non compliance.

Public sector bodies may also work in partnership with suppliers to pursue wider ethical issues outside the public procurement process. This must however be done post-award and on a voluntary basis as contracts must not set standards that exceed EU law, as this may deter bidders from member states and could be challenged as a restriction on free trade.

Acting with integrity and transparency

There is a strong public interest in public procurements to ensure that:

- Procurement processes are conducted in an open and honest way;
- There is transparency in the spending of public money;
- Suppliers have systems in place to ensure high standards of propriety which make sure public money is used for the purpose it is intended.

Working conditions are safe

- Operate appropriate health and safety policies and procedures overseen by a senior manager responsible for compliance and monitoring and ensuring employees have the necessary training and health and safety equipment.

- Provide comfortable and hygienic working conditions with clean toilets and water suitable for drinking and washing. Where worker housing is provided it should meet the same standards for health and safety as the workplace.

Good health is promoted

- Invest in measures for tackling ill health as healthy employees experience a better quality of life and tend to be more productive.

Employment is freely chosen

- Afford employees the freedom to choose to work and not use forced, bonded or non-voluntary prison labour.
- Afford employees freedom of association with the right to join an independent trades union or other workers' associations and to carry out reasonable representative functions in the workplace.
- Facilitate alternative means of democratic representation where laws restrict freedom of association and collective bargaining.

Working hours are not excessive

- Comply with national and international laws or industry standards on employee working hours, whichever affords greater protection.

Working hours

Employees should not be expected to work more than 48 hours a week on a regular basis and, on average, receive one day off about every seven days. Overtime should be voluntary and not be demanded on a regular basis and where required it should be reimbursed at an appropriate rate and not exceed 12 hours in any week.

- Provide clear, easily understood disciplinary, grievance and appeal procedures that are lawful and appropriate. Any disciplinary measures should be recorded and suppliers should not seek to deprive employees of their legal or contractual rights.

Minimum wages

- Provide wages and benefits at rates that meet at least national legal standards.
- Provide employees with an easy to read contract of employment clearly explaining wage levels. Where employees are unable to read, the contract should be explained to them by a union representative or another appropriate third party.

Wages should be in cash and not in kind (e.g. goods, vouchers) with no deductions made unless permitted under national law or agreed by the employee, without duress.

Training is provided

- Raise employees' skills through training and access to professional development as befits their role to improve quality and secure greater value for money.

No discrimination

- Practice no discrimination in hiring, compensation, training, promotion, termination or retirement either directly or indirectly – see *section on the Equality Act 2010 below*.

Disputes procedure

- Provide clear and accessible processes for resolving disputes with employees.

Modern Slavery is eradicated

- Compliance with the new Modern Slavery Act 2015 to eradicate Modern Slavery to ensure our businesses and third sector to ensure their end to end supply chains are slavery free

Child labour is eliminated

- Support the elimination of child labour
- Provide for any children found to be performing child labour to attend and remain in quality education until no longer a child.
- Ensure no children and young persons are employed at night or in hazardous conditions, as defined by the International Labour Organisation.

Child labour

The Council fully supports the internationally agreed core labour standards and, as will promote human rights as they apply to work and employment.

The ILO Minimum Age Convention (No.138), supplemented by Recommendation No.146 requires ratifying States to pursue a national policy to ensure the effective abolition of child labour and progressively to increase the minimum age for employment or work.

The Convention on the Rights of the Child, including Article 32, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

Abruptly stopping children working in export industries without ensuring alternative income for the family or appropriate, good quality educational opportunities for the children is likely to be ineffective and to drive them into more hidden and harmful jobs.

The Government's approach is that effective implementation of labour standards is best achieved through partnership and voluntary action of Government, business and civil society. This can help to ensure that suppliers are aware of the importance of implementing and monitoring labour standards in their supply chains and supporting them in doing so.

No inhumane treatment is allowed

- Prohibit physical abuse or coercion, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation.

