

North East Improvement and Efficiency Partnership  
Targeted Recruitment and Training (TRT)

# TOOLKIT



Resource 2 A

Procurement & Development  
Agreements

North East Improvement and Efficiency Partnership

Targeted Recruitment and Training (TRT)

# Toolkit

Resource 2a

## Procurement & Development Agreements Step by Step

Copyright Reserved

**THIS IS NOT LEGAL ADVICE**

**ANTHONY COLLINS SOLICITORS LLP**

134 Edmund Street  
Birmingham B2 2ES  
Tel. 0121 212 7472  
Fax. 0121 212 7434

E-Mail [mark.cook@anthonycollins.com](mailto:mark.cook@anthonycollins.com)

**RICHARD MACFARLANE**

Research & Project Development Ltd  
149 Chamberlayne Road  
London NW10 3NT  
Tel & Fax: +44 [0]20-8964-2416  
Mobile: 077688 93731

E-Mail: [Richard@rmacfarlane.co.uk](mailto:Richard@rmacfarlane.co.uk)

## The Authors

Anthony Collins Solicitors and Richard Macfarlane are the most experienced UK practitioners in the inclusion of community benefits requirements in public sector contracts and agreements including the New Approaches to Public Procurement Toolkit that was introduced to parts of NE England between 2003 and 2006.

### Mark Cook and Gayle Monk - Anthony Collins Solicitors LLP

---

Anthony Collins Solicitors are lawyers and consultants who focus on 7 themes of work, Transforming Communities; Children and Young People; Vulnerable Adults; Enterprise; Housing for all; Entertainment and Leisure; and Faith Communities. Our Transforming Communities theme focuses on work for and with New Deal for Communities organisations, community associations, local authorities, schools and social enterprise, and on a variety of concerns including environmental issues and the provision of better public services.

Mark Cook is probably one of the leading legal experts on community benefits and sustainability in procurement, having co-authored with Richard Macfarlane the JRF Report *Achieving Community Benefits through contracts: law, policy and practice* in 2002. He has worked with over 60 local authorities and other public bodies in England and Scotland in this important area.

Mark Cook or Gayle Monk can be contacted at:

Tel: 0121 212 7472 Email: [mark.cook@anthonycollins.com](mailto:mark.cook@anthonycollins.com) or [gayle.monk@anthonycollins.com](mailto:gayle.monk@anthonycollins.com)

### Richard Macfarlane

---

Richard Macfarlane is an independent researcher and consultant with 27 years experience of local economic development and urban regeneration, who has specialised in helping public bodies use their contractual leverage to secure community benefits. He has offices in London and in Dumfries and Galloway.

Richard is the most experienced independent consultant working on 'local labour in construction'. He has undertaken a wide range of work that seeks to maximise the local labour market benefits of regeneration and development. Richard conceived and managed the JRF-funded research with Mark Cook that resulted in the publication of *Achieving Community Benefits Through Contracts: law, policy and practice*, and since publication he has been project-managing a range of policy development and implementation programmes

Richard can be contacted at:

Tel: 07768 893 731 Email: [Richard@rmacfarlane.co.uk](mailto:Richard@rmacfarlane.co.uk)

# Contents

## The Authors 3

---

### 1. Introduction 6

---

- 1.1 Improvement and Efficiency Targets 6
- 1.2 Mapping the Field 6
- 1.3 Why use procurement and development agreements? 7
- 1.4 'What to Buy' and 'How to Buy' Options 8
- 1.5 Beyond Construction 9
- 1.6 Structure of Resource 2 9

### 2. Public Procurement: Step by Step 11

---

- 2.1 Introduction 11
- 2.2 Policy basis 12
- 2.3 Setting and Monitoring Targets 13
- 2.4 Procurement Process 19
- 2.5 Champion: the critical component 24

### 3. Development Agreements and Property Sales 25

---

- 3.1 Introduction 25
- 3.2 Development Agreements 25
- 3.3 The Problem of "Positive Covenants" 26

### 4. Supply-side Actions 29

---

- 4.1 Importance 29
- 4.2 Matching Opportunity to Need – TRT 29
- 4.3 Maximising local SME participation 30
- 4.4 Facilitation 31
- 4.5 Monitoring, Verification & Reporting 32
- 4.6 Facilitation and Support Services in NE England 33

---

**Appendix 1: 34**

Basic text for an Invitation to Tender or equivalent setting out TRT and supply-chain requirements for a contract. Some optional variations to this are included in appendices 2 to 5.

---

**Appendix 2: 42**

Options for Supply-chain Requirements

---

**Appendix 3: 44**

Options for Local Economic Development Requirements

---

**Appendix 4: 46**

Additional provisions for a deposit-sum approach

---

**Appendix 5: 48**

Additions / Variations for a Framework Agreement and / or Group Purchasing or a Local Education Partnership

---

**Appendix 6: 56**

Text to be included in a Development Agreement requiring a Local Economic Benefit Covenant

---

**Appendix 7: 58**

Modifications to fit standard forms of contract

# 1. Introduction

## 1.1 Improvement and Efficiency Targets

This is the second part of a three-part Toolkit that will help public bodies in North East England maximise the use of local people and suppliers in construction and services activities and thereby help achieve economic, social and economic prosperity in the region - one of the goals of the North East Improvement and Efficiency Partnership. The implementation of these policy goals needs to take account of:

- legal frameworks – relating to procurement, planning and property disposals;
- financial regulations; and
- best practice in organising and resourcing targeted recruitment and training (“TRT”) and SME-friendly procurement activity.

## 1.2 Mapping the Field



Discussion of the subject of this Toolkit suffers from the lack of a shared vocabulary. However, the following hierarchy may be helpful in understanding this field of policy and activity:

- the whole activity fits within the overarching public sector commitment to sustainable development – a concept that includes promoting personal wellbeing, social cohesion and inclusion, and creating equal opportunity for all;<sup>1</sup>
- sustainable procurement is a way that purchasers in the public and private sectors can achieve sustainable development through use of their mainstream budgets;
- ‘social issues in procurement’ is a broad term that includes, for example core labour standards

1 HM Government. Securing the future: delivering UK sustainable development strategy. 2005. Section 4

(as established by the International Labour Organisation), disabled access, disability, gender and race equality, employment and training issues, fair trade, and support for SMEs<sup>2</sup>, including social enterprises, black and ethnic minority enterprises and women and disabled-owned businesses;

- ‘community benefits in procurement’ form a sub-set of social issues that aim to benefit the people and businesses in the area where delivery/development is taking place, including TRT, targeted equal opportunities, training for the existing workforce, targeted supply-chain initiatives, community consultation, ‘considerate contractor’ schemes, ‘Business in Education’, the promotion of local social enterprises, and resources for community initiatives;
- TRT and locally-focussed SME-friendly procurement are community benefits that aim to address social exclusion and deprivation through the provision of jobs and training opportunities – either directly or through the use of a (local) supply-chain.

### 1.3 Why use procurement and development agreements?

---

A major benefit of social clauses relative to other approaches that are available to a wide range of public bodies - like grants, voluntary agreements and committing to corporate social responsibility - is that they can fit well with good procurement practice. They offer:

- consistency and transparency: the opportunity for the purchaser to identify need and convert this into a specification that each provider has to deliver;
- the opportunity to focus on measurable outputs rather than the delivery process;
- an approach that can be the subject of comparative evaluation which will help secure value for money; and
- the opportunity to include monitoring information requirements as a part of the specification, which will enable the purchaser to ensure that they receive the community benefits they pay for.

Voluntary agreements and commitments to corporate social responsibility depend on the goodwill of contractors and the business drivers which make such arrangements imperative for them. Grants tend to support the core activities of the provider organisation, which may or may not coincide with the objectives of the procuring authority. Furthermore, if purchasers are encouraged to link their procurement with grants, voluntary agreements and commitments to corporate social responsibility the award process could become contaminated by taking into account informal promises to deliver social outcomes when these are not part of the subject of the contract – the ‘core requirements’.

SME-friendly procurement is perhaps easier to achieve since significant additional opportunities are available through the decisions made by contracting authorities on ‘how to buy’, including the use of framework contracts, the breaking down of large contracts into smaller ‘lots’, splitting

---

<sup>2</sup> SMEs comprise micro enterprises (less than 10 employees or €2m turnover), small firms (11-49 employees or under €10m turnover) and medium-sized firms (50-249 employees or under €50m turnover).

the supply of components (such as kitchens and bathrooms) from the fitting of the components, setting aside up to 20% of the contract need for delivery by SMEs, including social enterprises (the 'small lots' rule), and considering the benefits achieved by letting smaller one-off contracts. This is in comparison with TRT, where most benefits are achieved by changes to the specification.

## 1.4 'What to Buy' and 'How to Buy' Options

---

Earlier Toolkits have primarily focussed on the inclusion of TRT in 'the subject of the contract' (i.e. the specification) and/or as contract conditions as a way of achieving social inclusion, especially in the construction sector. In this Toolkit an additional approach is being offered: maximising the provision of contract opportunities for SMEs especially those based in the area where the contract is being delivered. These contracts may also include TRT requirements.

However, SME-friendly procurement is perhaps best considered when deciding how the contract is to be procured. A purchaser has considerable freedom to choose the size, value and subject matter of the contract that they think will best meet their needs. The 'needs' can include issues about quality, timeliness, cost, and contract management, it can also include social and economic issues (including a desire to maintain competition – because of the value for money that this can represent to the contracting authority – and a desire to stimulate the local economy). Taking this set of requirements as a whole a purchaser may decide that it is preferable to tender the work in smaller lots, or to offer bidders the opportunity to bid for smaller or larger volumes of work.

Some procurement teams may be more comfortable with SME-friendly procurement options than other community benefit approaches, perhaps because they have traditionally procured from local SMEs or are questioning the value for money they achieve from large contractors with no local commitment. The caveat to this may be a concern about whether they have the resources to manage a larger number of procurement processes and contractors. The 'cost of procuring' can be reduced by the use of frameworks contracts and procurement in 'lots', where there is one procurement process rather than many, while the 'management cost' may be an issue of perception: the client is paying for supply-chain management whether they do this in-house or include it in the main contract.

