

# Guide

to socially  
responsible  
procurement



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## Foreword by the Minister



Socially responsible purchases are part of corporate social responsibility. In autumn 2012, the Government adopted a Resolution on Corporate Social Responsibility. According to this resolution, socially responsible procurement aims to set contract conditions that encourage suppliers to ensure that during the contract period goods and services have been produced in conditions where human rights and core labour standards are respected. In effect, suppliers must comply with international human rights conventions, such as the ILO conventions, the UN Convention on the Rights of the Child, legislation on minimum wages and working hours in the production country, and general environmental, health and safety requirements.

The government is responsible for many key tasks in society from education to environmental care and employment to human well-being. As contracting authorities spend significant sums of money in a number of sectors on their purchases, they can exert a considerable influence on the products and services offered in the market. Public sector actors can set private organisations and persons an example of skilful and responsible procurement. As public sector purchases can thus influence the markets and private consumption, it is justified for such units to also examine in a broader context the impacts of their procurement activities on the society for which they are responsible.

Public procurement legislation ensures that public procurement procedures are transparent and non-discriminatory, but it does not determine or spell out how or on what terms contracting authorities should procure goods or services or conclude contracts. Moreover, the Act on Public Contracts does not prevent contracting authorities from taking into account factors related to employment, working conditions, the position of vulnerable people or corporate social responsibility in the procurements. In other words, the Act on Public Contracts is not just a restriction; it also opens up possibilities.

Regardless of the possibilities offered by the public procurement legislation, taking the aforementioned social considerations into account in practical procurement activities is not always easy. Public sector contracting authorities must know the market and the product or service to be purchased and be familiar with the rules of public contracts legislation, without losing sight of their own needs and objectives. As the contract award procedure must be non-discriminatory in accordance with European Union legal standards, requirements that mean well but are discriminatory to some suppliers cannot be set in purchases. In these circumstances, it may be difficult for the municipality or 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 the disabled, while also meeting their other obligations.

This guide was specifically designed to assist contracting authorities in these difficult si-

tuations. The guide was intended not only to describe the benefits of responsible public purchases or the inclusion of social considerations in the contracting authority's strategy but also to serve as a practical tool for public servants and employees in charge of tendering processes in their everyday work. To serve this purpose, the guide approaches social considerations through concrete examples. The contracting authorities referred to in the guide have carried out vital pioneering work to include social considerations in their own procurement procedures. Hopefully, these examples will also encourage other contracting authorities to take social considerations into account..

Contracting authorities can incorporate social considerations in a very broad sense in all phases of the tendering procedure. The examples discussed in the guide also show what an innovative and active role many Finnish contracting authorities have played in the sphere of socially responsible purchases. My hope is that this guide will communicate to the readers an idea of what public procurement to a great extent is about: taking care of business that concerns us all in a sustainable manner.



Lauri Ihalainen  
Minister of Employment

# What do responsible purchases comprise?

**THE PURPOSE** of this guide is, in as practical terms as possible, to describe the benefits of responsible public procurements and to discuss the contracting authorities' possibilities of taking social considerations into account in their procurement procedures. These possibilities are significantly affected by the valid legal provisions on public procurement. The tendering procedures of Finnish contracting authorities are subject to the Act on Public Contracts (348/2007) and the act on public 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, 349/2007). This guide also highlights the possibilities offered by the public contracts legislation and case law to make socially responsible procurements.

The tendering procedures of Finnish contracting authorities are subject authorities. Where applicable, however, it can be used in private sector contracts and corporate planning that aims for creating and expanding business that promotes social goals.

In many markets, contracting authorities represent major purchasing power and influence. At the European level, public contracts account for some 17 per cent of the EU's GDP. Apart from the direct societal impacts of public sector procurements, they can also encourage companies and private buyers to focus attention on issues that are vital to society.

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

Government Resolution of 22 November 2012 contains the following statement on social corporate responsibility:

"Socially responsible procurement aims to set contract conditions that encourage suppliers to ensure that during the contract period goods and services have been produced in conditions where human rights and core labour standards are respected. In effect, suppliers must comply with international human rights conventions, such as the ILO conventions, the UN Convention on the Rights of the Child, legislation on minimum wages and working hours in the production country, and general environmental, health and safety requirements."

In the European Commission Guide to Taking into Account of Social Considerations in Public Procurement, socially responsible public procurements are defined as:

“...procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR), while observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives.”

## Who benefits from responsible procurements?

**TENDERING PROCESSES** are used in public procurements 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, Finnish contracting authorities also contribute to achieving goals that are important for society, including employment, human well-being and the implementation of fundamental rights.

Including social considerations in public procurements means that contracting authorities also consider the impacts of their procurements in a larger societal frame of reference. Socially sustainable procurements may create overall savings in fulfilling their tasks when not only the purchasing price but all societal benefits of the procurement, 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 older persons and mental health rehabilitees were assessed on the basis of the suppliers' commitments. These commitments concerned such aspects as customer satisfaction. After the awarding of the contract, customer 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 customer needs. This increased customer satisfaction and reduced the city's costs by reducing expenditure on rehabilitation periods or hospital stays outside the housing units.

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



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

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 procurements. For example, a material in a product purchased by a certain contracting authority can be replaced by a more socially sustainable and/or completely new alternative.

