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Guide to socially responsible public procurement



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Foreword

In socially responsible public procurement, consideration is given to the impacts of the procurement process on society at large, locally, at national level and globally. This means that the price is not the only consideration in the procurement process as the positive and negative societal impacts of the object of the procurement or its production process are also taken into account. Contracting entities may take social aspects into account at different stages of the procurement process. This guide describes the options available, the requirements laid down for responsible procurement in the Act on Public Procurement and other relevant acts, and the approaches to social responsibility adopted by different contracting entities.

Why should the public sector manage its procurement in a socially responsible manner? The public sector is responsible for many key tasks in society from education to environmental care and employment to human well-being. As the public sector spends significant sums of money on procurement in a number of areas, it can also exert a considerable influence on the products and services offered in the market. Contracting entities can set private organisations and persons an example of competent and responsible procurement. As public sector procurement can thus influence the markets and private consumption, it is justified for contracting entities to also examine the impacts of their procurement in a broader context.

Moreover, under the UN Guiding Principles on Business and Human Rights (2011)¹, states should promote respect for human rights by business enterprises with which they conduct commercial transactions. Thus, the guiding principle is that the state contributes to the protection of human rights through its own economic activities, in this case through public procurement. Socially responsible procurement can also be seen as one way of implementing the UN Sustainable Development Goals².

At the same time, the purpose of the public procurement legislation is to ensure that public procurement procedures are transparent and non-discriminatory, but it does not spell out how or on what terms contracting entities should procure goods or services or conclude contracts. Moreover, the Act on Public Procurement also allows contracting

1. UN Guiding Principles on Business and Human Rights (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

2. UN Sustainable Development Goals, <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

entities to take into account factors related to employment, working conditions, the position of vulnerable people, and corporate social responsibility in their procurement. Thus, the act should not be seen as an obstacle; in fact, it provides plenty of opportunities.

Regardless of the opportunities offered by the public procurement legislation, taking into account the aforementioned social considerations in practical procurement activities is not always easy. Contracting entities must know the market and the product or service to be purchased and be familiar with the rules of public procurement legislation, without losing sight of their own needs and objectives.

As the contract award procedure must be non-discriminatory in observance of European Union legal standards, requirements that mean well but are discriminatory to some suppliers cannot be set in procurement. In these circumstances, it may be difficult for the municipality or a central government agency to know how it could take social responsibility considerations into account, including requirements associated with providing employment for persons who are long-term unemployed or ensuring accessibility for persons with disabilities, while also meeting their other obligations.

This guide is particularly intended to assist contracting entities in these complex situations. Our aim is to describe the benefits of socially responsible public procurement and to give practical tips on how to take into account social considerations in the contracting entity's strategy but also to serve as a practical tool for public servants and employees in charge of tendering processes in their everyday work. For this reason, the guide approaches social considerations through concrete examples. The contracting entities referred to in the guide have performed vital pioneering work to include social considerations in their own procurement. Hopefully, these examples will also encourage other contracting entities to take social considerations into account.

Markus Ukkola and Linda Piirto,
Ministry of Economic Affairs and Employment



What is the purpose of this guide?

The purpose of this guide is, in as practical terms as possible, to describe the benefits of socially responsible public procurement and to discuss how contracting entities can take social considerations into account in their procurement. These opportunities are significantly affected by the valid legal provisions on public contracts. The tendering procedures of Finnish contracting entities are subject to the Act on Public Procurement and Concession Contracts (1397/2016) and the act on public contracts and concession contracts of units operating in the water and energy supply sectors and transport and postal services sectors (laki vesi- ja energiahuollon sekä liikenteen ja postipalvelujen alalla toimivien yksiköiden hankinnoista, 1398/2016). This guide also highlights the opportunities offered by the public procurement legislation and case law to make socially responsible procurement.

The guide is mainly intended for central and local government and other contracting entities. Where applicable, however, it can also be used in private sector contracts and corporate planning in which the aim is to create and expand business that promotes social goals. In many markets, the public sector represents major purchasing power and influence. At EU level, public contracts account for some 18 per cent of the EU's GDP. Apart from the societal impacts of public sector procurement, they can also encourage companies and private buyers to focus attention on issues that are vital to society.

The public sector can take into consideration the societal impacts of its procurement in a broader sense than merely looking at the purchasing price or the price-quality relationship. The guiding influence of public procurement which is of key importance in society, is associated with social responsibility. By promoting socially responsible public procurement, the authorities can provide companies with genuine incentives to develop social responsibility in their activities.

Who benefits from socially responsible procurement?

Tendering processes are used in public procurement to determine the best price-quality relationship for the goods, services, or contracts to be procured. The costs and impacts of the product over its entire life cycle can be taken into account in the price-quality relationship. However, in Finland, the public sector also contributes to achieving goals that are important for society, including employment, human well-being and the implementation of fundamental rights.

Including social considerations in public procurement means that the public sector considers also the impacts of its procurement in a larger societal frame of reference. Socially responsible procurement can create overall savings in fulfilling the public sector's tasks when not only the purchasing price but all societal benefits of a purchase, including improved working ability or prevention of exclusion, are factored in.

In the City of Oulu, tenders received in a tendering process for housing services for elderly persons and mental health rehabilitees were assessed on the basis of the suppliers' commitments. These commitments concerned such aspects as client satisfaction. After the awarding of the contract, client satisfaction was surveyed on a yearly basis during the contract period. If the supplier exceeded the standard to which they had committed in their tender, they received the bonus specified in the contract. The experiences of this procurement indicated a tendency for the procured services to become more sensitive to client needs. This increased client satisfaction and reduced the city's costs by reducing expenditure on rehabilitation periods or hospital stays outside the housing units.

Besides benefits to the public sector, socially responsible procurement can dynamically influence market functioning. An increase in the demand for socially responsible products or services is likely to also increase their offer. Public procurement can also encourage the creation of solutions and products with innovative societal impacts.

Contracting entities can serve as an example of socially responsible procurement. By showing public sector's willingness to invest in socially responsible procurement and by spreading the word about the impacts of these activities, public sector can at best also influence private consumption and buying habits. One way of passing on the message is to describe good experiences of responsible procurement on the contracting entity's website. Openly communicating about experiences will increase public sector transparency in relation to citizens and residents. It will also help the suppliers of the products or services to be purchased anticipate the social requirements set for the procurement.

The social considerations may also be associated with innovations. New products with innovative features that promote social responsibility and considerations may be created in the market, and their development can be encouraged by the procurement. For example, a material in a product purchased by a certain contracting entity can be replaced by a more socially responsible and/or completely new alternative.

Strategy supports the inclusion of social considerations

In practice, socially responsible public procurement means that a contracting entity takes social considerations into account in the procurement. Social considerations may be included in various ways and in many different stages of the contract award procedure. However, the limited resources of contracting entities, legislative requirements and the need for efficiency in socially responsible procurement force contracting entities to examine how and in which procurement social considerations could be included to the greatest effect and with the highest impact.

Consequently, contracting entities should draw up a strategy for implementing socially responsible procurement approved by the management, or incorporate responsible procurement in a more general procurement strategy. The strategy will help a contracting entity to

- recognize its societal goals and priority areas as well as the role procurement plays in achieving them
- ensure the commitment of the contracting entity's management to socially responsible procurement
- apply a risk analysis to those of the contracting entity's procurement where issues of social responsibility may emerge in the contract award stage or during the contract period
- reach internal agreement within the contracting entity upon the division of responsibilities and tasks associated with socially responsible procurement
- supervise the implementation of responsible procurement and survey their societal impacts and the achievement of the set targets
- disseminate information on socially responsible public procurement and their results and create networks for spreading good practices.

If the contracting entity's national or local **priorities of social considerations** (for example creation of employment or protecting human rights) are clearly identified in the strategy of socially responsible procurement, the links between public procurement and more extensive goals and entities become more evident. At the same time, the role of procurement as a tool for implementing these policies is emphasised. Clear targets can thus also be specified for procurement, and their achievement can be monitored. In this

context, the contracting entity should also identify those procurement categories that are central to achieving the social responsibility objectives.