**‘What to buy’ and ‘How to buy’ options****‘What to Buy’ Options**

- Pre-procurement market dialogue
- Supply-chain management
- Works and local economic development
- Works and supply-chain development
- Labour-only and supply-only contracts

**‘How to Buy’ Options**

- Smaller contracts – don’t aggregate work unnecessarily
- Division into ‘lots’
- Set-aside contracts – 20% option under the ‘small lots’ rule
- Framework contracts with smaller call-off volumes
- Part B Services contracts
- Changing the pre-qualification questionnaire

Source. Chartered Institute of Housing in Wales. CAN DO Toolkit on SME-friendly Procurement. 2010. Resource 2

## 1.5 Beyond Construction

---

Much of the existing practice in the inclusion of TRT in procurement has related to the construction sector. However, all of the matters considered in relation to construction can be applied to activity in other economic sectors, either by the public sector or the private sector (in relation to planning agreements).

Broadening the approach to TRT to non-construction jobs, and a wider range of services and supplies contracts is important because no more than 10%-15% of any population will want to take up construction-related opportunities. Some of these other jobs may also fall within the definition of Part B services (e.g. social care services) under the EU procurement rules, for which the procurement process is less proscribed.

## 1.6 Structure of Resource 2

---

This Toolkit is a modified and updated version of the New Approaches to Public Procurement Toolkit that was introduced into the Region between 2003 and 2006.

The Toolkit will help Local Authorities in NE England and other public bodies in NE England and other English Regions deliver sustainable development by using their procurement of works and services. The Toolkit will help ensure that suppliers maximise the recruitment and training

of local people – especially those that are disadvantaged in the labour market - in construction and end-use employment. This employment may be direct or through the engagement of small and medium-sized enterprises (SMEs) that will generate and sustain local jobs.

The Toolkit is divided into three Resources, and the second of these is divided into two parts:

*Resource 1- Opportunities for Action* is an introduction to targeted recruitment and training (TRT) and targeted supply-chain opportunities;

*Resource 2A – Procurement and Development Agreements: Step by Step* (this document) is a guide to using public procurement to achieve TRT and supply-chain opportunities;

*Resource 2B – Procurement: The Legal Framework for UK Public Bodies* provides more detailed information on relevant legal and policy matters.

*Resource 3 – Planning and Development Control* provides legal, policy and good practice information for the use of Planning Obligations to secure TRT and supply-chain opportunities.

Readers of this document should also refer to Resource 2B.

Much of the existing practice in the inclusion of social requirements in procurement has related to the construction sector. However, all of the matters considered in relation to construction can be applied to activity in other economic sectors.

This document includes as Appendices 1 to 6 a set of model documents that can be used as exemplars or adapted for use in particular circumstance. Appendix 7 is an example of how the requirements can be included in standard forms of contract.

Whilst every effort has been made to ensure the accuracy of this Toolkit at the time of its compilation, legal advice should be taken before action is taken or refrained from in specific cases.

## 2. Public Procurement: Step by Step

### 2.1 Introduction

---

The decision on ‘how to buy’ and then ‘what to buy’ in relation to works, services and supplies should be based on the established policies of the procuring body. Where TRT and other community benefits are to be included in a specification/contract these should, wherever possible, be part of the ‘core elements’ of what is being purchased. This is a matter for the purchasing authority to decide on the basis of its powers and policies.

For local authorities in England there remain issues in including labour force matters in contracts where these are not a ‘core requirement’ because it may be difficult to argue that such ‘secondary requirements’ are necessary to achieve best value. Local authorities and some other local public bodies in England can only set aside the requirements of Part II of the Local Government Act 1988 (referring to “non-commercial considerations” in the award of their contracts) where this is necessary to achieve best value.<sup>3</sup>

However, all contracting authorities should consider including the community benefits as core requirements where this is within their powers and policies, since this:

- enables them to take account of contractors’ offer in relation to community benefits when awarding the contract – which provides additional leverage;
- ameliorates risks of challenge under the EU procurement rules: most case law on community benefits relates to the extent to which non-core matters can be considered in the award of a contract - essentially they should not be.

Most public bodies in the UK have the freedom to adopt policies that will support the use of community benefit requirements in their procurement (see 2.2 below).

It is important that each contracting authority takes the decision to include TRT and other community benefit requirements throughout the procurement process at each of the following stages:

- adoption of clear policies e.g. the sustainable development policy, the Sustainable Community Strategy, and the procurement strategy;
- the business case for the particular procurement, including an assessment of costs and affordability;
- the OJEU contract notice;
- the pre-qualification questionnaire (PQQ) (if one is being used);
- the specification;

---

<sup>3</sup> The “non-commercial considerations” listed in section 17(5) Local Government Act 1988 are ameliorated in England by the Local Government Best Value (Exclusion of Non-Commercial considerations) Order 2001. The case is different in Wales and Scotland where different approaches were taken to setting aside parts of the Local Government Act 1988.

- the Invitation to Tender / Negotiate / Participate in Dialogue;
- the contract conditions;
- the award process; and
- contract implementation (including monitoring).

## 2.2 Policy basis

---

### 2.2.1 Sustainable Development

The UK policy on Sustainable Development includes, as one of its five key elements, a strong commitment to social inclusion, equalities and personal wellbeing (see Resource 1, Section 2.2). These should be reflected in the Sustainable Development policies of all public bodies in the UK and can be used to justify the use of TRT and SME-friendly procurement by those bodies.

The draft policy set out in 2.2.2 below could be adapted for use.

### 2.2.2 Sustainable Community Strategy

Community Strategies are usually developed by a group of public and community organisations and therefore present an opportunity to provide a policy that can be adopted or used by a wide range of local partners.

The following text could be considered for inclusion in Community Strategies in order to provide the policy underpinning for the inclusion of TRT and SME-friendly approaches in their procurement contracts and other agreements, and in their Local Development Frameworks (see Resource 3).

*“The Partners will continue to use all of their powers, wherever they can, to do anything they consider will promote or improve the well-being of the area. Steps to be taken include:*

- *securing representation for black and ethnic minority communities in employment at all levels that is equivalent to their representation in the local population;*
- *maximising opportunities for SMEs based in or around the area where investment is taking place;*
- *developing a workforce that is highly skilled and well motivated and can truly meet the skill needs of the economy;*
- *ensuring that employers maximise their local recruitment, including the provision of training and support to new entrants and returners to the labour market;*
- *providing residents with the skills to compete for the employment created by new investment in public services and private enterprise, and enabling them take up sustainable employment opportunities.*

### 2.2.3 Procurement Strategy

Procurement Strategy documents vary in their context but they do provide a useful opportunity for mapping and then directing procurement processes in a contracting authority. To the extent that a procurement strategy makes a direct link with implementation of a local authority's Community Strategy, wording along the following lines is recommended:

*“The Council will seek to implement its aims as stated in its Sustainable Community Strategy of securing skills and employability and equal opportunities in employment, and maximising opportunities for small and medium-sized enterprises. This will be achieved on a case by case basis by:*

- *early consideration of how the procurement process can contribute to these objectives;*
- *ensuring that requirements within pre-qualification questionnaires are appropriate for the type and scale of contract being procured;*
- *including in its procurement and development contracts specifications which include, where appropriate, broad regeneration activities which enable the use of both mainstream and additional funding to achieve objectives such as the enhancement of local skills within a broad value for money framework.*

*“To this end the Council may require particular conditions concerning performance of the contract, provided that those conditions are compatible with UK and European law and provided that they are stated in the contract notice (where an EU procurement procedure is used) or in the contract documents. Contract performance conditions may relate in particular to social and environmental considerations.”*

## 2.3 Setting and Monitoring Targets

---

### 2.3.1 Introduction

Considerable thought needs to be given to the community benefit requirements that are included in the procurement process. The key questions in determining this should be:

- what are the priority community benefits that can be addressed through this particular commitment?
- what are the cost implications of including different community benefits, and different output targets, and how are these costs to be met?
- what community benefits can be included without putting at risk other key priorities e.g. affordability, quality and the timetable for completion?

- what is the best way of measuring the community benefit requirements – for both target setting and monitoring purposes?
- how will the client team manage monitoring information and who will undertake progress-chasing on the community benefit elements? and
- having considered the resources for progress chasing and monitoring, what is the minimum size of contracts where community benefit outcomes will be sought?

### 2.3.2 Appropriate Beneficiaries

Most contracts are complex and multi-faceted. TRT and supply-chain requirements add to this complexity and if they are going to receive due consideration – from both the contractor and the client officers – they need to be few in number and well focussed. There are four questions to ask:

- the inclusion of community benefit requirements is intended to help a target group of people/ organisations – the beneficiaries – but what are their needs?
- which of these needs can be met through this particular contract?
- are these needs best addressed through ‘how to buy’ or ‘what to buy’ approaches?
- is there a balance to be struck between the needs of the beneficiaries (e.g. for training and support) and the number of beneficiaries on the contract?

### 2.3.3 Cost Implications

The cost of incorporating community benefit requirements – to the contractors and therefore to the client – will vary with the requirements.

Key variables for TRT are:

- whether the beneficiaries have to be employed or just accommodated for work experience or a work trial;
- whether employed beneficiaries can be recruited from a scheme that includes a funding package, vocational training provisions, training management and trainee support;
- the degree of pre-site training that has been completed;
- access to industry training resources for apprentices and workforce training;
- the provision of good contacts or good quality information about the external resources that are available to help the contractor deliver the requirements; and
- the way the requirements are phrased: are the bidders given the opportunity to price the TRT elements – and if so is this the net cost after deducting grants etc. – or are they told that they must find any additional resources?

Good contractors would know about the training regimes in their industry and be in the best position to access the resources they need.

A key consideration in relation to opportunities for SMEs is additional risk and cost associated with identifying and managing a local supply-chain. This can be offset through the use of local

databases that include a profile of the company.

