

SOUTHAMPTON CITY COUNCILS ETHICAL PROCUREMENT POLICY STATEMENT

Southampton City Council (SCC) will proactively work to ensure that all goods, works and services it procures are sourced ethically in terms of both the way that SCC procures and in terms of the standards that we expect our suppliers, service providers and contractors to meet. Within its obligations as a Best Value Authority, and in compliance with UK and underpinning EU legislation, SCC will conduct its procurement process in line with its Ethical Procurement Policy which is based upon the principles of the Ethical Trading Initiative (ETI) Base Code, which were founded on the conventions of the International Labour Organisation (ILO) and is an internationally recognised code of labour practice.

Introduction

SCC expects its suppliers to maintain high standards of integrity and professionalism in their business dealings and practices, adhering to the laws of the countries where they operate. SCC therefore requires its suppliers to abide with the following principles where proportionate and directly relevant to the subject matter of the contract. These are not normally included in the subject matter of contracts as most are governed by labour law within the EU and, as such, are legal requirements which if breached could be grounds for excluding the supplier for non compliance.

This Ethical Procurement Policy Statement sets out SCC's policy on ethical procurement. It is based largely on the following principles:

- Freedom of association and the right to collective bargaining are respected;
- No discrimination is practised;
- Employment is freely chosen;
- Working conditions are safe;
- Good health is promoted;
- Working hours are not excessive;
- Wages meet at least national legal standards;
- Regular employment is provided;
- Training is provided;
- Clear dispute procedures are in place;
- Child labour is eliminated;
- No inhumane treatment is allowed; and
- Acting with integrity and transparency.

Legal Framework

SCC operates within the legal framework governing public procurement as framed by the EU Treaty itself, the relevant EU Directives relating to public procurement and the Public Contract Regulations 2006 as subsequently updated and amended.

This legal framework requires contracting authorities to award certain contracts in line with the overarching fundamental principles of the EU Treaty, including the principles of non-discrimination, equal treatment, transparency, procedural fairness, mutual recognition and proportionality.

In accordance with the public procurement rules, it is therefore necessary to ensure that ethical issues are relevant to the subject matter of the contract and are consistent with the requirement within the Local Government Act 1999 to achieve “best value”. In the context of procurement, best value for money means choosing the option or bid that offers “the optimum combination of whole life costs and benefits to meet the customer’s requirements.” Ethical considerations that are “relevant” to the subject matter of the contract may arise where there is a risk to SCC from a supplier being unable to deliver the product or service to time and of sufficient quality due to say insufficient health and safety provisions for its employees. If a clear link can be established between poor conditions of employment and the ability or motivation of an employee to maintain required quality standards, this will be relevant to the supply of goods, works or services.

Public sector bodies may also work in partnership with suppliers to pursue wider ethical issues, in a constructive and collaborative way, outside the public procurement process. This must however be done post-award and on a voluntary basis as contracts must not set standards that exceed the parameters of what may be required under EU law. Further, doing so may deter bidders from Member States and could be challenged as a restriction on free trade.

Principles

There is a strong public interest in ensuring that in public procurement activity the following principles are observed:

- Freedom of association and the right to collective bargaining are respected;
- Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- The employer adopts an open attitude towards the activities of trade unions and their organisational activities
- Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

No discrimination

- Practice no discrimination in hiring, compensation, training, promotion, termination or retirement either directly or indirectly.

Employment is freely chosen

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

Working conditions are safe

- Appropriate health and safety policies and procedures are operated and are overseen by a senior manager responsible for compliance and monitoring and for ensuring employees have the necessary training and health and safety equipment.
- Adequate steps are taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- Provide comfortable and hygienic working conditions with clean toilets and water suitable for drinking and washing. Where worker housing is provided it should meet the same standards for health and safety as the workplace.
- Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.

Good health is promoted

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

Working hours are not excessive

- Comply with national laws or industry standards on employee working hours, whichever affords greater protection.
- Provide clear, easily understood disciplinary, grievance and appeal procedures that are lawful and appropriate. Any disciplinary measures should be recorded and suppliers should not seek to deprive employees of their legal or contractual rights.

Minimum wages

- Provide wages and benefits at rates that meet at least national legal standards with no deductions made unless permitted under national law or agreed by the employee, without duress.
- Provide employees with an easy to read contract of employment clearly explaining wage levels. Where employees are unable to read, the contract should be explained to them by a union representative or another appropriate third party.

Regular employment is provided

- To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.
- Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

Training is provided

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

Disputes procedure

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

Child labour is eliminated

- Support the elimination of child labour. The course of action taken shall be in the best interest of the child, conform to the provisions of International Labour Organisation (ILO) Convention 138 and be consistent with the United Nation's Convention on the Rights of the Child.
- Provide for any children found to be performing child labour to attend and remain in quality education until no longer a child. 'Child' refers to any persons less than 15 years of age, unless local legislation on the minimum age stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply.
- Ensure no children and young persons (over the age of a child, as defined above, but under the age of 18) are employed at night or in hazardous conditions, as defined by the International Labour Organisation.