Management commitment is a key part of implementing socially responsible procurement, as determining the human and financial resources needed to implement the procurement and specifying the organisation structure are in the hands of the management. **Risk analysis** will help contracting entities to focus their efforts on the most significant procurement and the procurement through which they can optimally promote the achievement of their social goals.

Socially responsible procurement requires extensive expertise in all parts of the contracting entity's organisation. It is thus vital that the **tasks of each relevant civil servant or employee** of the contracting entity are defined and that **extensive cooperation** between procurement experts and specialists in social issues is established.

To ensure the effectiveness and impact of socially responsible procurement, it is essential that the achievement of the targets set is **monitored**. **Disseminating information on and sharing good experiences and examples** with other contracting entities sends out a positive message of the impact and benefits of socially responsible procurement and encourages both public and private buyers to include social considerations in procurement. In addition to sharing good practices, experiences of **possible risks** that should be avoided could also be passed on.

Contracting entity's checklist in socially responsible procurement:

1. Defining a strategy of socially responsible procurement
2. Commitment of management
3. Conducting a risk analysis
4. Incorporating social responsibility in job descriptions
5. Cooperation between experts
6. Monitoring target achievement.



City of Espoo

In late 2010, **the local executive of Espoo outlined** its policy on the social objectives of its procurement. The primary objective is promoting the employment of young people, immigrants and persons with disabilities, supporting sheltered workshop activities and taking the operation of companies with high ethical standards into account in the city's partnerships. In line with the local executive's policy, all departments of the city should promote job creation for persons difficult to employ and increase the number of on-the-job learning places for those studying for a profession in their procurement.

A guideline on social criteria applicable to persons to be employed on pay subsidies was also drawn up in Espoo. The guideline notes that the environmental impacts of procurement and the chances of supporting the social policy objectives outlined by Espoo local executive should be taken into account in the planning of procurement. The guideline specifies five approaches to promoting social considerations in procurement:

1. Restricting the contract to certain units, social contracts
2. Defining the object of the procurement and technical specifications
3. Tenderer suitability requirements
4. Contract award criteria
5. Contract

City of Tampere

The City of Tampere makes its procurement in a responsible manner and in accordance with the principles of sustainable development.

As a major purchaser of products and services, it is aware of the societal impacts of its procurement and takes them into account. Procurement has direct and indirect environmental effects but it also has social impacts and impacts on the functioning of the market. By taking into account the sustainability perspective in its procurement, the City of Tampere is able to fulfil its sustainable development commitments and manage the impacts of its operations on the environment and society at large. By considering the environment impacts of its procurement, the City of Tampere is able to save energy, cut climate emissions, reduce the use of chemicals hazardous to health and the environment, and promote efficient use of resources. Social responsibility in procurement means the setting of objectives on the basis of which the suppliers undertake to ensure that human rights and labour standards are respected in the production of the goods and services delivered by them. Through its procurement, the City of Tampere can also promote the job opportunities of individuals difficult to employ. Socially responsible procurement also means that the City of Tampere combats grey economy and draws attention to the potential impacts of its procurement on the functioning of the markets.

During 2017, all procurement with the most significant environmental impacts will be reviewed, environmental criteria for the environmentally most significant procurement will be developed, and the cost impacts of the criteria will be assessed. In the field of social responsibility, the City of Tampere will review procurement in which the requirement of providing employment can be applied and procurement that involve a particularly high risk of human rights violations. Furthermore, the City of Tampere has set the following strategic priorities for the year 2017: improving the capability of the procurement to identify and combat grey economy operations, and to make supervision more effective and systematic so that the City of Tampere can ensure that its contracting partners have managed their social responsibilities and their obligations as employers.

Templates for agreements on procurement principles are available on the website of the Ministry of Economic Affairs and Employment³ in Finnish and Swedish. The templates are as follows:

- Päätös sitoutumisesta sosiaalisten näkökohtien huomioimiseen (Undertaking to consider social aspects)
- Johdon sitouttaminen ja toiminnan organisointi (Committing the management to socially responsible procurement and organising the activities)
- Toimintasuunnitelma (hankintakäytäntö) (Action plan (procurement practices)).

The purpose of the document templates is to support the contracting entity in the commitment to socially responsible procurement and the organisation of the activities. The templates can also be used in internal and external communications.





Risk analysis helps to focus social criteria

As described above, contracting entities can promote positive impacts on society and individuals (such as employment of the young people) by making socially responsible procurement, and prevent negative impacts (such as the adverse impacts directed at the implementation of human rights⁴). It is recommended that the prevention of the adverse impacts should start with a risk analysis of all products and services to be purchased. This helps to determine which products and services involve the highest social responsibility risks and the procurement of which should be accompanied by responsibility requirements.

The purpose of the risk assessment is to analyse whether there is a risk that the purchase will have adverse human rights impacts on employees, local population or service users. In addition to establishing the risks connected with these adverse impacts, consideration in the analysis must also be on the scale and scope of the adverse impacts and whether the impacts are irreversible.

If it is determined in the analysis that there are risks connected with the adverse impacts, the procurement must include social requirements in the contract, the purpose of which is to prevent the adverse impacts. Even if several potential target areas were discovered in the risk analysis, the setting of the requirements should start from the purchasing categories that, according to the analysis, contain the most serious risks of adverse human rights impacts. It is, however, recommended that before the targets are specified, the contracting entity should prepare a timetable of when the other targets identified in the risk analysis are included in the social responsibility process.

It should be noted that the social responsibility risks do not exclusively concern the supply chains of goods. Social dumping also occurs in the West, including Finland. In the ensuring of social responsibility, knowledge of different procurement categories is essential. Some of the issues that should be considered in the risk analysis are described below:

- **Surveying the basic working conditions:** Is there a risk that the terms of employment or ILO Conventions are not complied with? Are there problems with working hours and the payment of wages?

4. Adverse human rights impacts occur when an action takes away or reduces the ability of a person to enjoy their human rights.

- **Workforce:** What type of labour is typically used in similar production processes or services? What kind of work is performed as part of the production or services?
- **Production process:** What is the production process like? What stages does the process include? Who are the participants in the process?
- **Problems that are already known:** Have there already been reports on abuses occurring in this particular sector? For example, poor working conditions have been reported in the textile and electronics industries and the manufacturing of paving stones, tools and foodstuffs. Social dumping is an increasing problem among service providers, and the risk of it occurring is particularly high in such areas as catering and cleaning services and in the construction sector.
- **Scope and importance of the purchase:** Making a sizeable purchase strengthens the influence of the organisation. On the other hand, in smaller procurement it is possible to influence the operating culture of small and medium suppliers in particular.
- **Surveying occupational safety and health:** Could the production process present risks related to the working environment, including occupational safety and health risks?
- **Supply chain:** What is the supply chain like? To how many countries does it extend, and what countries are these? Is it likely to comprise a number of subcontractors? Which part of the supply chain presents the highest risk of labour rights violations?

If the risk analysis indicates that the planned public procurement involves social responsibility risks, the contracting entity should set corporate social responsibility requirements for the purchase.

Document templates for setting social responsibility requirements are available on the Ministry of Economic Affairs and Employment's website⁵ (available in Finnish and Swedish).

⁵ Ministry of Economic Affairs and Employment: Socially responsible public procurement, <http://tem.fi/sosiaalisesti-vastuulliset-julkiset-hankinnat>, (in Finnish), <http://tem.fi/sv/socialt-ansvarsfull-offentlig-upphandling> (in Swedish) , retrieved 7 September 2017.



Considering social aspects at different stages of the procurement process

In practice, contract award procedures are divided into several stages. Under the public procurement legislation, social considerations can be included in all stages of the procurement process. The following section describes the main stages of a contract award procedure where social considerations can be included.

1 Planning the procurement

2 Supplier suitability criteria

3 Minimum requirements applicable to the object of the procurement

4 Tender comparison criteria

5 Contract terms applicable to contract fulfilment



1 Planning the procurement

It would be justified to take social considerations into account from the planning stage on, as many crucial decisions relevant to the contract award procedure and the content of the procurement are made in this stage. In the public procurement legislation that entered into force at the start of 2017, the emphasis is on the planning of the procurement process and on market consultation as tools for a successful procurement procedure. Under the Act on Public Procurement, the contracting entity may conduct market consultations to prepare the procurement and inform suppliers of its plans concerning its plans and requirements for the purchase. The contracting entity may use independent specialists, other public authorities and suppliers in the market consultations.