In relation to SME-friendly procurement it is important to avoid simplistic assumptions that bigger contracts deliver better value. The ‘Glover Report’<sup>4</sup> identified the following key benefits that increasing the opportunities for SMEs is expected to bring:

- increased numbers of good quality firms in the market (in part achieved by enabling micro and small firms to grow incrementally): competition will control prices and promote quality;
- innovation and a focus on the client’s needs: SMEs are reputed to be better at this;
- user focus: the staff of local providers (especially social enterprises) are likely to be drawn from the communities in which they are working and therefore be more understanding of the needs of service users e.g. in social welfare and housing provision;
- greater leverage for the purchaser: a contract will form a larger part of the workload of an SME;
- easier contract management: although large contracts may produce savings at the procurement stage some of these may be lost later because it is difficult for the client to manage a large and potentially diverse contract.

The above ‘benefits’ take no account of the impacts on the local economy of using local businesses – including SMEs - rather than non-local firms, perhaps assessed by a ‘local multiplier’ or ‘social return on investment’ calculation. This draws attention to the importance of assessing cost against the requirements of the contract. If these include community benefits then it would be inappropriate to award a contract that offers a lower cost but for a reduced delivery of the community benefits.

However, even without these specified community benefits there appears to be a rationale for considering wider impacts in assessing value for money:

*Government policy is that value for money must be assessed over the whole lifetime of the project ... estimating costs and benefits to society as a whole, not simply those directly relevant to the purchaser – e.g. environmental impact – as set out in the Treasury’s Green Book.<sup>5</sup>*

The above statement demonstrates that VfM is not just judged on the specification as it benefits the purchaser, but also the benefits to the wider society.

### 2.3.4 Setting Targets for TRT

To get acceptance of TRT targets it is important that members of the procurement team are involved in setting them. This will help them assess the risk to other key requirements like

---

4 The “Glover Report” - Accelerating the SME economic engine: through transparent, simple and strategic procurement - HM Treasury 2008

5 HM Treasury. Simple guide to value for money and sustainability. March 2007. [http://www.hm-treasury.gov.uk/data\\_greenbook\\_money\\_sustainability.htm](http://www.hm-treasury.gov.uk/data_greenbook_money_sustainability.htm)

quality, timely completion and cost. The Davis Langdon Skills Forecasting Model has been developed for public bodies in North East England to help them in setting targets for different types and scale of works.

However, the target then needs to take account of some other matters. It is useful to estimate the numbers of likely beneficiaries and then ask:

- how do these numbers relate to the numbers of people from the target communities that will want to be engaged in construction training and employment? and
- are there the supply-side resources to enable contractors to deliver this volume and type of output?

After considering these questions it might be appropriate to increase or decrease the targets by changing the 'percentage trainee' figure in the Skills Forecasting Model.

It is important to negotiate the targets with the procurement team, with the actual target being set towards the high end of the range they think is achievable alongside the other requirements of the contract. However, it is also important to challenge simple assumptions about the capacity of the beneficiaries. They potentially include people with a wide range of capacities. Targeting people with a low initial capacity (and then supplementing this with training and support) is one variable in setting the targets. It is not the only way of implementing TRT.

It aids the adoption and delivery of community benefit requirements if these requirements can be specified in a clear way and be easily monitored. Community benefit requirements have to be verifiable to be permitted under EU law. Numerical targets are the easiest to monitor.

The examples in the Appendices demonstrate a range of ways of setting targets for TRT:

- a percentage of the total labour time required to deliver the contract;
- a specified number of beneficiaries (for example, employees, trainees, work placements);
- a specified number of weeks of engagement in the contract for beneficiaries;
- a requirement that all opportunities be made available to named agencies; and/or
- a specified number of beneficiary-weeks per a set figure in contract value.

The Skills Forecasting Model is likely to be a key tool in setting targets, and this uses a percentage of person-weeks as the way of forecasting the potential of a site and setting the targets to be achieved. This relies on an estimate of the value of the site works. This should be readily available where the surveyors for the development are working with the TRT team, but may be more difficult to obtain in relation to a private development that is subject to a development agreement.

However, the selection of the measures used should be influenced by the context. For example, the Stirling Western Access Road in Scotland was a contract of limited duration (26 weeks) and value (about £1.3m) and the client wanted work placements for recruits that would go through

a bespoke pre-site training programme. They calculated the capacity of the site – negotiating this with the procurement team – and specified that four beneficiaries should receive a total of 52 weeks' site work experience. In contrast, and also from a Scottish example, Glasgow Housing Association tendered for framework contracts where the actual volume of work to be delivered by each contractor was not known. In this context the targets had to be set in relation to variable that would become known. They set the trainee target (their primary requirement) at 10% of the time required to deliver all of the works, plus 100% of vacancies to be notified to named local agencies.

### 2.3.5 Setting Targets for SME Opportunities

Compared with potential 'new entrant trainees' there may be relatively few businesses with the capacity to meet a contractor's requirements in any named area. And those that do exist may have a business model that makes them inappropriate or too expensive, or they may be at full capacity. This makes it difficult to set absolute targets for SME involvement. In this context the best option may be to:

- request a method statement on how the contractor intends to identify potential SME suppliers, and in particular those from within the target area;
- ask the contractor to set a target for the value (or percentage of contract value) that they hope to offer to suppliers from within the target area;
- require quarterly outcome reports that include information on the steps that have been taken, the number of target SMEs that have been invited to submit prices, and the number and total value of contracts awarded.

Over time it is possible that patterns and benchmarks can be identified that will allow better consideration of the method statements, the number of target suppliers that are involved, and the percentage of contract value that goes to these suppliers.

One issue with using 'percentage of contract value' as a measure is that national contractors and suppliers may have or establish local subsidiaries that are SMEs that are able to deliver some or all of the contract. For example, a subsidiary with less than 10 employees (i.e. a micro-enterprise) could manage the delivery of £500m in contract value. The definition of an SME could address this by excluding subsidiaries of the main contractor.

### 2.3.6 Setting Targets for Local Economic Benefits

While it would be possible to define a target for the value or percentage of value of a contract that should be go into a local economy (best defined by a set of postcodes) the mechanisms that a contractor would need to use to achieve this would be TRT and the award of sub-contracts and supply contracts to firms based in the area and employing a significant number of local residents.

It could be argued that setting a target value to be delivered to the local economy will give maximum flexibility to contractors to devise a means of doing this. On the other hand some

otherwise good contractors may struggle to understand how to deliver local economic benefit and might find it easier to understand more direct requirements like TRT and supply-chain requirements. Furthermore, it may be necessary to name local agencies that provide access to the target workforce or target supply-chain in order to provide an equal opportunity for non-local bidders. Perhaps the biggest problem with allowing contractors to decide how they will benefit the local economy is that the contracting authority will struggle to accurately compare and score proposals from bidders where these may be widely different in nature.

In this context the key element of targets for local economic benefit may be in the way monitoring information is specified and collected. There are measures like 'LM3' and 'social return on investment' that could be included as contract requirements. However, the operation of these may require a level of specialist knowledge that could not be expected of a contractor – and especially SMEs – so it may be better to either ask for information that will enable the client to assess local economic impacts for itself, or else stipulate that the contractor must facilitate research on these impacts where this is commissioned by the client.

Possible requirements related to local economic impact and related monitoring is included here as Appendix 3.

### 2.3.7 Monitoring & Progress-chasing

At the time when targets are set it is important to consider how outcomes will be monitored and how information will be used. In a small one-off contract like the Stirling example above, it is relatively easy to monitor the outcome for the four to eight beneficiaries, each of whom is known to the client's team. For an extensive programme of works the issue of monitoring is of quite a different order and may require use of a bespoke database system that produces management reports on overall performance and the performance of each contractor.

A key lesson is that the arrangements for dealing with monitoring data need to be a consideration in the choice of targets and the specification of the monitoring requirements in the contract.

In North East England, as part of the TRT pilot, an IT-based job-matching and beneficiary tracking programme is being adopted (the Hanlon System).

### 2.3.8 A Systems Response – The Process Map

There will be benefits in adopting a systematic approach to incorporating TRT and other community benefits. These include:

- implementing an approach that ensures compliance with procurement frameworks and good practice: for example ensuring that the contract notices always include the wording that will allow community benefit requirements to be included as a core requirement;
- the procurement team will develop skills in setting appropriate targets (for example using the Skills Forecasting Model) and scoring responses in the award process;

- an appropriate output monitoring and reporting arrangement is set up and resourced (for example using the Hanlon System); and
- external funding and services are available so that contractors are better able to deliver the requirements at little cost to the client.

To facilitate this a Process Map has been designed to work with this Toolkit.

## 2.4 Procurement Process

---

### 2.4.1 Market Dialogue

To understand the opportunities and potential benefits of including TRT requirements and/or using a SME-friendly procurement approach – and what this approach should be – it may be necessary to obtain information on:

- existing training programmes and funding regimes being used by potential contractors;
- the likely response of contractors if required to operate a targeted and perhaps extended training regime;
- SMEs that operate within the travel-to work area of the investment site(s), including contractors, manufacturers (e.g. kitchen unit and window / door suppliers) and service providers (e.g. professional, cleaning, environment etc);
- Perceived and actual barriers to participation of these SMEs in the tendering process and/or the supply chain to the main contractor.

Some of this information may already be available within the organisation or in partner organisations.

### 2.4.2 Business Case

To be able to justify a business case fully, a contracting authority should draft a high-level definition of its project requirements to ensure that there is a clear and agreed understanding of the business goals and of what is required of contractors to be able to meet those goals. As a part of this process a contracting authority should assess the extent to which the procurement requires the achievement of community benefits and work this into the business case for the procurement.

In preparing a business case a contracting authority must consider many issues including:

- ensuring that financial provisions are made for the entire project, including social outcomes such as training needs;
- considering the 'how to buy' options available to determine the most appropriate way to achieve the objects of the procurement;
- identifying who the beneficiaries of the community benefits will be; and

- confirming that documents adequately support the proposed scope of the procurement (for example, a local authority's Community Strategy and Best Value Performance Plan or Improvement Plan).

Once a business case has been developed, a contracting authority should be able to appreciate fully all the issues involved and what is required of a contractor. At this stage it can consider a range of 'how to buy' issues. Will the objectives of the procurement – including community benefits – best be achieved by, for example, procuring a large contract that includes a range of community benefits as core requirements, or perhaps by dividing the contract into 'lots' or appointing a number of contractors to a framework and then issuing 'call-off' contracts of varying sizes so that targeted SMEs have an increased opportunity to obtain work. The called-off contracts may also include TRT requirements.