A Fair Trade County Borough

- *The Council supports the Fair Trade of products and services that meet the fair trade standard and gained Fair Trade Charter since 2006*
- *Procure where possible fairly traded products and service such as tea bananas coffee and sugar for sale to the public or for sale in its canteens and vending machines*
- *Promote the use of Fair Trade products in communities*

Suppliers should inform the Council about any concerns they have in applying the above principles. Additionally, they are encouraged to keep written records to demonstrate that their actions are fair and above reproach and, where relevant, report on progress and future planned activity if requested to do so. .

Equality Act 2010

The Equality Act 2010 is a major simplification of discrimination legislation that makes the law easier to understand and comply with and delivers significant benefits for business, public bodies and individuals. It covers the same groups that were protected by existing equality legislation - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity (referred to as "*Protected Characteristics*") - but extends some protections to groups not previously covered, and also strengthens particular aspects of equality law.²⁵

The Equality Act also includes a Public Sector Equality Duty. This new duty is designed to embed equality considerations (i.e. the protected characteristics) into the day to day work of public bodies including their procurement, so that they tackle discrimination and inequality and

contribute to making society fairer.

Grounds for exclusion

Service providers

The Council reserves the right to exclude a service provider where deemed ineligible to tender for, or be awarded a public contract under the Public Contract Regulation 2015 . Rejection of a service provider is permissible when the organisation:

- Is in a state of bankruptcy insolvency compulsory winding up, administration, receivership, composition with creditors or any analogous state, or subject to relevant proceedings;
- Has been convicted of a criminal offence related to business or professional conduct;
- Has committed an act of grave misconduct in the course of business;
- Has not fulfilled obligations relating to payment of social security contributions;
- Has not fulfilled obligations relating to payment of taxes;
- Is guilty of serious misrepresentation in supplying information required by the Authority under the Regulations;
- Is not in possession of a licence or not a member of the appropriate organisation where the law of that State requires it;

Or

- Is not registered on the professional or trade register of the relevant State in which established.

In deciding whether to exclude a service provider the Council will consider the seriousness of the misconduct, whether it was related to the subject matter of the contract, when it was committed and the action taken or being taken to prevent its recurrence. This discretion will not apply to convictions for offences where there is a mandatory requirement on public sector contracting authorities to exclude candidates in accordance the Public Contracts Regulations 2015

Economic operators

The new regulations cover the criteria for the rejection of economic operators where the contracting authority has actual knowledge that it or its directors or representatives have been convicted of certain offences. For example: conspiracy from participating in a criminal organisation, corrupt practices, bribery, theft, fraudulent trading and defrauding the European Communities, the Revenue and the Customs.

Regulation also makes provision for an exception to the mandatory exclusion of an economic operator. That is, if the contracting authority “is satisfied that there are overriding requirements in the general interest” which would justify such an exception, e.g. in the case of a national emergency.

Technical specifications and standards

Where relevant to the contract, Rhondda Cynon Taf CBC will use technical specifications and standards to integrate ethical considerations into procurement, such as standards for IT systems to ensure that they are accessible to people with disabilities and interoperable with software and hardware intended for disabled users.

The specification must be relevant to the requirement and must not discriminate against other products or providers from other member states, nor must it restrict competition. Unnecessary use of these principles may place an undue burden on small businesses and other organisations, which might have a disproportionate impact on their ability to compete and therefore be unlawful. In all cases, contracting authorities must be prepared to consider equivalent standards from suppliers from other countries (with different national standards) that

meet the underlying requirement. The onus is on the supplier to prove that the solution being offered meets the requirements.