A risk analysis is also conducted as part of the procurement planning stage. Its purpose is to clarify, which social aspects should be highlighted in the procurement process. The questions asked in the overall procurement analysis can also be applied to this analysis.

1.1 Social and health care services

Comprehensive planning ensuring a high-quality procurement process and societal effectiveness is particularly important in procurement in social and health care services. In fact, under the public procurement legislation, in procurement involving social and health care services, the contracting entity must consider the requirements laid down in the legislation concerning the service, the special needs of users and consulting them as well as factors involving the quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the special needs of different user groups, user participation and increased empowerment, and innovation.

In addition to the Constitution of Finland, the following acts form the core of the legislation aimed at ensuring the quality of social and health care services and the clients' rights: 1) the Act on the Status and Rights of Social Welfare Clients (812/2000); 2) the Social Welfare Act and the Health Care Act as pieces of legislation containing provisions on the content of the services; and 3) special legislation supplementing them, such as the Disability Services Act (380/1987), the Special Care Act for Persons with Intellectual Disabilities (519/1977); the Act on Supporting the Functional Capacity of the Older Population and on Social and Health Services for Older Persons (980/2012); the Child Welfare Act (417/2007); the Act on Specialized Medical Care (1062/1989); the Mental Health Act (1116/1990); and the Communicable Diseases Act (583/1986).

The special and general social welfare legislation referred to above contains mandatory provisions on such matters as the consideration of the interests and needs of the service

users, their participation and consulting them. These cover the assessment of the service needs, service planning, decision-making and the practical arrangement of the services (implementation). If the contracting entity provides the services by purchasing them from other operators in a competitive tendering process, it must consider the content of the above services and the legislation pertaining to the service process, including the safeguarding of the service users' rights.

1.2 Consulting user groups

Consulting the user groups of the object of the procurement often plays a particularly significant role in defining the procurement needs and in procurement planning. When specifying the requirements concerning hardware and software, for example, provision should be made for the needs of users with poor eyesight or hearing, and/or a visual or a hearing impairments. Similarly, the accessibility requirements of different user groups should be taken into account in the planning of new facilities, buildings or access routes and the renovation of existing ones. Consulting the users and clients using the product or service to be purchased in the planning stage is often a highly essential factor in the quality and outcome of the purchase. Especially in procurement that are intended for persons with disabilities, the users and their next of kin should always be consulted before initiating the contract award procedure.

In the City of Espoo, a project is under way to find good service design practices for the planning, tendering process and contract period activities of housing services for persons with disabilities. A key objective of the project is fostering the participatory involvement of the clients and developing dialogue practices with service providers in the provision of housing services.

In this project, the client group was consulted in the planning stage before the procurement was implemented. In the planning stage, a service designer was recruited for the project, who was responsible for service design and methodology, as well as for analysing and summing up the results.

In order to investigate the needs and preferences of housing services clients, Espoo conducted a Housing Dreams survey among the client group. The survey was carried out using the design probe method. Design probe is a working method based on self-documentation that provides the clients with a tool for expressing their views. The probes comprise such tasks as drawing, photographs and journals. In the clients' responses, three themes emerged: communality, mobility, and individuality as well as flexibility of housing. A quality and impact workshop was also organised for the clients and their families and friends to ensure the success of the participatory method.

1.3 Market dialogue

In addition to consultations with the clients and stakeholders, it is often important and useful to engage in a dialogue with suppliers in the procurement planning stage. Market dialogue with suppliers can help to solicit from suppliers operating in the market ideas for implementing socially responsible procurement and opinions on the impacts of earlier solutions on suppliers, and develop innovative ways of e.g. providing services or building facilities. The requirement of openness laid down in the public procurement legislation can be observed in this dialogue by publishing a request for information in the open and free public contracts website (www.hankintailmoitukset.fi, available in Finnish and Swedish). The request for information can explain the contracting entity's objectives and the project's background, and existing options for achieving the objectives can be discussed. The contracting entity may also organise an information event to which suppliers have free access..

In a technical dialogue that is part of the planning stage in procurement of facility user services (including cleaning services), **Hansel Ltd asks** suppliers if they have paid attention on employing long-term unemployed persons and how the suppliers monitor their efforts to do so.

The planning stage also includes the risk analysis referred to above. The risk analysis will help the contracting entity to identify the most efficient ways of taking social considerations into account in terms of their resources and the societal impacts.

When a contracting entity includes social considerations in its procurement, it should allow for the time it takes for the suppliers to obtain various types of documentation, labels, and similar. The time period reserved for submitting requests to participate and tenders should be in proportion to the types of social criteria that are applied. In other respects, too, contracting entities should strive to set their social consideration criteria so that the administrative burden caused by them, or the need to provide documentation on them, would be as small as possible, especially for SMEs.

For example, the contracting entities can reduce the suppliers' administrative burden related to tendering processes and contracts by preparing forms that are relatively fast and easy to complete by the supplier. In this context, the significance of open and clear communication is also important so that the suppliers are able to anticipate the contracting entity's expectations.



2 Supplier suitability requirements

Contracting entities may set requirements that apply to both the actual object of the procurement and the supplier submitting a tender. The requirements applicable to the supplier are referred to as **suitability requirements**. These requirements may be relevant to the qualifications of the supplier's staff, or the supplier's technical capacity, prior experience, and professional skills, and financial standing. The suppliers must fulfil these requirements to be eligible to take part in the competitive tendering.

The purpose of these requirements is to ensure that the successful tenderer will be able to cope with its contractual obligations. The contracting entity may not set the suitability requirements unreasonably high considering the needs and objectives of the procurement.

In addition to the suitability requirements, the Act on Public Procurement also lists criteria for excluding a supplier from the competitive tendering. If any such grounds for exclusion arise, the contracting entity may (and in the case of mandatory exclusion criteria it must) exclude the supplier from the competitive tendering process. Mandatory exclusion criteria include certain economic and labour offences⁶, trafficking in human beings and participation in the activities of an organised criminal group. If the tenderer or persons in managerial or other responsible positions in the tenderer are encumbered by these criteria, the contracting entity must, as a rule, exclude the tenderer from the competitive tendering process. Discretionary exclusion criteria include non-payment of taxes or social security contributions, non-observance of obligations laid down in the labour or social legislation or grave professional misconduct. This means that the contracting entity may exclude from the competitive tendering process a supplier that has failed to pay its taxes or that has verifiably violated against provisions or regulations concerning working conditions.

In order to determine whether the suitability requirements are met and whether there are any grounds for excluding any tenderer from the competitive tendering, the contracting entity must request from the tenderers an assurance of the appropriateness of their background. At the conclusion of the competitive tendering process, the contracting entity must also request the winning tenderer to submit details of its own situation. In procurement exceeding the European Union threshold values, the assurance must be submitted on the uniform European Single Procurement Document. In such EU procurement, the contracting entity must require from the winning tenderer the following information: details of the criminal records of its managers, payment of taxes and, depending on the purchase, details of personnel competence, financial standing or pre-

6. These include the offences referred to in chapter 47 of the Criminal Code, such as work safety offence, working hours offence and work discrimination.

vious deliveries. If necessary, the contracting entity may require all tenderers to supply, instead of the assurances, the background reports already during the competitive tendering process. The extracts of the criminal records of the tenderer and its managers are supplied by the Legal Register Centre.

If the information provided shows that the suitability requirement is not met, or that an exclusion criterion applies, the contracting entity must, as a rule, exclude the supplier in question from the competitive tendering and no purchasing contract can be concluded with that supplier. The candidate or the tenderer may, however, submit evidence of its reliability notwithstanding its encumbrance by a mandatory or discretionary ground for exclusion. The evidence may include an account showing that the candidate or the tenderer has undertaken to pay compensation for all damage caused by the criminal offence, error or default, or details of the measures concerning its organisation or personnel that can prevent further punishable acts. If the contracting entity finds the evidence and reliability to be sufficient, then it may not exclude the candidate or tenderer in question from the competitive tendering process.