There may be circumstances where the purchaser needs to aggregate works to comply with the EU procurement rules (see Resource 2B, Section 6.3.1). However, by using 'lots' and frameworks the procurer can 'disaggregate' the contract at the delivery stage.

One factor that may influence the choice of contract size is the capacity of the purchaser to manage a larger number of smaller contracts. This may overlook the fact that in many cases the cost of a large contract includes a significant element of supply-chain management. Indeed, because profit is being paid on the cost of this management function the cost may be higher than the in-house management of a range of smaller suppliers. The latter are more likely to be local and employ local residents, and insofar as they recruit apprentices and trainees they will find it easier to complete their training commitment since subcontractors and suppliers are likely to be 'local'.

Preparation of the business case may entail a soft market-testing exercise to scope with potential contractors the way the requirements will be procured and the level of community benefits that are achievable.

Once a contracting authority has prepared its case for a procurement, it must be able to confirm that the business case is robust and feasible. For social considerations this will mean ensuring that:

- it is sufficient to achieve the contracting authority's objectives (including any social or economic and regeneration goals); and
- the whole project is affordable: in relation to local socio-economic objectives an assessment of the supply-side and facilitation resources available from partner agencies to help deliver the requirements will be important.

A contracting authority must also ensure that all of its social objectives, such as TRT and supply-chain requirements, can be quantified and measured (see 2.3 above). This will assist the contracting authority in establishing that the TRT and supply-chain aspects of the contract represent value for money.

### 2.4.3 Official Journal of the European Union (OJEU) Contract Notice

The use of social considerations in contract conditions must be mentioned in any OJEU contract notice by the contracting authority. The following model wording is suggested, under the section in the OJEU contract notice headed 'Additional Information':

*“Under this [procurement / project] the [contractor / developer] is required to participate actively in the economic and social regeneration of the locality of and surrounding the place of delivery for the [procurement / project]. Accordingly contract performance conditions may relate in particular to social and environmental considerations.”*

OR

*“Conditions relating to the environmental and social requirements of the contracting authority may be included in this contract”.*

### 2.4.4 Pre-qualification Questionnaire (PQQ)

In any PQQ the following questions can be used in the section of the questionnaire that assesses technical capacity and ability:

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

- *generating employment and training opportunities for long-term unemployed people;*
- *providing training opportunities for young people;*
- *promoting supply-chain opportunities to new and small enterprises, including those based in and around the area where the contract is being delivered;*
- *the development of trade skills in your existing workforce; and*
- *equal opportunities recruitment procedures.*

*What was your exact involvement in each of the above activities?*

*Which of the examples you have cited have been more successful, and which have been less successful, and why?”*

Where there is a commitment to SME-friendly procurement there should also be a careful review of the questions included in the PQQ to remove unnecessary barriers to the participation of SMEs. This could include:

- taking account of experience that is outside of the public sector;
- ensuring that threshold values for participation are appropriate to the size of contracts e.g. turnover and insurance cover;
- taking into account actual experience as an alternative to formal accreditation or membership of trade organisations as a way of assessing capability;

- including questions relating to the delivery of TRT and the use of targeted supply chains where these are part of the core requirements or contract conditions: these are areas where SMEs and social enterprises may have particular strengths.

#### 2.4.5 Specification

The specification sets out the detailed requirements for the contract, including the community benefits. It is important to consider what community benefits are appropriate for inclusion in the contract on a case by case basis (ideally in the business case). However a variety of model specifications are included as Appendices 1-5.

While the details will vary from contract to contract there are a number of common elements that need to be included in all 'community benefit' specifications. These include:

- some reference to the policy and legal underpinning for the requirements;
- measurable performance indicators either within the specification or in an addendum, relating to:
  - the required outputs, and/or
  - a recruitment process that has to be followed (e.g. for site vacancies);
- monitoring and performance review requirements; and
- a disclaimer to protect the client from 'claims' relating to any supply-side interventions they make.

As with all other elements of the specification, care will need to be taken in determining what training and employment (or wider community benefit) requirements are appropriate and deliverable. These need to be drafted into clauses that are unambiguous and provide a 'level playing field' in the tendering process for contractors.

A key element of achieving this 'level playing field' may be the availability of supply-side agencies that can ensure equal access to appropriate trainees, employees and small businesses for contractors/suppliers, wherever the latter are based, and whatever their size.

#### 2.4.6 Award Process

Where the community benefits are part of the subject of the contract (as set out in the specification) then they can be taken into account in the award process. This typically happens by giving this element some weighting in the scoring of the tender, as a part of the 'quality' score. However, where the community benefits are not included in the specification but are merely contract conditions then they are considered 'secondary requirements' and should not be scored and considered in the contract award decision.

Where the community benefits are included in the specification it is good practice to ask bidders to submit with their tender a method statement setting out how they will achieve these requirements. This is then evaluated and scored, and this score forms part of the qualitative assessment (score) for the tender. A key benefit of this approach is that it ensures that the bidder gives due consideration to the community benefits when they are preparing their tender. Where the requirements are not core elements of the contract, the method statements should be disregarded in the award process but can be used in pre-appointment clarification where implementation of the requirements will be a contract condition.

A good approach to the scoring of social requirements is to use a scoring framework that identifies:

- the subjects where a response from the bidder was expected, with each subject given a weighting (number of points); and
- the types of actions that were expected to be offered under each subject, with each action then being given a weighting – a breakdown of the points available for that ‘subject’.

This scoring framework can be tested by a purchaser’s evaluation team and then used to score each tender submitted. The resulting scores are then incorporated into, say, a 30% ‘quality’ element of the evaluation, which is then combined, for example, with the remaining 70% price element of the evaluation.

The weighting given to community benefit elements should reflect the importance given to them by the purchaser. It should not be disproportionate: for example, if the community benefits are one of six ‘quality’ elements that together provide 30% of the score, then a 5% weighting for community benefits would be appropriate, and probably sufficient to obtain the bidders’ attention.

This approach should use the specialist knowledge and skills of the contracting authority’s training and employment officers and procurement officers to develop a robust and fair means of evaluating method statements.

It is useful to provide pro-forma method statements to ensure that all bidders answer the same questions and provide the same core information. This helps ensure a level playing field is put in place between bidders and reinforces the message that these are not voluntary or “best endeavours” elements of the contract, but contractual requirements for a core aspect of the contract being procured.

#### 2.4.7 Contract Conditions

Specific contract conditions can be developed on a project by project basis. In procurement processes that allow scope for negotiation (perhaps based on a service delivery plan or method statement) specific clauses can be incorporated into contract documentation to tie the contractor / developer to specific targets and outcomes.

The model clauses in Appendix 7 can be used as a starting position for all procurements, including those covered by the EU procurement rules. They are drafted on the basis that the contractor will have supplied a service delivery plan or method statement satisfactory to the procurer, concerning how it will generate employment opportunities.

## 2.5 Champion: the critical component

---

A key element of the recommended approach is a champion for TRT and targeted supply-chain opportunities who knows what can be expected and routinely supports the work of the procurement team and then works with the contractors and their 'community benefits supply chain' to ensure that the requirements are met. This Champion may serve a single LA or could work on a regional or sub-regional basis.

The decision to include TRT requirements (and what to include and at what scale) will rest with the officers of the client body. Procurement officers, internal or external, should advise but will not make the final decision. However procurement officers may be influential in raising the subject with the client officers, especially if it is a corporate policy that they should do so.

The key issue in obtaining leverage over contracts is therefore the support of the client officers. This will take time to achieve and needs to be approached systematically, prioritising:

- the purchasers with the largest annual expenditure on appropriate works: those that are most suitable for trainees and new entrants;
- those with 'term contracts' being re-tendered, since these can provide longevity; and
- those that have the closest policy fit e.g. neighbourhood regeneration and housing.

It will take time to access the right person and win their support. It will be necessary to address legitimate concerns about the potential impact on cost, quality, timetables, and contract monitoring and management. It will be important for the champion to focus efforts on the most willing participants, and then use success with these partners to obtain the interest of other purchasers. It is also important to reintroduce the approach when staff change so that the system doesn't decay over time.

Mutual benefit is an important outcome for most purchasers. This might include addressing concerns about the availability of skills to carry out and then maintain their works, or the opportunity to achieve additional policy outcomes at no additional cost to their budgets.

The task of gaining the goodwill of purchasers should not be underestimated.

## 3. *Development Agreements and Property Sales*

### 3.1 Introduction

---

Public bodies like local authorities and Urban Regeneration Companies (URCs) frequently enter into agreements with third parties (for example, private sector development companies and housing providers) to undertake the development of a site or neighbourhood. Typical examples would be the development of commercial or mixed-use sites after public sector clearance, decontamination, reclamation and 'land assembly', or the sale of social housing sites for redevelopment with a mix of affordable housing. These bodies also dispose of property through sales, without a development agreement. In these situations the building contracts and end-user leases (in relation to commercial property) will be issued by the new developer, not by the public body. In some cases the party to the initial contract with the public body will sell on their interest in the site to other developers, or they may be restructured or taken over.

There will be occasions where the public body that owns the land or undertakes the initial investment needed to make it suitable for development will wish to ensure that its social priorities (for example, equal opportunities and TRT that will bring economic opportunities for disadvantaged communities) are delivered by the developers and end-users of the sites. The disposing body can use a development agreement to tie the developers and/or subsequent site occupiers to achieving the community benefits that they regard as necessary. However, where the disposing body is a Planning Authority it could consider using a Planning Obligation (see Resource 3) to enforce its TRT and supply-chain requirements since these are automatically attached to the title of the property and therefore transfer to new owners. This is not the case for development agreements.

As with planning agreements (see Resource 3) a key concern in drafting the requirements for a development agreement is to provide durability in a context where there can often be no assumption about who will develop and who will occupy the development site, or when the development will go ahead.