No inhumane treatment is allowed

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

Acting with integrity and transparency

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

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

Equality Act 2010

The Equality Act 2010 (the Act) replaces the previous anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with it. It also strengthens the law in important ways, to help tackle discrimination and inequality. The majority of the Act came into force on 1 October 2010.

The general public sector equality duty was created by the Equality Act 2010, which replaced the public sector race, disability and gender equality duties which existed previously. The duty now covers the wider protected characteristics of age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation

The Public Sector Equality Duty (the new public sector duty also applies to service providers contracted to deliver a service to customers on SCC's behalf or directly to SCC's staff). This new duty is designed to embed equality considerations (i.e. the protected characteristics) into the day to day work of public bodies including their procurement, so that they tackle discrimination and inequality and contribute to making society fairer.

Grounds for exclusion

SCC reserves the right to exclude an economic operator where deemed ineligible to tender for, or be awarded a public contract under regulation 23 of the Public Contracts Regulations 2006. Rejection is permissible when the organisation:

- Is in a state of bankruptcy insolvency compulsory winding up, administration, receivership, composition with creditors or any analogous state, or is subject to relevant proceedings;
- Has been convicted of a criminal offence relating to business or professional conduct;
- Has committed an act of grave misconduct in the course of business (this could mean conviction of such a criminal offence or commitment of an act of grave misconduct as might relate to a conviction for breaching International Labour Organisation conventions on child or forced labour, more general conditions of work, mistreating employees or breaking employment or equality laws in countries where they operate);
- Has not fulfilled obligations relating to payment of social security contributions;
- Has not fulfilled obligations relating to payment of taxes;
- Is guilty of serious misrepresentation in supplying information required by SCC under Regulation 23;
- Is not in possession of a licence or not a member of the appropriate organisation where the law of that State requires it for the purpose of providing the services in question;

Or

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

In deciding whether to exclude an economic operator SCC will consider the seriousness of the misconduct, whether it was related to the subject matter of the contract, when it was committed and the action taken or being taken to prevent its recurrence. This discretion will not apply to convictions for offences where there is a mandatory requirement on public sector contracting authorities to exclude candidates in accordance with regulation 23 of the Public Contracts Regulations 2006.

Regulation 23(2) makes provision for an exception to the mandatory exclusion of an economic operator. That is, if the contracting authority “is satisfied that there are overriding requirements in the general interest” which would justify such an exception, e.g. in the case of a national emergency.

Technical specifications and standards

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

The specification must be relevant to the requirement and must not discriminate against other products or providers from other Member States, nor must it restrict competition. Unnecessary use of these principles must be avoided in order to avoid the possibility of placing an undue burden on small businesses and other organisations, which might have a disproportionate impact on their ability to compete. In all cases, contracting authorities must be prepared to consider equivalent standards from suppliers from other countries (with different national standards) that meet the underlying requirement. The onus is on the supplier to prove that the solution being offered meets the requirements.

SCC general procurement principles

In delivering this policy statement we will work with suppliers, service providers and contractors to:

- Meet the objectives of our Sustainable Procurement Policy (see below link) whilst also meeting the requirements of this policy, our Equality Policy (see below link) and our value for money objectives.
http://www.southampton.gov.uk/Images/sustainableprocurement_tcm46-266463.pdf
http://www.southampton.gov.uk/Images/New%20Equality%20Policy_tcm46-334368.pdf
- Ensure that we provide tendering opportunities that are suitable for Small and Medium Enterprises (SMEs), Voluntary Sector, Ethnic Minority Businesses (EMBs) and supported factories.
- Ensure that we act in accordance with the Compact Code of Practice (see below link)
<http://www.southampton.gov.uk/living/comiving/compact.aspx>
- Ensure that we act in accordance with the Public Services (Social Value) Act 2012.
- Promote skills training, apprenticeship opportunities and graduate programmes among our suppliers to help tackle youth and graduate unemployment.
- Support the use of fairly traded goods where this is within the legal framework governing public procurement.
- Encourage suppliers to offer solutions for delivering ethical requirements innovatively and cost effectively.
- Encourage suppliers to develop effective strategies for enhancing staff engagement to enable people to be the best they can at work.

- Retain records to demonstrate that procurement has been fair and transparent.
- Continue to treat suppliers fairly and equally at all times and to act impartially and objectively and with integrity and honesty throughout the procurement process.
- SCC will ensure that we pay our suppliers, service providers and contractors on-time and will act in accordance with the Late Payment of Commercial Debt Regulations 2013. We also expect our suppliers, service providers and contractors to pay their suppliers, service providers and contractors/sub-contractors on-time and in accordance with the spirit of the Prompt Payment Code.
- Address breaches of the ethical procurement policy by suppliers.

Communication

We will communicate this policy both internally and externally via our tender documents. Copies of this policy will be placed with supporting documents on SCC's Procurement Intranet site and Internet web site.

References

The Ethical Trading Initiative (ETI) Base Code
Defra –Ethical Procurement Policy Statement –March 2011 © Crown
copyright 2011