Under the fairness and non-discrimination provisions of the public procurement legislation, the suitability requirements may not be unreasonably high from the perspective of the background and objectives of the procurement. For example, the contracting entity may not require that in procurement exceeding the European Union threshold values, the turnover of the candidate or tenderer should be more than twice as high as the value of the purchasing contract. Neither can the contracting entity directly set providing certain documentation or meeting a specific standard as a suitability requirement, as the suppliers must be provided with an opportunity to demonstrate compliance in other similar ways.

The Public Works Department of the City of Helsinki includes the following requirement and verification method in its calls for tender:

Requirement: The tenderer's tax payments, social security contributions and pension insurance premiums are up to date. A tenderer may be eligible, however, if its failure to make payments can be deemed minor or if a payment plan accepted by an authority exists for the neglected payments.

Verification: A certificate of payment of taxes and social security contributions from the tax authorities, or a certificate of tax debt, or an account that a payment plan has been made for tax debt. Certificates issued by a pension insurance fund and/or insurance company of taking out pension insurance and payment of pension insurance premiums, or an account of a payment agreement on overdue pension payments having been made.

If the tenderer is not obliged to take out insurance, a separate account of this must be submitted. The account may be drawn up by the tenderer themselves.

As part of the process of determining whether any of the exclusion criteria apply, the contracting entity may require that the tenderer provides an answer to the following question on an ESPD form:

Has the economic operator, to its knowledge, breached its obligations in the fields of environmental, social and labour law?

Verification: Answer Yes No

If yes, has the economic operator taken measures to demonstrate its reliability despite the existence of this ground for exclusion ("Self-Cleaning")?

Yes No

If it has, please describe the measures taken: [...]

As regards prior experience, the contracting entity may, for example, demand prior experience of accessible design, or design for all. The tenderer or candidate can prove that they fulfil this suitability requirement by giving an account of their prior experience.

For example, the contracting entity may present the following requirement:

The tenderer has experience of providing similar services dating back no more than three years. [As far as this requirement is concerned, the call for tender documents must describe the content of the service and the relevant social consideration in greater detail, for example the requirement of accessibility.]

Verification: The tenderers must provide the requested information in their references. [The required references must be described in greater detail.]



3 Minimum requirements applicable to the object of the procurement

The contracting entities may set different requirements not only for the suppliers but also for the actual object of the procurement. The contracting entities may also specify the properties of the goods, services or construction contract to be procured so as to make meeting these requirements a condition for accepting the tender. The description of the object of the procurement often comprises the minimum requirements applicable to it.

To allow the contracting entity to check that the minimum requirements or the description of the object of the procurement are met, the tenderers must be asked to describe the goods, services or contract they offer in their tenders. If the contents or terms of the tender do not meet the minimum requirements set by the contracting entity, the tender must, as a rule, be rejected. Compliance with the requirements is verified in the **tender processing stage**. The description of the object of the procurement and the minimum requirements set must be relevant to the object of the contract or some stage of its life cycle. For example, the contracting entity may not set as a requirement that the company engages in charitable work.

The minimum requirements concerning the object of the procurement can be fine-tuned to take into account the needs of users with disabilities and any other accessibility requirements and criteria relevant to the users. Accessibility considerations are particularly important in ICT procurement, procurement of interpretation services and construction contracts. The requirements may be relevant to disabled access to buildings in a construction contract, easy accessibility in procurement of transport fleet or user-friendly features in device procurement. An object of the procurement that is intended for use by natural persons must, under the Act on Public Procurement, be as a rule specified in a manner that gives consideration to unimpeded access for users with disabilities and to a design that satisfies the requirements of all users.

Legislative requirements should also be considered when drawing up the description of the object of the procurement, including the Land Use and Building Act and Decree as well as the National Building Code. In the call for tender documents of construction contracts, the requirements may either apply directly to contractors submitting tenders in turnkey contracts, or to suppliers offering design services when design services are procured separately.

The City of Espoo has included the following accessibility requirement in its calls for tender for online advisory services:

Requirement: The service to be offered must be accessible and compliant with the A and AA levels of WCAG 2.0 Web Content Accessibility Guidelines. [Web Content Accessibility Guidelines WCAG contain a large set of recommendations that improve the accessibility of web content. Compliance with the guidelines makes the content accessible for a large group of persons with disabilities or impairments.

These include blindness and visual impairment, deafness and hearing impairment, learning difficulties, cognitive limitations, reduced mobility, speech disorders, light sensitivity and combinations of the above. The success criteria in WCAG 2.0 are defined as statements that can be tested and thus are not dependent on individual technologies. Three levels have been specified for compliance with the guideline: A, AA and AAA, where A is the lowest and AAA the highest.

Verification: The tenderers must affirm their compliance with the criteria in WCAG 2.0 guideline levels A and AA.

Should it so wish, the contracting entity may also test the offered products. There should be justified grounds for restricting the other uses of products being tested. However, the request to test the products must be clearly expressed in the contract notice or the call for tenders. The tenderers must also be allowed a sufficient time period to deliver their samples. The call for tender documents must further state the aspects on which the contracting entity will focus attention in the testing.

If the testing reveals that such as the accessibility properties of the offered product do not meet the standard required in the call for tenders, the tender must be rejected. In the decision to reject a tender, the contracting entity must justify the decision to reject the product and provide an adequately detailed description of the test use on which it was based.

In a call for tenders for a construction contract, requirements may also be included aiming to prevent accidents at the construction site. These requirements are relevant to the object of the procurement, or the construction contract and its implementation.



4 Tender comparison criteria

Similarly to the minimum requirements applicable to the object of the procurement, the comparison criteria concerning the economic advantageous nature of the tenders are relevant to the actual product, service or construction contract. Many themes that are relevant to the minimum requirements can thus alternatively be included in the comparison criteria.

The added value of using comparison criteria, rather than minimum requirements only, comes from their step-wise operation: differences between the tenders are more subtle, as they are described in scores, not just by accepting or rejecting the tender. When comparison criteria are used, a supplier may also compensate for low points scored for one comparison criteria by a higher score in another area.

When comparison criteria are used, the tender that obtains the highest total score for all comparison criteria, or the tender that is the most economically advantageous, will be successful.

The tender comparison criteria must be specified in advance in the call for tender documents. They must also be fair and sufficiently detailed. In other words, the comparison criteria may not discriminate against or favour specific suppliers. The contracting entity must apply the stated comparison criteria to each tender included in the tender comparison and justify the points awarded for each criteria with adequate clarity. When social

considerations are included in the comparison criteria, the contracting entity must be particularly careful, as the tender comparison will have a crucial impact on the end result, the quality of the tendering process and the ranking of the tenderers.

The contracting entity may use social considerations as comparison criteria, including factors relevant to the staff, where the tender receives the higher score the more effectively or extensively it takes such considerations into account.

Staff employment relationships as comparison criteria

Market Court ruling MAO:485/10 and Supreme Administrative Court ruling 8.3.2013 record 862 dealt with a procurement of crèche services. The contracting entity had used the following tender comparison criterion: "the employment relationships of care and educational staff with qualifications in compliance with the minimum staffing level laid down in the day care decree are as a rule valid until further notice." If the share of the company's employees with employment relationships valid until further notice was 100 per cent, the tender scored three points; it scored two points if this share was 76–99 per cent, and one point if the share was 50–75 per cent.

A petition on this contract was filed with the Market Court, which stated in its ruling that the nature of the care and educational services concerned in the procurement were a valid reason for the contracting entity to apply criteria that exceeded the minimum eligibility of the tenderer to assess the quality of the tendered service. According to the Market Court, the contracting entity's efforts to secure trained staff for day-care services in employment relationships that were as permanent and long as possible was to be deemed an acceptable goal.

The Market Court considered that not only were the aforementioned comparison criteria relevant to providing services of a high quality but also the way they were set out in the call for tenders allowed the contracting entity to establish which tender was the most economically advantageous.

The Market Court ruling was appealed to the Supreme Administrative Court. The Supreme Administrative Court did not change the Market Court ruling.

In case of this court ruling, we should remember that the courts regarded the object of the procurement as one where factors related to terms of employment were relevant to the quality of the services to be procured. To ensure that the requirements are not unfair and discriminatory against suppliers, the contracting entity must in each individual case establish if this association applies in the procurement in question. Only in procurement of this type can factors related to terms of employment be taken into account.