### 3.2 Development Agreements

---

Development agreements are contracts. Most of the obligations are fairly short term and will be fulfilled by the original landowner and developer. Unless the contract provides otherwise the obligations in the contract will only be enforceable between the two original contracting parties.<sup>6</sup>

---

<sup>6</sup> The old general rule that only a party to a contract can sue on it ('Privity of Contract') is now reversed by the Contracts (Rights of Third Parties) Act 1999, but in practice most contracts reinstate the old rule. It follows that strangers to a contract cannot have obligations imposed on them to which they are not parties.

Problems of enforcement can arise where one party can dispose of their contractual obligations by way of assignment or where one contracting party gets another to perform their obligations, for example through a subcontractor.

### 3.3 The Problem of “Positive Covenants”

---

Most development agreements will have obligations in them dealing with the disposal of land whether by outright sale or by lease.

If a public body is selling land and wants to include a ‘community benefit’ covenant it faces a problem where these covenants are positive: as a rule of thumb a positive covenant is a covenant which requires someone to spend some money, which may be the case for ‘community benefits’. The general rule is that the burden of a positive covenant will not bind anybody who subsequently buys that land.

In this context there are three recommended approaches to achieving community benefits through development agreements and land disposals.

#### 3.3.1 Retaining the Freehold

One approach to this issue is that the freeholder enters into a conditional contract to sell the land, but retains their freehold interest until the community benefits have been achieved. In this approach the community benefit requirements could be included in the lease with the developer/tenant.

The easiest approach would be to include the provisions in a separate schedule in the lease and to ensure there are the usual covenants not to assign sublet or charge the property (or part) without the consent of the freeholder landlord (not to be unreasonably withheld or delayed) and with the condition (among others) that the assignee/subtenant enters into direct covenants to observe the terms of the lease.<sup>7</sup>

#### 3.3.2 New Covenants Required

A second approach is for the contract to sell the land/buildings to include:

- a requirement that each prospective purchaser enter into a Deed of Covenant that includes the community benefit requirements; and
- a requirement that the first purchaser makes a joint application (with the vendor) to the Land

---

<sup>7</sup> Note: there is a fine legal point that if the lease contained a provision that the Landlord may impose a condition on giving any consent to any assignment/sublease that the assignee/subtenant entered into a separate deed of covenant containing target recruitment etc the courts might well construe this as the Landlord requiring a premium for giving its consent to an assignment / sublease, which would be unlawful. The approach outlined above has the benefit therefore of being simpler and lawful.

Registry to enter a restriction that no disposition is to be registered without the freeholder having certified that it has received an executed Deed of Covenant (relating to the community benefits) in its favour.

This arrangement means that no transfer or mortgage or lease of more than 7 years relating to the property can be registered with the Land Registry without the new owner/tenant making the required commitment to deliver the community benefits (leases of under 7 years do not require substantial registration at the Land Registry).

An approach for incorporating community benefits in a development agreement in this context is included in Appendix 6. In developing this approach consideration has been given to the likely concerns of development officers about the impact of the requirements on private investors. In practice the impact will vary from site to site in relation to market conditions. However, a key requirement is that potential investors:

- gain early knowledge of the community benefits requirements so that they can build the impact of these into their plans; and
- can calculate any additional costs and risks, so that they can build these into their budgets and take account of these when negotiating.

Some development officers may feel that the TRT requirements will reduce the development returns to the public sector when it is disposing of property. However, 'the returns' must be judged against the aims and policies of the public sector development body. If the implicit or explicit aim is to regenerate the local economy and provide opportunities for disadvantaged local residents then the acceptance of a lower rate of return in order to achieve these outcomes is rational and legitimate.

### **3.3.3 Measures for Non-Performance**

A problem with each of the above approaches is that, for construction activities, the obligation cannot be met once the buildings are constructed. It may therefore necessary to introduce some measures for non-performance that can be applied during the construction period. Some development officers will be wary of requirements that could deter investment so careful consideration needs to be given to how any 'deposit-sums' will operate.

In Appendix 6 the developer is required to deposit a 'deposit-sum' with the local authority that is repaid as and when the trainee-weeks are delivered. Since the object is to obtain employment opportunities and training outcomes from the construction site, the deposit-sum needs to be set at a level where a developer is going to choose to provide the opportunities rather than just pay the money. The latter may be their first instinct.

In many cases housing sites are developed in phases (and the land transferred to the developer in phases) and the deposit-sum can be paid a phase at a time. This limits the sum that the developer

has to pay out at the commencement of the development when their cash-flow is most difficult.

Under the model in Appendix 4 it would be for the developer to recover any un-claimed bond payment from a subsequent owner if they decided to sell some or all of the site prior to development.

### 3.4 Organising for Intervention

---

As with procurement, a critical aspect of using development agreements to achieve TRT is changing existing practice and obtaining the goodwill of the officers' team involved in the disposal. The 'right of access' to these contracts will depend to a considerable degree on:

- a clear policy at the corporate level and in the development brief for the site to be disposed of;
- the opportunity to engage in discussion of the disposal and make the case for the inclusion of TRT requirements;
- being able to offer an approach that will maximise added value because the outcomes can be achieved at little cost to the developer, so that they have minimal impact on the capital receipt received for the property – this relies on the availability of good supply-side arrangements.

## 4. *Supply-side Actions*

### 4.1 Importance

---

The 'supply-side actions' include:

- for TRT: training provisions including trainee management and support, recruitment and job-matching provisions, access to funding for training;
- for SME opportunities: a register of small businesses, social enterprises and other 'additional suppliers' within the target areas, and providing these businesses with information, training and support to enable them to better bid for contract opportunities.

These arrangements are very important because:

- they can eliminate or very significantly reduce the cost of implementing the requirements: costs that are otherwise borne by the client for the works or the vendor of property under a development agreement;
- the potential that the requirements can be delivered in a cost-neutral way makes it much easier to obtain support for the proposals from 'the gatekeepers' to the contracts and agreements;
- for public procurement, ensuring that the recruitment of workers, trainees or additional suppliers is done through agencies that focus on recruitment from local communities provides a means of targeting the benefits without specifying 'local recruitment' or 'local SMEs'; and
- good supply-chains for trainees, workers and SMEs from the target communities will make it easier for contractors to deliver their obligations, and this will improve outcomes.

The availability of supply-side services should be one factor influencing the community benefit requirements that are put into contracts and agreements. To specify outcomes for which there are poor supply-side arrangements and therefore potentially greater cost implications will make it more difficult to obtain 'gatekeeper' support for the requirements and less likely that the contractor will succeed in delivering the requirements.

### 4.2 Matching Opportunity to Need – TRT

---

If the policy objective is 'social inclusion' then it is important to provide a route for non-employed people without recent, relevant, work experience to get access to the job and training opportunities. It is important to ensure that each 'step on the ladder' between non-employment and employment is in place and resourced. Table 1 provides an example of what could be provided to assist people become job-ready.

Table 1 Steps into Work

Steps on the ladder	Possible Actions
Initial recruitment and assessment	Outreach work. Taster sessions. Work with schools. Skill assessments. Profiling possible supply-chain companies, including their speciality, capacity and financial strength.
Pre-recruitment training	Short-course training, including bespoke training for employers needs. College NVQ 1 courses. Intermediate labour market employment and training.
Job-matching and Supply-chain contacts	Pre-selecting candidates for employers to select from. Work trials. Support for candidates coming off benefits. Support for employer and employee to sustain the job. Providing supply-chain contacts to contractors.
Employment	Continued in-service training. Training management services. Provision of training and accreditation. Grants to cover time off for continued training (e.g. from CITB). Support for employer and employee to sustain the job.
Progressions	Facilitating the placement of trainees with new employers if the first employment is not providing the required training or experience, or if it ceases. Advice on self-employment.

For longer-term developments and contracts the durability of the supply-side services can be important. There may be an expectation that supply-side services should be provided by other public bodies like the Learning and Skills Council or Jobcentre Plus and their provider networks, using public resources. However, as a 'supply-chain' to the contractor/developer they may be very unstable because their policies and programmes change frequently, often at relatively short notice, in response to regional or national policy changes. The latter may reflect changing political attitudes to training and unemployment.

In this context a public body seeking to implement the contractual approach may need to take a lead in the provision of supply-side services. It can work in partnership with other public agencies, but it must ensure that the step-ladder to employment is maintained for its 'priority communities' and that the services are employer-focussed. Part of this role will be to put together additional funding to 'top-up' and underwrite the services provided from time to time by other public agencies.

### 4.3 Maximising local SME participation

To maximise the participation of local firms in contracts associated with the development may require some or all of the following:

- increased information on opportunities: advertising contract opportunities through local newspapers, websites and procurement portals, and through 'meet the buyer' events;
- pruning and standardising the pre-qualification information requirements;
- avoiding unnecessary aggregation of requirements into larger contracts, and disaggregating

- the delivery of the requirements through the use of 'lots' and frameworks with smaller call-off contracts;
- encouraging main contractors to advertise their sub-contract and supply opportunities e.g. through newspapers and 'meet the buyer' events;
- helping local firms to access 'supplier development support': specialist one-to-one support to help the company become better managed, more cost-efficient and better equipped for a competitive tendering process.

## 4.4 Facilitation

---

Success in achieving TRT and supply-chain outcomes relies on good facilitation at both the tender/award stage and the contract delivery stage. The facilitator may be from the local authority's economic development team or a specialist body operating on a local or sub-regional basis. This is where the commitment is likely to be strongest: there is knowledge of what training and recruitment outcomes are required, and there is knowledge and contact with the supply-side (for example, training, job-matching and supplier-development agencies).

It is also important that the facilitator has experience of the relevant sector - e.g. construction: its contracting processes and training arrangements.

There are six elements to the facilitation role:

- prior to the tendering process, working with the client and the procurement team to identify the approach to incorporating TRT and SME opportunities, helping them identify appropriate targets, and helping them adopt/develop appropriate wording for the documents;
- evaluating information on community benefits provided by potential bidders e.g. in response to a pre-qualification questionnaire and inputting this into the selection of the firms invited to tender;
- during the tender period to provide briefing to tenderers on the community benefit requirements and supply-side resources in an even-handed way;
- setting up a scoring framework for the bidders' responses to the community benefit requirements (for example, the Method Statements), undertaking a scoring of these elements of the tenders and taking part in the award process;
- progress-chasing when the contractor starts on site to make sure that there is a good relationship with supply-side agencies and that action on TRT and SME opportunities starts early; and
- routinely receiving and responding to monitoring information on behalf of the client department, including attending site meetings to discuss any problems with the TRT and SME-friendly delivery.