Welsh Public Sector Organisations

In delivering this policy statement we will work with other organisations in Wales engaged in collaborative procurement to:

- Continue to provide tendering opportunities that are suitable for Small and Medium Enterprises (SMEs), Ethnic Minority Businesses (EMBs), third sector, civil society organisations and supported factories both directly and indirectly through first tier suppliers

Supported factories and businesses *Public bodies are permitted under the 2015 Public Contracts Regulations to reserve the right to participate in public contract award procedures to supported factories and businesses or to economic operators, which operate supported employment programmes. A "supported factory" or "supported business" is an establishment where more than 30% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.*

- Promote skills training, apprenticeship opportunities and graduate programmes among our suppliers to help tackle youth and graduate unemployment.
- Support the use of fairly traded goods³⁸ where this is within the legal framework governing public procurement.
- Encourage suppliers to offer solutions for delivering ethical requirements innovatively and cost effectively.
- Encourage suppliers to develop effective strategies for enhancing staff engagement to enable people to be the best they can at work.⁴⁰
- Continue to improve the way in which suppliers are appointed and supply chains managed, audited and reported on.
- Retain records in accordance with the new Public Contract Regulations to demonstrate that procurement has been fair and transparent.
- Continue to treat suppliers fairly and equally at all times and to act impartially and objectively and with integrity and honesty throughout the procurement process.
- Make appropriate resources available to meet our stated commitments, including provision of guidance, awareness raising and training for staff and suppliers.
- Provide guidance outside the formal procurement process to suppliers who genuinely seek to promote and implement the standards into their own business processes and down their supply chains, where relevant and appropriate to do so.
- Monitor progress in implementing the policy and annually report on performance to stakeholders.
- Address breaches by suppliers of the ethical procurement policy.

Communication

The Council will communicate this policy both internally within the Rhondda Cynon Taff collaborative partners and externally. Copies of this policy will be placed with supporting documents on Corporate Procurement Intranet site.

FOR REVIEW**References**

- Ethical Procurement Statement Defra available at www.defra.gov.uk Crown copyright
 - The Ethical Trading Initiative (ETI) Base Code
- The UN Declaration on Human Rights - <http://www.un.org/Overview/rights.html>
- United Nations Global Compact - <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html>
- SA8000 (a standard relating to social accountability developed by the Council on Economic Priorities Accreditation Agency in New York - now known as Social Accountability International (SAI))
- The Core Conventions of the International Labour Organisation (ILO)⁴³
 - C1 – Hours of Work (Industry) Convention, 1919
 - C14 – Weekly Rest (Industry) Convention, 1921
 - C98 – Right to Organise and Collective Bargaining Convention, 1949
 - C100 – Equal Remuneration Convention, 1951
 - C105 – Abolition of Forced Labour Convention, 1957
 - C106 – Weekly Rest (Commerce and Offices) Convention, 1957
 - C111 – Discrimination (Employment and Occupation) Convention, 1958
 - C138 – Minimum Age Convention, 1973
 - C160 – Labour Statistics Convention, 1985
 - C161 – Occupational Health Services Convention, 1985
 - C174 – Prevention of Major Industrial Accidents Convention, 1993
 - C182 – Worst Forms of Child Labour Convention, 1999
 - C183 – Maternity Protection Convention, 2000
 - C187 – Promotional Framework for Occupational Safety and Health Convention, 2006
- Supply Chain Management in Public Sector Procurement: a Guide - <http://www.ogc.gov.uk/documents/SupplyChainManagementGuide.pdf>
ERG guide designed to encourage contracting authorities to take a more sophisticated approach to supply chain management and understand both the role that they and their main suppliers must play in managing the supply chain.
- Buy and make a difference – how to address social issues in public procurement: http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf
ERG publication that draws on real-life examples to show public procurers how they can help address social concerns both in what they buy and in the way they should expect suppliers to cater for social needs.
- Smaller Supplier - better value - http://www.ogc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf
This ERG guide is designed to help buyers achieve efficiency in public procurement while improving the diversity of their supplier base by removing barriers to small businesses.
- ERG Procurement Site - <http://www.ogc.gov.uk/procurement.asp>. This is a one-stop focal point that deals with all aspects of procurement.