5 Contract terms applicable to contract fulfilment

Under the Act on Public Procurement, contracting entities may lay down special conditions relating to the performance of a contract which may, in particular, be intended to favour environmental and social aspects, such as on-site vocational training, compliance with the provisions of the International Labour Organization (ILO) Conventions, working conditions and employment terms or the recruitment of persons with disabilities. This applies provided that the conditions are non-discriminatory and compatible with Community law and that they are indicated in the contract notice or the call for tenders.

When employment-related criteria are used, it must be ensured that they are applicable to the procurement in question. The chances that suppliers may find tasks that are suitable for such people as long-term unemployed and individuals that are only partially capable of work should be assessed as part of the procurement planning process.

Social considerations can be particularly efficiently included in the terms and conditions of such contracts. As far as the contract terms are concerned, it should be noted that under legislation on public contracts and the established case-law, no significant modifications may be made during the contract period to what was originally stated.

Contract terms concerning social responsibility are meaningless if their fulfilment is not supervised. This is because while compliance with the minimum requirements or suitability requirements concerning the procurement is verified during the tendering process, fulfilment of the contract terms is mainly examined and supervised during the **contract period**.

Supervision of contract terms on labour rights and human rights differs from that of other supervision, as it involves extensive (and even global) monitoring of a company's activities and supervision of compliance with legislation based on ethical principles or international conventions. The purpose of the supervision is to influence the company's or supplier's operating culture.

The effectiveness of the supervision depends on the size and resources of the supervising unit compared to the object of supervision, the volume of procurement, the length of the supply chain, and the circumstances, prevailing culture and any problems in the object of the supervision. The contracting entity's chances of influencing the suppliers' activities depend on how large a share the contracting entity's procurement represent in the activities of the manufacturer and how complex the production and delivery chain is. It is also important that the contracting entity takes an active approach in the matter.

The supervisory duties of the contracting entity may be eased by using different types of certificates. Relying on certificates in the supervision of a purchasing contract frees the contracting entity from the obligation of performing detailed audits targeting various links of the supply chain. Certificates and more or less established audit practices often also permit the contracting entity to collect more reliable information on compliance with labour rights and human rights in the supply chain than what it could achieve by its individual efforts. Contracting entities may also work together to supervise the terms related to social considerations during the contract period. In Sweden, for example, a number of municipalities have pooled their resources to fund audits of various parts of the public procurement supply chain.⁷

Contracting entities can include in the contracts penalties permitted by contract law to deal with problems that may emerge during the contract period. For example, a contract penalty or the option of cancelling the contract as a response to certain violations can be incorporated in the contract. However, the contracting entity should primarily strive to encourage the contracting partner and their subcontractors to improve their operations during the contract period so as to be capable of meeting the obligations imposed by legislation and international conventions. Cancellation of the contract should be the last resort. In other respects, too, the principle of proportionality should be followed regarding contract penalties and contract violations and negligence during the contract period.

⁷ For more information on this arrangement, see the guide "Good Practice in Socially Responsible Public Procurement, Approaches to Verification from Across Europe", the Landmark consortium, c/o World Economy, Ecology & Development (WEED e.V.) 2012.

5.1 Contract terms on provision of employment

Contracting entities may take into account considerations related to provision of employment by including in the terms and conditions an obligation to recruit individuals with partial work ability or long-term unemployed workers.⁸ Such an obligation could be incorporated in most purchasing contracts (except for small-scale procurement). The employment obligation could be worded as follows:

The City of Espoo has included the following requirement in the articles on contract terms in the call for tenders for a service procurement:

Contract term: The supplier undertakes to offer a full-time job for at least six months [x] to persons who have been unemployed without interruption for a minimum of six months before the start of the employment relationship. The employment measures and recruitment must be completed at the latest within six months of the signing of the contract. (For instructions on supervising the aforementioned contract terms, see below the section "Supervision of contract terms").

Another option is to specify that a certain part of the service performance or work needed to perform a construction contract are carried out by workers employed on a pay subsidy:

The City of Vantaa has set out the following employment obligation for companies submitting tenders for its repair and construction contracts:

During the contract period, the tenderer undertakes to employ at least one individual entitled to pay subsidies. This obligation only applies to service providers submitting the winning tender. A sanction of 4,000 euros for non-observance is included in the employment obligation.

(For instructions on supervising the aforementioned contract terms and examples, see below the section "Supervision of contract terms").

The requirement to provide employment may also target other groups, including young people, persons with disabilities, or immigrants. It is often justified to describe the persons to be employed in greater detail in the employment terms, including the contracting entity's definition of young people, persons with disabilities, or immigrants. If necessary, definitions in valid legislation can be applied. When a requirement of providing employment is included in the contract, it is often also justified to specify details

⁸ When the obligation is applied, consideration must be given to the requirements laid down in the labour legislation and in particular the rehiring and reassignment obligations contained in the legislation.

related to the duration of the employment relationships and contracts to ensure that the persons to be employed gain enough experience and benefits from their employment. When setting the conditions for providing employment, a decision should also be made on whether it is acceptable that the company or other supplier has already recruited a long-term unemployed or an individual with partial work ability, who is therefore no longer unemployed at the time of submitting the tender.

With regard to the employment obligations, it is important to consider the familiarity with the markets. This means that before laying out the requirements, the contracting entity should determine whether individuals meeting the requirements are available. Some sectors may have more or less full employment in such areas as the Helsinki region, which means that there are no long-term unemployed in the sector that could be offered jobs through the purchase. For this reason, it is important to know the labour market situation in different sectors.

In addition to the employment obligation, on-the-job learning, apprenticeship training, work try-out or opportunities for work practice may also be considered in the contract.

The City of Oulu has incorporated the following requirement for companies seeking contracts in virtual solutions for information technology:

The service provider pledges to offer an individual studying in an education institution in the technical field at least one on-the-job learning or work practice place or an opportunity to produce their thesis each year covered by the contract so that during the contract period four individuals will get one of the places referred to above. (For instructions on supervising the aforementioned contract terms, see below the section "Supervision of contract terms").

In the market dialogue taking place during the procurement planning stage, the contracting entity should clearly state its employment-related objectives. Any other information that affects the preparation of tenders, including the volume of the purchase, its value, contract period duration, and other essential contract terms must be stated in sufficient detail in advance in the call for tender documents.

5.2 Labour rights and human rights in contract terms

In this context, it should also be remembered that under section 98 of the Act on Public Procurement and Concession Contracts, before the signing of the contract, a condition must be entered into a purchasing contract concluded between a central government authority and the successful tenderer in competitive tendering that requires compliance with at least the minimum terms of employment governing work of the same type

under the Finnish law and collective agreements in work that forms part of a purchasing contract to be implemented in Finland. This rule also applies when another contracting entity, including a municipality, concludes a contract on construction work referred to in section 2 of the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006).

If, based on the risk analysis of the supply chain, it is obvious that problems could emerge in compliance with labour rights and human rights during the contract period in, for example, a purchasing of goods, the contracting entity may include in the contract terms of these procurement clauses on compliance, and supervision of the compliance, with ILO Conventions and the UN Convention on the Rights of the Child⁹.

The Fundamental Conventions of the International Labour Organization¹⁰ include

– **Abolition of Forced Labour Conventions** nos 29 (from 1930) and 105 (from 1957).

– **Freedom of Association Conventions:**

- Convention concerning the Freedom of Association and Protection of the Right to Organise no 87 (from 1948).
- Convention concerning the Application of the Principles of the Right to Organise and Collective Bargaining no 98 (from 1949).

– **Non-discrimination and equality Conventions:**

- Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value no 100 (from 1951).
- Convention concerning Discrimination in Respect of Employment and Occupation no 111 (from 1958).

– **Abolition of child labour Conventions:**

- Convention concerning Minimum Age for Admission to Employment no 138 (from 1973).
- Convention concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour no 182 (from 1999)¹¹.

9. Ministry for Foreign Affairs: Convention on the Rights of the Child (1989), <http://formin.finland.fi/public/default.aspx?contentid=68142> (in Finnish); The Office of the United Nations High Commissioner for Human Rights (OHCHR): Convention on the Rights of the Child (1989) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (in English).

10. The International Labour Conference of the ILO has identified the following eight Conventions as Fundamental Conventions as they deal with the main principles and rights at work, which are also laid out in the ILO's Declaration on Fundamental Principles and Rights at Work (1998).