From the above list it can be seen that the lack of the facilitation resources could limit the scope for the proper delivery of community benefits in an authority.

The facilitation role needs to expand as the number of operational projects/contracts increases. It

is likely that one facilitator could eventually manage 10-15 contracts with some administrative support. To maximise the benefits it is important to target the facilitation resources at large and longer-running contracts. However, the capacity will be significantly reduced if the facilitator also has to do extensive work with training and job-matching agencies to ensure the availability of suitable services for the contractors.

To reiterate, facilitation is an essential service that the economic development department or an external agency will need to provide to the client/developer and the procurement team to enable them to extend their core requirements to include TRT and other community benefits.

## 4.5 Monitoring, Verification & Reporting

---

Monitoring and verification are critical issues when TRT and SME requirements are included as contract conditions. It is important for the client to know what is being delivered, especially where they are paying for the outcomes.

Monitoring refers to the supply of information on performance. Verification aims to provide the client with a means of checking the monitoring information.

In a procurement context there is no point in specifying outcomes that cannot and will not be monitored and verified. This risks diverting the effort of the client team and the contractor for little measurable gain, and probably little actual gain. So the decision about what requirements to include in the specification must be influenced by the systems and resources available for the monitoring and verification of outcomes. This requires choices to be made, and the choices depend on priorities. It is better to include a few requirements and know these are being delivered than to be over-sophisticated in setting targets and then not be able to monitor and verify the outcomes.

It is important that the client or their agent takes action based on the monitoring information – or the lack of it. Contractors and suppliers will respond to the priority that their client gives to different elements of the contract. There is a degree of attention to community benefit requirements that will be given by the client's team through site meetings etc., but this will be influenced by other concerns they have e.g. on quality or speed of progress etc. It is important that progress-chasing on TRT is done by a person for whom this is the main priority.

As indicated above, the facilitation of the approach set out in this Toolkit is quite labour-intensive. Improved value from this investment in facilitation will be achieved if the monitoring and verification system is electronic and fairly automatic. The development of a standardised monitoring and reporting system for the Region is well advanced and will add significantly to the efficiency of the TRT activities.

## 4.6 Facilitation and Support Services in NE England

---

Users of this Toolkit should contact the economic development team in the Local Authority in which they are operating to discuss the facilitation and support services that are available.

However, users and economic development teams should make sure that standard information on training, job-matching, local suppliers and the resources available to contractors (for each of these activities) is available to every bidder for each contract in which TRT and/or supply-chain requirements are included. Without this the procuring authority could be open to challenge for not operating in a way that creates a `level playing field` for local and non-local bidders: on the basis of European case-law the latter may be presumed to have less knowledge of local training provisions and no local firms in its supply-chain (see Resource 2B, Section 6.4).

The provision of current information on `supply-side` services and resources is not an option for economic development teams that are asking procurement colleagues to facilitate their work through the procurement process. It is vital.

## Appendix 1:

**Basic text for an Invitation to Tender or equivalent setting out TRT and supply-chain requirements for a contract. Some optional variations to this are included in appendices 3 to 5.**

### Targeted Recruitment & Training (TRT) and Supply-chain Opportunities

---

#### 1. Introduction

In pursuance of the information provided in the OJEU Notice that the Contractor is required to actively participate in the economic and social regeneration of the locality the [Contractor] [supplier] shall deliver the TRT and supply-chain requirements as set out below.

#### 2. The Requirements

2.1. [Contractor] [Suppliers] are required to submit a Targeted Recruitment and Training Method Statement with each valid tender, using the attached pro-forma, setting out how the following outcomes will be achieved [without cost] or [at minimum net cost] to the Employer.<sup>8</sup>

2.1.1 A minimum of [... person-weeks of employment] *or* [... person weeks of employment for each £1m in contract value] to be provided for a new entrant trainee recruited from a source agreed by the Employer where:

2.1.1.1 a person-week is the equivalent to one person being employed for 5 days either on the development site or on other sites with the agreement of the Employer;<sup>9</sup>

2.1.1.2 a new entrant trainee<sup>10</sup> is a school or college leaver, or an adult that has not been employed in the construction industry during the previous 6 months and who is undertaking training towards a qualification agreed by the Employer, or a 'new entrant trainee' employed by another contractor/supplier to the Employer whose contract of employment or apprenticeship agreement is being terminated and who is therefore seeking another position to complete their training period;

---

8 The contractor(s) appointed will be expected to cover some or all of the cost of the training requirements by accessing public sector and industry funding and by effectively managing the works/services so as to achieve good productivity from the trainees.

9 The Employer will expect transport to be to alternative sites to be provided where these are not within 5 miles of the site where the trainee is initially engaged.

10 A trainee could be registered as an apprentice with an industry recognised body (who can be counted as a 'new entrant' for up to [104] weeks) or a person that has a trainee contract or a contract of employment or self-employment that are not apprentices (who can be counted as a 'new entrant' for up to [52] weeks).

2.2. [Contractor] [Suppliers] must use their best endeavours to retain new entrant trainees for at least the full duration of their 'new trainee' period i.e. [104] weeks for apprentices and [52] weeks for other trainees and must notify the Employer 4 weeks in advance if a new trainee position cannot be maintained.

### 2.3. Recruitment

Every vacancy on site, including those with sub-contractors, is to be notified to agencies named by the Employer, and candidates identified by these agencies are to have an equality of opportunity in the selection process.

### 2.4. Unwaged work experience

The equivalent of 20% of the person-weeks identified under ...2.1 above are, in addition, to be made available as unwaged work experience opportunities. Some of these may not be utilised.

### 2.5. Remuneration

Trainees and recruits must, as a minimum, be paid in accordance with industry norms and must have terms and conditions of employment that are at least equivalent to those provided to workers that have equivalent skills and experience.

Employers are encouraged to increase the remuneration of trainees in line with their experience and productivity.

### 2.6. Supply-chain Opportunities

When requested by the Employer, to participate in initiatives to identify and nurture additional supply-chain organisations based in or around the area where the development is taking place.

### 2.7. Monitoring & Verification Information

2.7.1 Within 4 weeks of completion of each 13 week period following the commencement of each contract to provide the Employer with a Targeted Recruitment and Training Performance Statement setting out in relation to the period and the contract to date:

2.7.1.1 the numbers of weeks employment provided to each new entrant trainee, including those on sites outside of the contract where this is necessary to provide continuity of employment and training and where this has been agreed with the Employer;

2.7.1.2 a schedule showing for each contractor and sub-contractor:

2.7.1.2.1 the number of personnel starting on site in the period and cumulatively;

- 2.7.1.2.2 the number of vacancies notified to agencies named by the Employer,
- 2.7.1.2.3 the number of people engaged on site in any capacity that have their main residence in one of the following post-code areas ..... (*enter the relevant 3 or 4 digit postcodes*).
- 2.7.1.3 a schedule listing the firms invited to tender or price for subcontracts and supply contracts under 2.6 above and indicating which of these were successful;
- 2.7.1.4 the total value of sub-contract and supplies contracts that have been awarded to firms with a .....(*enter the relevant 3 or 4 digit*) post-code.
- 2.7.2 For verification purposes the following documentation will be required by the Employer using pro-forma documentation provided:
  - 2.7.2.1 a Trainee recruitment notification signed by the trainee to permit the provision of personal data to the Employer for contract monitoring purposes;
  - 2.7.2.2 a trainee transfer notification where a trainee is moved between sites, or between employers engaged in the development;
  - 2.7.2.3 a Trainee completion or termination notification.

### 3. [Contractor] [Supplier] and Sub-contractor Compliance

- 3.1. It is the [Contractor] [Suppliers] responsibility to develop a working method that will deliver the targeted recruitment and training requirements and supply-chain opportunities and related monitoring and verification data, and obtain the full co-operation of contractors and subcontractors in delivering these requirements.

### 4. Support

- 4.1. The inclusion of targeted recruitment and training and supply-chain requirements does not comprise or imply any promise on the part of the Employer or their agents to provide suitable trainees or labour. Any action taken by these bodies or their agents to broker relationships between the Contractor and local individuals/firms/agencies does not imply that they or their agents consider the individual/firm/agency as suitable for engagement by the Contractor. All recruitment, supervision and discipline responsibilities rest with the Contractor and Sub-contractors. Within this context the Employer will work with local agencies to help facilitate the

achievement of the recruitment and training requirements.

## **5. Targeted Recruitment & Training Method Statement**

- 5.1. Bidders are required to submit a completed Targeted Recruitment and Training Method Statement, using the pro-forma attached, with each valid tender.
- 5.2. Prior to completing the Method Statement bidders are advised to obtain the Local Economic Benefit Information Sheet from [.....]. This will give information on local training, job-matching and supplier development organisations and resources. All of these will operate an appropriate equal opportunities policy.

## Addendum 1 to Appendix 1

---

[.....] (enter the Employer's name)

### Pro-forma Targeted Recruitment & Training and Supply-chain Method Statement

Title of contract .....

Name of Company .....

Contact Name .....

Position .....

Telephone numbers .....

E-mail address .....

I confirm that this Method Statement sets out the actions that will be undertaken to ensure the achievement of the Employer's Targeted Recruitment & Training and supply-chain requirements. It is recognised that delivery of these requirements [are part of the subject of the contract and may be used in the award of the contract] [will be a condition of contract but will not be used in the award of the contract].

Signed .....

(Print Name) .....

Date .....

Prior to completing the Method Statement bidders are advised to obtain the Local Economic Benefit Information Sheet from [ ]. This will give information on local training, job-matching and supplier development organisations and resources. All of these will operate an appropriate equal opportunities policy.



## 2. Recruitment

What arrangements will you make to recruit apprentices and other trainees from agreed sources?

## 3. Support for Trainees

What arrangements will you make to provide mentoring and support for trainees and work placements to ensure maximum retention and achievement of industry accreditation?

