

## **Local Labour Clauses and the Public Procurement Regime**

Since the Local Government Act 2000, local authorities have had a clear legal basis for incorporating community benefits, including targeted recruitment and training, into public contracts by means of the well-being powers.

However, the prohibitions of the EU public procurement regime against discrimination have made many local authorities wary of treading the careful path which is required if they are to avoid their targeted recruitment and training provisions falling foul of EU law.

Regulation 39 of 2006 Public Contracts Regulations expressly allows contracting authorities to stipulate social and environmental conditions relating to the performance of a contract, provided these are set out in the OJEU notice and/or contract documents and comply with the general principles of EU law, including non-discrimination and transparency. The community benefits in question must be linked to the subject matter of the contract.

The OJEU notice should include the relevant CPV code for personnel services / labour recruitment (74500000-4), and include as “other information” a statement explaining that the contractor will be required actively to participate in achievement of certain social policy objectives, and accordingly, particular contract conditions may relate to social considerations including, e.g. provisions regarding local training initiatives.

On a practical level, a Council may come under political pressure to be prescriptive in contract documents about the benefits which are required to the local economy. There is a fine distinction between what is and is not discriminatory: it is acceptable for procurement policy to have the effect of opening up the supply chain to local SMEs or maximising local employment, however it is not appropriate to specifically target local firms, quantify an amount of local spend or restrict the source of recruits to local residents.

Examples of acceptable local labour provisions include:

- Specifying that an agreed number of employment opportunities, training opportunities and/or work placements are provided by the contractor in connection with the project;
- Requiring any vacancies in connection with the project to be notified to agreed local agencies / sources, however exclusive advertising through named sources is not permissible;
- Aiming provisions specifically at a target group, e.g. people who have been unemployed for over 6 months, however the target group may not be limited by reference to locality.

EU case law (*Wienstrom*) also requires community benefit clauses to be verifiable, therefore it is good practice to include measurable targets and ensure they are

covered by the contract monitoring regime. Additionally, Councils should always ensure that the local labour provisions will help to achieve one of their policy objectives and do not conflict with Best Value requirements.

Finally, it is always worth remembering that voluntary agreements with contractors to increase local economic benefits may be introduced at any time during procurement or following contract award. Voluntary agreements may give a contracting authority greater flexibility, however they do not have the back-up of contractual enforceability.

With careful planning and preparation, the inclusion of local labour clauses in public procurement can make an important long-term contribution to social inclusion and regeneration and is therefore an important tool in implementing corporate strategies.