11. Conventions of the International Labour Organization ILO. Ministry of Labour, <http://bit.ly/2m7lwGC>, retrieved 22 February 2017 (in Finnish).

In addition to these Fundamental ILO Conventions, there may also be references to other ILO Conventions in the contract terms. For information on compliance with the Conventions and supervision of compliance, see the website of the ILO¹². Information on ILO's activities and Conventions can also be found in Finnish and Swedish on the website of the Ministry of Economic Affairs and Employment¹³.

Hansel Ltd has set out the following requirement for all tenderers seeking contracts to supply goods for the company:

Contract term: The supplier may only use importers, principals and equipment manufacturers that observe the following Conventions of the International Labour Organization (ILO) at equipment manufacturing plants at different levels of the production chain: Abolition of forced labour (Conventions nos 29 and 105), right to organise and collective bargaining (Conventions nos 87 and 98), non-discrimination and equality (Conventions nos 100 and 111), and abolition of child labour (Conventions nos 138 and 182). The supplier undertakes to implement all requirements concerning employment conditions and environmental friendliness laid out in the Conventions, to the extent that the supplier has full control over them. To the extent that the supplier does not have full control over the production chain, the supplier must use all available means to ensure that the targeted level laid out in the Conventions is achieved. The supplier agrees that during the contract period, Hansel may send it questionnaires to be answered and request information pertaining to the social responsibility of the supplier and manufacturers of its product range and that Hansel has the right to publish a summary of the results of the questionnaires.

12. International Labour Organisation, www.ilo.org.

13. Ministry of Economic Affairs and Employment, <http://tem.fi/kansainvalinen-tyojarjesto-ilo1>, retrieved 30 January 2017 (in Finnish).

Alko has incorporated the following section on ethics in its procurement contract terms:

Offering and delivering products to Alko requires that the seller undertakes to observe the code of conduct of BSCI (Business Social Compliance Initiative)¹⁴.

The key elements of the updated BSCI operating model are the Code of Conduct, Due Diligence (which is now of more obligatory nature), and the requirement for strategic planning and practical action aimed at promoting corporate social responsibility. The responsible purchasing model of BSCI is based on the principle of continuous improvement, open cooperation and the empowerment of the actors in the supply chain.

When signing the tender or submitting a tender in the partner network, the seller guarantees that the seller and all corporations in the same supply chain observe the obligations laid out in the code of conduct. The supply chain means the corporations associated with the manufacturing, transport and sales of the product and its packaging.

Alko offers beverage suppliers online training in the code conduct. The purpose of the training is to ensure that the suppliers have adequate understanding of the practical effects of the operating principles of responsible purchasing. Alko requires that all sellers have received the training. If the seller has an authorised representative (agent) the agent, too, must receive the training.

(For instructions on supervising the aforementioned contract terms and examples, see below the section "Supervision of contract terms").

14. Alko: Alko: Responsible purchasing, <https://www.alko.fi/alko-oy/tavarantoimittajille/vastuullisuus-ja-tasapuolisuus/vastuullisuus/vastuullinen-ostotoiminta>, retrieved 26 April 2017 (in Finnish).

The Finnish Defence Forces has set out the following requirements for tenderers in its textile supply contracts exceeding the European Union threshold values:

In the contract to be concluded, the requirements of corporate social responsibility must be taken into account. A special condition for concluding a contract is that the supplier has at their disposal procedures for ensuring that the products to be delivered during the contract period have been produced in compliance with the following provisions:

- ILO Conventions on forced labour, child labour, discrimination and freedom of association and right to collective bargaining (nos 29, 87, 98, 100, 105, 111, 138 and 182)
- Article 32 of the UN Convention on the Rights of the Child
- occupational safety and health legislation in the country of manufacture
- labour legislation in force in the country of manufacture, including minimum wages and social security legislation.

5.3 Terms and conditions concerning the duration of the contract

Under the Act on Public Procurement, in a procurement for social and health care services that concerns long-term care and client relationships, the contracting entity must specify the duration and other terms and conditions of the agreements so that the agreements do not give rise to unreasonable or inappropriate consequences for service users.

Social and health care services are particularly client-oriented. This means that some of the service packages may be of such nature that they will lead to a long-term care relationship with the client. When putting such services out to tender, contracting entities must pay attention to the duration of the contract period and other central terms and conditions so that the procurement end result will not give rise to unreasonable or inappropriate consequences for the clients. Such services include the services intended for elderly people suffering from dementia, mental health rehabilitees or people with disabilities, or child welfare services. As a rule, the public procurement legislation does not contain any provisions limiting the duration of purchasing contracts as agreements valid until further notice can be concluded under the law in most cases. There are provisions limiting the duration of framework arrangements and concession contracts in the public procurement legislation.

5.4 Supervision of contract terms

5.4.1 Supervision of contract terms concerning employment

It is justified to include specific conditions that concern the supervision of contract terms on provision of employment in the contract. For example:

The Cities of Espoo and Oulu have included in their calls for tender the following requests for information to verify the fulfilment of the contract terms described in the call for tenders:

Contract term: The supplier must submit a plan for employing difficult to employ and long-term unemployed persons as well as persons with disabilities during the term of this contract by [deadline]. The supplier must submit by [deadline] a plan for offering on-the-job learning places to persons studying at education institutions [xxx].

It is justified to request for this plan at the beginning of the contract period, or even during the tendering process, in which case the requirement has to be included in the call for tender documents. In addition to the plan, compliance with the terms should be supervised by means of reports submitted during the contract period:

The City of Espoo has included in its calls for tender the following request for information to verify fulfilment of the contract terms described in the call for tenders:

Contract term: The supplier must give notification of the employment by e-mail without delay. After this, the client will send the employed individuals a questionnaire that they should complete at the start and at the end of the employment relationship. All personal data will be processed confidentially.

The City of Oulu has included in its calls for tender the following request for information to verify fulfilment of the contract terms described in the call for tenders:

Contract term: The supplier must report to the contracting entity on the on-the-job learning places offered to persons studying at education institutions [xxx] at [time] intervals, counted from the date on which the contract is signed. The report must contain the name of the person to whom an on-the-job learning place has been provided, the length of the learning period and the person's key tasks.

If supervision or the requested information show that the contract terms concerning provision of employment have not been complied with, the contracting entities can impose penalties for contract violations. However, the penalties must be stated in the contract. For example, the contracting entity may oblige the contracting partner to pay a sum of money as a contract penalty. In case of major contract violations, the contracting entity may even reserve the right to cancel the contract. However, the contracting entity should primarily strive to solve such problems in cooperation with the contracting partner.

5.4.2 Supervision of contract terms concerning labour rights and human rights

As far as domestic suppliers are concerned, contracting entities can supervise the suppliers' activities during the contract period by conducting inspection visits and/or by requesting a corporate social responsibility (CSR) report from the supplier, or sending a CSR query form for the supplier to complete. In that case, terms on supervision of the following type may be included in the contract:

The following are some of the conditions that Hansel Ltd includes in its calls for tender to verify the fulfilment of the contract terms described in the call for tenders:

Contract term: The supplier must comply, and ensure compliance by their subcontractors, with the main points of the International Labour Organization ILO's Fundamental Conventions listed below, and the provisions of the UN Convention on the Rights of the Child, in the manufacturing of the offered product in case that these Conventions have not yet been implemented in national legislation:

- Abolition of forced labour (Conventions nos 29 and 105)
- Freedom of organisation and right to collective bargaining (Conventions nos 87 and 98)
- Non-discrimination and equality (Conventions nos 100 and 111), and
- Abolition of child labour (Conventions nos 138 and 182).

Hansel or an independent third party appointed by Hansel and the client have during the contract period the right to, at their expense, to supervise and inspect in accordance with the [contract clause in question] compliance with the contract terms on corporate social responsibility applicable to the supplier and to report on the results of the inspection.

The supplier must submit to Hansel by [deadline] a CSR report, or a certificate of a social responsibility audit [BSCI] or certification [SA 8000] of the manufacturing of the equipment coming under the framework agreement, or other certificate or documentation of socially responsible action endorsed by a third party if such certificates or documentation are available for the equipment in question. For reasons of clarity, it is stated that the certificate or documentation referred to above should concern the manufacturing process and is not equipment-specific.