## 4. Training Initiatives

What training initiatives would you seek to utilise, and with which organisations, to maximise achievement of the TRT requirements?

## 5. Notification of Vacancies

What arrangements will you make to notify all vacancies to Agencies named by the Employer and provide time for applications from these sources to be considered?

## 6. Contractors and sub-contractors

How will you obtain the co-operation of contractors and sub-contractors to ensure the delivery of the TRT and supply-chain requirements?

## 7. Information

How will you ensure that personal information on each 'new entrant trainee' can be provided to the Employer?

## 8. Management

Who will be responsible for the delivery of the TRT and supply-chain requirements on site and/or for the Company?

## 9. Other Information

Please provide here any additional information on how you would approach the implementation of the targeted recruitment and training and supply-chain requirements, including any innovative ideas.

## 10. Costs

Please complete Table 2 in relation to the resources required to deliver the TRT Requirements at [no cost] or [minimum net cost]. (see ...1 in the ITT)

Table 2: Summary of Targeted Recruitment & Training Resources

Cost Item	£	Basis of calculation
Management and administration		
Training costs		
Additional site costs		
Mentoring and support activities		
<b>Total cost</b>		
<b>Sources of Funding and other Resources</b>		
Industry training grants		
Existing company staff/overheads		
Trainee productivity		
Services from other external agencies		
<b>Total of additional resources</b>		
<b>Net Cost</b>		Difference between Total cost and Total of additional resources.

## Appendix 2: Options for Supply-chain Requirements

The following texts can be inserted in place of some of the requirements in Appendix 1 item 2.6.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on the local SME support providers and the contact for any available register of SMEs serving the target area. To avoid the risk of challenge under the EU procurement frameworks (see Resource 2B, Section 6) it is important that a suitable service is available.

### 2.6 SME-friendly Purchasing - Option 1

---

- 2.6.1 work with the [.....] (*add the name and contact details*) or a suitable alternative organisation agreed by the Employer to develop a programme of activities and support so as to maximise the provision of information on subcontract and supply opportunities to SMEs with a [... to ...] postcode and to maximize the number and competitiveness of bids in response to these opportunities from these SMEs.
- 2.6.2 Within four weeks of commencement of the contract to report on the actions that have been taken to provide information and contract opportunities to SMEs with a [... to ...] postcode, including a list setting out telephone and/or e-mail information for SMEs from the target area that have been involved in the activities in ...1.
- 2.6.3 One week prior to each [monthly contract review meeting] to provide to the client a report setting out the numbers of SMEs with a [... to ...] postcode that have been invited to tender / price for subcontract and supply work, the number of these that have been awarded a contract and the total value of these contracts. This should be reported for the latest period and the contract to date.

### 2.6 SME-friendly Purchasing - Option 2

---

#### 2.6 SME-friendly Purchasing

- 2.6.1 Provide a method statement setting out the steps that will be taken to procure that [10%] of the value of the contract is delivered by 'new suppliers' based in areas with a [... to ...] postcode, where 'new suppliers' are:

2.6.1.1 'enterprises with less than [ ] staff that are not a part of a larger company or group' and have not previously been engaged by a contractor that is engaging sub-contractors and suppliers; or

2.6.1.2 social enterprises or social firms that have not previously been engaged by a contractor that is engaging sub-contractors and suppliers.

2.6.2 One week prior to each [monthly contract review meeting] to provide a list of the names and contact details for 'new suppliers' identified under ...2.6.1 above in the period and the contract to date, and [the value of work awarded to each] *or* [the aggregate value awarded to these suppliers].

## Appendix 3: Options for Local Economic Development Requirements

The following texts can be inserted in place of some of the requirements in Appendix 1, item 2.6.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on the local SME support providers and the contact for any available register of SMEs serving the target area. To avoid the risk of challenge under the EU procurement frameworks it is important that a suitable service is available.

### 1. Option 1

---

#### 2.6 Local Economic Development

2.6.1 Use reasonable endeavours to support the economy in and around the 'target area' of delivery, defined as postcode areas commencing [... to ...] (*enter the first 3 or 4 digits of the post-codes*).

2.6.2 Undertake actions to maximise the supply-chain opportunities provided to SMEs that are based within the 'target area' other than a company that is part of the same group of companies as the tendering company.

2.6.3 Set an aspirational target for the percentage of the total contract value that will be delivered by SMEs based in the target area that are not a part of the same group as the tendering company;

2.6.4 One week prior to each [Employers site meeting] provide the following information

2.6.4.1 the numbers of SMEs with a [... to ...] postcode (other than those that are part of the same Group as the contractor) that have been invited to tender / price for sub-contract and supply work, the number of these that have been awarded a contract and the total value of these contracts;

2.6.4.2 a calculation of the value added to the area in and around the area of delivery of the contract from the use of supply-chains and the engagement by the main contractor of persons whose main residence is in this area.

2.6.5 when requested by the Employer, to facilitate research to establish the local multiplier impact

(LM3) and / or social return on investment related to the Employer's investment, including facilitating research with employees and the supply-chain to the contract.

**Also add to the Pro-forma Method Statement (as in Addendum 1 to Appendix 1) and then re-number subsequent items**

8. Local Economic Impacts

What is the aspirational target for the value of the contract to be delivered by SMEs based within the target area defined as post-code areas [... to ...] (*enter the first 3 or 4 digits of the post-codes*) other than a company that is part of the same group of companies as the tendering company, and what actions will be taken to maximise the achievement of this target?

## Appendix 4: Additional provisions for a deposit-sum approach

The following additional text should be included in Appendix 1 as 2.8 if a deposit-sum arrangement is required. This is an option for procurement contracts, but essential for development agreements as a way of sustaining delivery if the agreement is transferred to one or more other developers.

The deposit sum should be significant enough to encourage the recruitment of trainees but should not be unreasonably high. It can usefully be based on the cost of placing a trainee with employers on other sites that don't have a contractual commitment to recruit trainees. A figure between £65 and £100 per new trainee week has been used elsewhere.

On a long-term development the sum payable can be based on an annual TRT Method Statement or on project by project or phase by phase TRT Method Statements. Inflation should be added to the deposit sum.

The sum can be set as £x per trainee-week. Alternatively, the target number of trainee weeks can be calculated from the estimated value of the contract and the deposit-sum set out in the ITT. The latter is preferable since the obligation is very clear.

**Before using this text the Employer should identify how the deposit sums will be handled internally.**

### 2.8. Trainee Deposit-sums

2.8.1 [One week prior to Implementation to pay to the Employer a deposit sum of £... (X weeks @ £... per week) (*enter the figures*)] **or**

[One week prior to Implementation to pay to the Employer a deposit sum of £ [...] per new trainee week as required in the ITT [...] (*enter the reference*) and as set out in Table 1 in the TRT Method Statement.]

2.8.2 Within 6 weeks of receipt of each Targeted Recruitment and Training Performance Statement or receipt of acceptable supplementary information whichever is the later, the Employer will refund to the Contractor the deposit sum for each week of employment provided for a new entrant trainee in the period covered by the Performance Statement,

plus interest calculated on a daily basis at the current [ ] (*enter the name of the Bank*) Base Rate from the date of the deposit is lodged with the Employer to the date of repayment . The sums repaid cannot exceed the total deposit made to the payment date, plus interest accrued on the basis set out above.

- 2.8.3 Where the Contractor is not entitled to a full repayment of the deposit due to under-achievement they may submit with their Performance Statement a request for a discretionary repayment of some or all of the balance of the deposit. Repayment may be made by the Employer where they are satisfied that the Contractor used their best endeavours to achieve the targets. The employer must give a reply to this within 4 weeks of the date of receipt of the request.
- 2.8.4 Any deposit sums and related interest retained by the Employer after the expiry of [six/ twelve] months from the date of the most recent Performance Statement (*this should be two reporting periods*) will be used to support construction training initiatives in the area, provided always that the Employer has given 4 weeks' notice in writing to the Contractor that the remaining fund is to be used in this way.
- 2.8.5 The Contractor agrees to pay interest on sums due to the employer under clause 2.8.1 but not paid on the Specified Date<sup>11</sup> from the Specified Date until actual payment. The rate of interest shall be 4% above the..... (*enter the Bank name*) base rate from time to time.

## ***Appendix 5: Additions/Variations for a Framework Agreement and / or Group Purchasing or a Local Education Partnership***

The text set out in Appendix 1 should work for single procurements. However, increasingly there is a move to both framework agreements (where a contractor may receive several contracts over a period of time, some of which may overlap) and consortium buying (where there are a number of clients in the same geographic area using one or several contractors). In these contexts it is necessary to recognise the commitment of the suppliers to trainees recruited under existing contracts for the same Employer or consortium. This can be achieved through the revised texts provided below.

These variations may also be useful where a Local Education Partnership enters into contracts with the private sector partner to construct and manage a number of schools, on a project by project basis.

It should be noted that when the contracts are being procured the requirements in Appendix 1 and options set out in Appendices 2 and 3 can be used. The Method Statements set out in Addendum 1 below are additional to these and are completed after appointment.

The deposit-sum approach set out in Appendix 4 is compatible with this set of documents, with each Employer obtaining a deposit sum based on each project method statement. These would be pooled by the Employer to maintain a fund from which the repayments are made.

**Add the following text to 5 in Appendix 1 (amending to suit whichever of the two first paragraphs is selected):**

5.3 It will be a condition of contract that after appointment each contractor provides the following documents after discussion with..... (*enter the name of the supply-side intermediary or relevant representative of the Employer*) and consideration of any Local Economic Benefit Information Sheet that is made available:

5.3.1 an Annual Recruitment and Training Method Statement setting out how they will deliver the requirements set out in 2.1 to 2.6 above. This must be submitted to the Employer, using the pro-forma set out in Appendix ... (*enter the number*) within one month of appointment;

5.3.2 a Project Targeted Recruitment and Training Method Statement as part of each valid tender/ price submission setting out how they will deliver the requirements set out in 2.1 to 2.6 above. This must be submitted to the Employer, using the pro-forma set out in Appendix ... (*enter the number*).