In addition to the aforementioned examples, contract clauses may also specify the contracting entity's response to neglecting measures described in the correction plan.

When recording the responses in the contract, it should be noted, however, that the aim is to improve the social responsibility situation in cooperation with the supplier, and that financial penalties or cancelling the contract are not necessarily the best way to achieve improvements.

Hansel Ltd has included the following clause in its contract terms:

If the Supplier does not draw up a CSR report, or the Supplier does not have a CSR audit or certification for the equipment that the contract concerns, or other certificate or documentation of corporate social responsibility endorsed by a third party, the Supplier must conduct a self-evaluation by [deadline] by completing and returning a CSR survey to be sent out separately by Hansel, which is used to survey compliance with contract terms on responsibility in the supply chain. If the Supplier is a reseller of the equipment, the Supplier must, to the best of its abilities, check the details referred to [above] with the manufacturer of the equipment that it represents. Social responsibility will be jointly monitored during the contract period.

If the CSR survey brings up any deviations from the contract terms, Hansel/the Client and the Supplier can together draw up a plan on measures to be taken to correct the deviations and to eliminate the deficiencies. The Supplier must complete the measures contained in the correction plan following the agreed schedule.

Alko has included the following conditions in its contracts to verify fulfilment of contract terms on ethical action described in the call for tenders:

In order to ensure the implementation of the code of conduct in its supply chain, Alko may carry out audits in accordance with the BSCI operating model, or have them carried out by a third party. Alko may also require that the parties to the supply chain conduct self-evaluations concerning the observance of the code conduct, using the BSCI self-evaluation form and that the parties will submit the results to Alko for evaluation.

If a party to Alko's supply chain verifiably fails to comply with the code of conduct or operating principles of BSCI, Alko may cancel the product order and listing without incurring any liability for compensation as a result. In order to ensure the transparency of the supply chain, the seller assures that it will provide Alko with details of the location of all facilities of the seller or companies, including packaging and logistics services. The seller also assures that all production of the products supplied to Alko and/or all performance of the services connected with them takes place in the facilities reported to Alko.

In order to ensure the transparency of the supply chain, Alko may require the seller to provide information on its partners operating in its subcontracting chain that the seller has collected. The seller further assures that if it fails to report to Alko any of the facilities used for the production of the above-mentioned products or their parts and/or for the performance of services connected with them, this is a justification for Alko to immediately terminate all agreements, contracts and business relationships between Alko and the seller without any liability for compensation.

In this connection, seller means a contracting partner selling products to Alko.

We should bear in mind that this is about supervision of compliance with contract terms carried out by the contracting entity or a party appointed by the contracting entity. In many sectors in Finland, supervisory activities are carried out by various authorities. This should be taken into consideration in the supervision of contract terms.

Supervision of **foreign suppliers** during the contract period can take place in several different ways:

- by requesting information on CSR reporting during the contract period, or if such reporting is not carried out by the supplier, by requesting for a certificate of a audit or certification for the product to be purchased or its manufacturing process, or by requesting a CSR certificate endorsed by a third party, if one is available for the product
- by requesting information on how the supplier otherwise supervises responsible action and the implementation of corporate social responsibility in the product's supply chain, or

- by sending out a CSR survey or self-evaluation form drawn up by the contracting entity to the supplier. Templates for this are available on the website of the Ministry of Economic Affairs and Employment in Finnish, Swedish and English.

As far as the supervision of foreign suppliers is concerned, we should remember that the contracting entities primarily work with their main partner in Finland, not directly with foreign subcontractors. The contracting entities do not usually have the resources or capacity to make supervisory visits to the suppliers' facilities or procurement audit services that target foreign suppliers. If the supplier has been audited, and a report on this audit is available, the contracting entity may request for this report during the contract period.

In addition to a CSR report, documentation of socially responsible action during the contract period may include a BSCI audit certificate, SA 8000 certification, or similar.

A BSCI audit is a model for social quality control and its aim is to improve the suppliers' working conditions in high-risk countries so that they can reach the level required in international Conventions, and to clarify and harmonise the supervision of suppliers by companies. This model was developed by European retail chains in 2003. When companies join the BSCI, they undertake to promote the implementation of the BSCI's Code of Conduct.

This code is based on ILO's Fundamental Conventions, UN human rights Conventions and the UN Declaration of the Rights of the Child. A supplier who joins the system on the buyer's request commits to compliance with the BSCI Code of Conduct and conducts a self-evaluation of their activities following the BSCI code, after which the buyer and supplier companies jointly agree upon conducting audits and the audit schedules. Audits are always carried out by a neutral certification body approved by the Social Accountability International (SAI) operating in the country in question. SA 8000 is Social Accountability International's CSR certification system based on ILO's Fundamental Conventions, the Universal Declaration of Human Rights and the UN Declaration of the Rights of the Child.

SA8000 certification is accepted globally. It includes the development and evaluation of management systems promoting socially acceptable working methods that benefit the entire supply chain. SA 8000 certification is more comprehensive and extensive than a BSCI audit. When contracting entities consider whether a request for information should be submitted to the supplier, they should first establish if the product group that is the object of the procurement is within the scope of SA 8000 certification.

In addition to a BSCI audit and SA 8000 certification, contracting entities may also consider using other certificates or auditing systems in supervising contract terms. In this respect, however, they should investigate in detail which individual and specific supervisory measures each system comprises. For more information about the supervisory measures contained in different certificates, visit the website of Finnwatch, a Finnish non-governmental organisation (the information is in Finnish).

As part of conducting audits or requesting certificates during the contract period of public procurement, the contracting entity must consider which link in the production or supply chain, or which factory or work stage associated with one of these links should be the focus of the audit or other certification measures.

In the procurement of private companies, the auditing requirement is often brought to bear on the next link in the supply chain. The contracting entity may also clarify the issue by stating in the contract terms that the reports and certificates must pertain to one or several links of the supply chain or subcontracting chain. Selecting a suitable link depends on the product to be procured and the production or supply stage that is associated with the highest social risks.

Terms such as the following may be set for the Finnish importers or resellers of foreign suppliers in the contract:

The Finnish Defence Forces has set the following conditions in a call for tenders to verify compliance with contract terms described in the call for tenders:

The Tenderer must attach to the tender an assertion of compliance with the aforementioned stipulations. As an assertion will be accepted:

- A certificate in compliance with an international standard (if available), for example Fair Trade, Rainforest Alliance, SA 8000
- an audit carried out by an independent third party, or
- other documentation that verifies compliance with the requirement.
- If none of these is available or in use, the supplier's assurance or undertaking, which will be complemented during the contract period by filling in a self-evaluation form (Appendix x) will be required, and the contracting partners must engage in dialogue during the contract period.

16. Finnwatch: <http://finnwatch.org/julkaisut/julkisethankinnat>.

In addition to the aforementioned examples, contract clauses may also specify the contracting entity's response to neglecting measures described in the correction plan.

When recording the responses in the contract, it should again be noted, however, that the aim is to improve the social responsibility situation in cooperation with the supplier, and that financial penalties or cancelling the contract are not necessarily the best way to achieve improvements.



Social responsibility evaluation form

When reviewing the fulfilment of contract terms relevant to social considerations, the contracting entity may use social responsibility evaluation forms, which contracting entities such as Hansel Ltd have sent for suppliers to complete. A self-evaluation form in Finnish, Swedish and English is available on the corporate social responsibility pages on the Ministry of Economic Affairs and Employment website¹⁷. The site also provides instructions for completing the form in the three languages and guidelines for evaluating the information presented in it.

Abnormally low tenders

Under the Act on Public Procurement, the contracting entity must require the tenderer to provide a written account of the prices or costs of any tender that seems to be abnormally low. An abnormally low tender may be based on social dumping, inappropriate employment conditions or even forced labour or trafficking in human beings.

The request and explanation may relate in particular to the manufacturing method, the economic and technical solutions for performing a service or for a construction method, exceptionally low-cost terms and conditions of procurement, the originality of construction contracts, goods or services, compliance with the obligations laid down in the environmental, labour and social legislation, subcontracting, and State aid received by the tenderer.