**Addendum 1 to Appendix 5**

**This Method Statement is for use after appointment as a supplier and before any project under the framework/contract has been issued for pricing/tender. For consortium and group buying situations it could usefully be issued by the purchaser and then shared with each user in the group/consortium.**

[ ] (*enter the name of the consortium*)

**Contractor’s Annual Targeted Recruitment & Training Method Statement**

Period Covered - April 20[ ] to March 20[ ]

Name of Company .....

Name of Employer .....

Contract/Task Title/Description .....

Contact Name .....

Position .....

Telephone numbers .....

Email address .....

I confirm that this Method Statement sets out the actions that will be undertaken to ensure the achievement of the Employer’s targeted recruitment and training and supply-chain requirements. It is recognised that we may not be considered for the award of work unless a current TRT Method Statement is held on file by the Employer.

Signed .....

(Print Name) .....

Date .....

Ensure that information is provided in each of the following sections.

1. Who is responsible for the delivery of the targeted recruitment and training elements of the contract within your organisation?

Name .....

Position .....

Telephone .....

Email .....

2. What arrangements will you make for the recruitment of apprentices and other trainees from sources named by the Employer?

3. Which named sources will you use?

4. How will you organise the management and supervision of the works/services to ensure that the targeted recruitment and training requirements are fully delivered?

5. What steps will be taken to ensure subcontractor co-operation where this is necessary to fulfil the training requirements?

6. Who will be responsible for submitting Trainee Registration Forms and Transfer and Termination Forms? (see ...2.6 of the Employers' Requirements)

Name .....

Position .....

Tel .....

Email .....

7. What arrangements will you make to provide mentoring and support to new entrant trainees and work experience placements, to ensure maximum achievement of industry accreditation and to ensure that the quality requirements for the Project are not compromised? How will workplace recording and on-site assessment be provided?

8. What arrangements will you make to ensure that trainees and apprentices are paid according to Industry norms and that their remuneration increases in line with their experience and productivity?

9. How will you fund the targeted recruitment and training activities in the next year to minimise the cost to Employers?
  
10. What will the net cost per new trainee week be (after receiving grants and external resources)?  
£ .....
  
11. Please provide any other information about your commitment and the approach and actions you intend to take to ensure the delivery of the targeted training requirements.

This Method Statement is to be submitted to [ ] (*enter the name of the person representing the consortium*) at least 4 weeks prior to commencement of the first contract under the framework, and renewed by each 31<sup>st</sup> March thereafter. Where a Method Statement is considered to be incomplete or otherwise unsatisfactory the contractors will be advised through a meeting within four weeks of submission and will be given 2 weeks to submit a revised Statement. If the latter is not received or is still inadequate a Rectification Notice will be issued and kept in place until a satisfactory Method Statement has been received. The existence of a current Rectification Notice may be a consideration when allocating works contracts.

**Addendum 2 to Appendix 5**

**This Method statement should be required with each pricing or tender submission submitted for a project or task under the framework contract. Where TRT is part of the subject of the framework contracts this method statement may be scored and used in the selection of the contractor.**

..... (*enter the consortium name*)

**Pro-forma Project Targeted Recruitment & Training Method Statement**

Name of Company .....

Name of Employer .....

Contract/Task Title/Description .....

Contact Name .....

Position .....

Telephone number(s) .....

Email address .....

I confirm that this Method Statement sets out the actions that will be undertaken to ensure the achievement of the Employer’s targeted recruitment and training and supply-chain requirements. [It is recognised that this document may be evaluated as part of the award process].

Signed .....

(Print Name) .....

Date .....

*Ensure that information is provided in each of the following sections. This document must be submitted as part of each valid tender/pricing or as otherwise requested by the Employer.*

## Training Opportunities

11.8. What is the anticipated value of the contract/project, excluding VAT

£ .....

11.9. How many new entrant trainee person-weeks of employment will be provided to comply with the new trainee requirements in the contract?

[       ] person-weeks

11.10. Complete the Table below to show the split of opportunities between existing trainees<sup>12</sup> and additional Trainees

	New Entrant Trainee Person Weeks				
	Year 1*	Year 2	Year 3	Year 4	Total
Enter the financial year					
Total Person-weeks to be delivered (1.2 above)					
Person-weeks to be utilised by the contractor's existing new entrant trainees**					
Person-weeks to be utilised by additional new-entrant trainees					

\* Financial years

\*\* this is the person-weeks that will be used to provide continuity for new entrant trainees already engaged under the contract with the Employer or with another Employer in a Consortium where the latter is within the same travel to work area.

<sup>12</sup> An existing trainee is a 'new entrant trainee' recruited as a response to the contract conditions relating to targeted recruitment and training and registered with the Employer, and who has not been employed for longer than the agreed durations for apprentices or trainees.



## Appendix 6: Text to be included in a Development Agreement requiring a Local Economic Benefit Covenant

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on the local SME support providers and the contact for any available register of SMEs serving the target area. To avoid the risk of challenge under the EU procurement frameworks it is important that a suitable service is available.

### [ ... ] Local Economic Benefits

- [ ... 1] In line with the policies set out in its [...] Strategy [...] is seeking to ensure that the proposed development delivers measurable improvements to the economic, social and environmental well-being of the residents in and around 'the target area' where the development is taking place, defined as areas with post-codes commencing [... to ...], through the provision of targeted recruitment and training and SME opportunities in full respect of EU and national law. The development partners and employers will be required to participate in this.
- [ ... 2] It will be a condition of contract that the development partner enters into an Economic Benefit Covenant.
- [ ... 3] Potential development partners are required to prepare and submit with each valid tender an Economic Impact Method Statement setting out information relating to the following:
- [ ... 3.1] actions that will be undertaken to maximise the supply-chain opportunities provided to SMEs that are based within the target area other than a company that is part of the same group as the tendering company;
  - [ ... 3.2] an aspirational target for the percentage of the total contract value that will be delivered by SMEs based in the target area that are not a part of the same group as the tendering company;
  - [ ... 3.3] an aspirational target for the number of person-weeks engagement on site for persons directly engaged (i.e. employed and self-employed persons that are not provided through the supply-chain) on the site and the average wage costs per week of these persons.
  - [ ... 3.4] provide a statement that:
    - [ ... 3.4.1] they fully support the objectives of [...] in relation to the targeting of economic benefits from the development;
    - [ ... 3.4.2] if appointed they will enter into and fully implement the Economic Benefit Covenant as set out in Addendum [ ... ]. **Add draft covenant.**

Failure to provide this Statement could be construed as an unwillingness to comply with one of the conditions relating to the delivery of the contract.

- [ ... 4] The developer and contractor are encouraged to make full utilisation of the services and resources provided to employers by [ ] (*enter names*) and other training providers and relevant public agencies. All of these agencies are equal opportunities providers and will offer their services to developers and employers from any EU Member State.
- [ ... 5] The inclusion of targeted recruitment and training and supply-chain requirements does not comprise or imply any promise on the part of the Employer or their agents to provide suitable trainees or labour. Any action taken by these bodies or their agents to broker relationships between the Contractor and local individuals/firms/agencies does not imply that they or their agents consider the individual/firm/agency as suitable for engagement by the Contractor. All recruitment, supervision and discipline responsibilities rest with the Contractor and Sub-contractors. Within this context the Employer will work with local agencies to help facilitate the achievement of the recruitment and training requirements.

## Appendix 7: Modifications to fit standard forms of contract

The text for inclusion in the specification for a contract and tender documentation found in Appendices 1 to 5 can be easily modified for inclusion in a contract once it has been awarded. However, a challenge that arises when using template contract clauses is the need to “fit” them to the style and language of the wider contract. This contract may be in the contracting authority’s “house style”, or may be a standard form contract which the contracting authority is adding to and modifying. The language and style of such contracts can be quite particular, and distinct from other contracts - in the construction sector, various standard forms of contract are used, including the Joint Contracts Tribunal (“JCT”) and New Engineering Contract (“NEC”) standard forms, both of which have particular styles and uses of language that are distinct. For this reason, template clauses are not included here in full. However, the examples below show the approach to drafting that can be taken for two different styles of contract.

### Clauses drafted for a ‘generic’ contract:

- [ ] .1 The Targeted Recruitment and Training Method Statement may be modified at any time by mutual agreement between the parties.
- [ ] .2 The Targeted Recruitment and Training Method Statement shall include the following outcomes:
  - [ ] .2.1 A minimum of 78 person-weeks of employment to be provided for a new entrant trainee recruited from a source agreed by the Client, for each £1m in contract value provided:
    - [ ] .2.1.1 Where employment occurs on site further than five miles from the development site, transport to alternative sites shall be provided;
    - [ ] .2.1.2 Apprentices may be counted for up to 104 weeks of employment;
    - [ ] .2.1.3 New Entrants and Other Trainees may be counted for up to 52 weeks of employment.

### Clauses drafted for an NEC contract:

#### Recruitment and Training Method Statement

Z[ ] If a Recruitment and Training Method Statement is not identified in the Contract Data, the Contractor submits a first Recruitment and Training Method Statement to the Service

Manager for acceptance within the period stated in the Contract Data

Z[ ] The Contractor shows on each Recruitment and Training Method Statement the information which the Service Information requires the Contractor to show

Z[ ] The Contractor develops working methods and where necessary secures Subcontractor co-operation to achieve the recruitment and training requirements in accordance with the Recruitment and Training Method Statement

Z[ ] Within two weeks of the Contractor submitting a Recruitment and Training Method Statement to him for acceptance, the Service Manager either accepts the Recruitment and Training Method Statement or notifies the Contractor of his reasons for not accepting it. A reason for not accepting a Recruitment and Training Method Statement is that:

- it is not practicable;
- it does not show the information which this contract requires; or
- it does not comply with the Service Information

#### **Training and recruitment**

Z[ ] The number of Person-weeks required to be delivered by New Entrants who:

- are Apprentices, Other Trainees or who have an employment contract with the Contractor or a Subcontractor; and
- are engaged in an accepted training programme that is being delivered by a recruitment and training organisation as stated in the Service Information is stated in the Contract Data.

Z[ ] The *Contractor* ensures that he or his Subcontractors provide these Person-weeks while Providing the Service