If the information received shows that there are acceptable reasons for the low price, the tender should not be rejected. If, on the other hand, the explanation supplied by the tenderer and other evidence provided does not satisfactorily account for the low level of prices or costs tendered, the contracting entity may reject a tender with an abnormally low price. If the abnormally low price or cost result from non-compliance with the obligations laid down in the environmental, labour or social legislation, the contracting entity **must, under the Act on Public Procurement, reject** the tender because of its abnormally low price. If the tender is rejected, a reasoned decision should be made, of which the supplier having submitted the rejected tender will be informed.

¹⁷ Ministry of Economic Affairs and Employment, <http://tem.fi/en/socially-responsible-public-procurement>, retrieved 30 January 2017..

Reserving a contract for sheltered workshops

Under the Act on Public Procurement, a contracting entity may reserve participation in competitive tendering to take place in the context of work programmes or restrict participation in competitive tendering to sheltered workshops or similar suppliers whose main aim is the social and occupational integration of disadvantaged persons and persons with disabilities. It must be a condition of participating in competitive tendering that not less than 30 per cent of the employees of the sheltered workshop, supplier or work programme are disadvantaged persons or persons with disabilities. The contract notice must state that the contract is reserved for implementation by the sheltered workshops or in the context of work programmes.

Under the Social Welfare Act (710/1982), the main focus of such work programmes must be activities for persons with disabilities. The operation of social enterprises, on the other hand, is based on the Act on Social Enterprises (1351/2003). The main purpose of the act is to provide employment opportunities for persons with disabilities and partial work ability and for long-term unemployed. At least 30 per cent of the employees in the social enterprise's employ must be individuals with partial work ability or individuals with partial work ability and long-term unemployed. A social enterprise pays all its employees the salary indicated in the collective agreement and it is always entered in the Trade Register. The company must also have an entry in the register of social enterprises held by the Ministry of Economic Affairs and Employment¹⁸.

A social enterprise may only take part in a call for tenders reserved for sheltered workshops if it meets the criteria set for a workshop.

18. Ministry of Economic Affairs and Employment, <http://tem.fi/en/socially-responsible-public-procurement>, retrieved 30 January 2017.





Fair Trade products and other responsibility certificates

Under the case-law concerning public procurement, contracting entities may also purchase Fair Trade products and products carrying other responsibility certificates. The farmers producing Fair Trade products are paid at least a guaranteed price that covers the costs of production that is sustainable for the environment and humans. Various Fair Trade organisations grant labels and certificates to products that meet the Fair Trade criteria. Under the Act on Public Procurement, in the description of a procurement, in the criteria for determining the most economically advantageous tender set out in the call for tenders, or in the terms and conditions for implementing the agreement, a contracting entity may require certain labels as proof that the procurement satisfies the required environmental, social or other characteristics.

Under the Act on Public Procurement, a contracting entity must also approve all labels corresponding to specific social labels and for this reason it is recommended that the contracting entity should set as a requirement and thus also describe the criteria behind

the award of the label or certificate in the call for tender documents. For example, the contracting entity may require that the supplier pay the producers a price that covers all their costs of sustainable production (including proper wages and working conditions for the workers). In addition to this, the contracting entity may state that **the tenderer may produce a Fair Trade label or certificate granted to their product as a proof of meeting the criteria set in the call for tenders.**

The contracting entity must accept other appropriate means of proof if a tenderer, for reasons beyond its control, has been demonstrably unable to secure the special label notified by the contracting entity or a corresponding label within the prescribed time limit. The contracting entity may also accept other ways of demonstrating the fulfilment of the requirements.

If the offered product has a Fair Trade label or certificate, fulfilment of the criteria can already be established during the tendering process. If, however, compliance is verified by other means, this usually takes place during the contract period. In order to examine compliance with the requirement in case of all tenderers simultaneously, it is usually justified to request that suppliers whose products do not have a label or a certificate give, during the tendering process, a commitment to complying with the requirements during the contract period. In this case, supervision of compliance with the requirements will take place during the contract period.

In the contract terms, the contracting entity may require the supplier to report on changes that affect the validity of a Fair Trade label or the contents of other documentation during the contract period. If the supplier has given their commitment during the tendering process to fulfilling contract terms relevant to social considerations, the contracting entity may require the supplier to fill in the evaluation form discussed above.

In its calls for tender, Hansel Ltd has formulated its terms related to Fair Trade products as follows:

Contract term: The supplier must pay the producers a price that covers the costs of sustainable production, including a wage standard compliant with laws that gradually increases towards a level that is sufficient to live on, safe working conditions and the right to join a trade union.

Verification: The tenderer may prove compliance with the contract terms either by citing a Fair Trade label that has been granted to the product in question or other similar information.

Further reading

Anttalainen, Heli – Tapaninen, Reino, Liikkumis- ja toimimisesteisille soveltuvat perusopetuksentilat, kalusteet ja varusteet, Opetushallitus 2009.

The Norwegian contracting authority Difi, has produced an overview of product groups in which there is a documented high risk of adverse impacts on working conditions and human rights, <https://www.anskaffelser.no/english/socially-responsible-public-procurement/information-about-high-risk-products>

Esteettömyyskeskus: Oppaita ja suunnitteluohjeita esteettömään ympäristöön, http://www.esteeton.fi/portal/fi/julkaisut/esken_ja_invalidiliiton_julkaisut/oppaita_ja_suunnitteluohjeita/ (in Finnish).

Good Practice in Socially Responsible Public Procurement, Approaches to Verification from Across Europe, The Landmark consortium, c/o World Economy, Ecology & Development (WEED e.V.) 2012.

The Hankinnoista duunia (Handu) project which was coordinated by the National Institute for Health and Welfare and which brought together the Cities of Helsinki, Vantaa, Espoo and Oulu, was carried out **between 1 May 2015 and 31 October 2017**. Read more about the procurement pilots used in the project at , <https://www.thl.fi/fi/tutkimus-ja-asiantuntijatyo/hankkeet-ja-ohjelmat/hankinnoista-duunia-handu/hankintapilotit> (in Finnish).

International Learning Lab on Public Procurement and Human Rights is a global network in which the aim is to produce information, tools and guidelines and strengthen the competence of public contracting entities in the consideration of human rights in public procurement. Read more: <http://www.hrprocurementlab.org/>

Julkisten ruokapalvelujen laatukriteerit, Helsinki: FCG Finnish Consulting Group Oy 2010.

Act on Public Procurement and Concession Contracts (1397/2016), <https://www.finlex.fi/fi/laki/kaannokset/2016/en20161397.pdf>

OECD's website on responsible business conduct (<http://mneguidelines.oecd.org/>): In addition to a code of conduct for multinational companies, the OECD has also draw up sector-specific guidelines focusing on the application of the due diligence principle in different situations.

SA 8000 certification, certification system for corporate social responsibility drawn up by Social Accountability International, <http://www.sa-intl.org/>

A list of standards promoting accessibility compiled by **the Finnish Standards Association SFS**: http://www.sfs.fi/standardien_laadinta/sfs_n_tekniset_komiteat_ja_seurantaryhmat/it-standardisointi/it_-_aihealueet/esteettomyys (in Finnish).

Corporate social responsibility website of the Ministry of Economic Affairs and Employment:

<http://www.tem.fi/en/social-responsibility>

Convention on the Rights of Persons with Disabilities, available in electronic form at http://www.ykliitto.fi/sites/ykliitto.fi/files/vammaisten_oikeudet_2016_net.pdf (in Finnish).

Verhe, Irma – Ruti, Marko, Esteetön luontoliikunta, Opetusministeriö 2007.

Vikstedt T, Raulio S, Prättälä R, Joukkoruokailutyöryhmä. Julkisten ruokapalveluiden ravitsemuslaatu. Hankintailmoitusrekisteri tarkastelussa. Helsinki: Terveyden ja hyvinvoinnin laitos (THL). Raportti 18, 2011.

In brief

The guide to socially responsible public procurement describes through practical examples how social aspects can be taken into account at different stages of a procurement process. The guide describes, what the different options are, what kind of requirements are laid down for responsible procurement in the Act of Public Procurement and other relevant acts, and the approaches to social responsibility adopted by different contracting entities.



Ministry of Economic Affairs
and Employment of Finland