## Strategy supports the inclusion of social considerations

**IN PRACTICE**, socially responsible public procurement means that the contracting authority takes social considerations *into account* in the procurement. Social considerations may be included *in various ways and in many different phases of the contract award procedure*. However, the limited resources of contracting authorities, legislative requirements and the need for efficiency in socially responsible procurements force contracting authorities to examine how and in which public purchases social considerations could be included to the greatest effect and with the highest impact. Consequently, contracting authorities should draw up a strategy for implementing socially responsible procurements, or incorporate responsible procurements in a more general procurement strategy. The strategy will help the contracting authority to

- recognize its societal goals and priority areas as well as the role procurements play in achieving them;
- ensure the commitment of the contracting authority's management to socially responsible procurements;
- apply a risk analysis to those of the contracting authority's procurements where issues of social responsibility may emerge in the contract award phase or during the contract period;
- reach internal agreement within the contracting authority upon the division of responsibilities and tasks associated with socially responsible procurements;
- 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 its results and create networks for spreading good practices.

If the contracting authority'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 in implementing such policies can be highlighted. Clear targets can thus also be specified for procurement, and their achievement can be monitored. In this context, the contracting authority should also identify those procurement categories in which social responsibility actions will primarily be implemented.

*Ensuring management commitment* is a key part of implementing socially responsible procurements, as determining the human and financial resources needed to implement the procurements and specifying the organisation structure are in the hands of the management. *Risk analysis* will help contracting authorities to focus their efforts on the most significant purchases and the procurements through which they can optimally promote the achievement of their social goals. Socially responsible procurement requires extensive expertise in all parts of the contracting authority's organisation. It is thus vital that the *tasks* of each relevant civil servant or employee in the contracting authority's offices 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 set targets is *monitored*. Disseminating information on and sharing good experiences and examples with other contracting authorities 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 authority's checklist in socially responsible procurement

1. Defining a strategy of socially responsible procurement
2. Ensuring management commitment
3. Conducting a risk analysis
4. Incorporating social responsibility in job descriptions
5. Cooperation between specialists
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 disabled persons, supporting sheltered workshop activities and taking the operation of companies with high ethic 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 activities.

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 a procurement and the possibilities of supporting the social policy objectives outlined by Espoo local executive should be taken into account in the planning of procurements. The guideline specifies five approaches to promoting social considerations in procurements:

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

## CITY OF TAMPERE

The procurement guide that directs strategic procurements in the City of Tampere states that the possibility of applying the sustainable development criteria or social considerations should be taken into account in all tendering processes. The guide describes how social considerations can be incorporated in contract award procedures. The city's operative procurement guideline also makes a reference to social considerations.

The SYS project implemented in the city's employment services unit, which was co-funded by the European Social Fund and the City of Tampere, aims to develop intermediate labour markets through social entrepreneurship in Tampere urban region. One objective of this project is to promote the inclusion of social criteria in public procurements. As part of this project, a working group on social criteria was put together, consisting of five planning managers who represent the core processes of the contracting authority's service areas in the city, a procurement lawyer, the head coordinator of immigrant services, a planning officer from the Sustainable society unit and the SYS project's project manager. The aim of the working group is to promote the inclusion of social considerations in the city's service procurements and to mainstream the use and promotion of these considerations in the city's organisations. Training and discussion sessions were also organised on this theme.

## Risk analysis helps to focus social criteria

THE MINISTRY OF EMPLOYMENT AND THE ECONOMY published a free-of-charge CSR compass tool related to public procurement and social responsibility for contracting authorities at the website <http://julkinen.csr-kompassi.fi/> (available in Finnish and Swedish). It provides a step-by-step introduction to taking social considerations into account. The tool is particularly well suited for procurement of goods. The instructions at the website emphasise paying particular attention on the following aspects in the risk analysis:

- **Supply chain:** what is it like? To how many countries does it extend, and what countries are these? Is it complex? Is it likely to comprise a number of subcont-



ractors? The supply chains of goods in which intermediate products are used are more complex, and mastering them is challenging. Collecting information on a long subcontracting chain may be difficult both for the contracting authority and the supplier at the top of the chain. On the other hand, subcontracting is a key method for utilising the resources of different parties and promoting the participation of SMEs in public contracts

- **Production process:** what is it like? Which part of the supply chain presents the greatest risk of labour rights violations? This section provides instructions for investigating the type of processes needed to produce the goods.
- **Labour:** what type of labour is typically used in similar production processes or deliveries? What type of work is required to produce the product?
- **Knowledge of prior problems:** have abuses been reported in this sector before? For example, poor working conditions have been reported in the textile and electronics industries and the manufacture of paving stones, tools and foodstuffs. Social dumping is an increasing problem among service providers, and the risk of it occurring is particularly high e.g. in connection with catering and cleaning services and in the construction sector.
- **Scope and significance of the procurement:** obtaining a major contract increases the organisation's influence. On the other hand, in smaller procurements it is possible to influence the operating culture of small and medium suppliers in particular.
- **Surveying the basic working conditions:** Is there a risk of a failure to comply with ILO conventions? Are there problems with the payment of wages and working times?
- **Surveying occupational safety and health issues:** Could the production process present risks related to the working environment, including occupational safety and health risks?

If the risk analysis shows that the planned public procurement is associated with risks from the perspective of social impacts and responsibility, it is recommended that the contracting authorities take social considerations into account in the procurement procedure.

# Incorporating social considerations in public procurement procedures

**IN PRACTICE**, public procurement procedures are divided into several phases. Under the public procurement legislation, social considerations can be included in all phases of the procedure. The following section describes the main phases of a public procurement procedure where social considerations can be included.

1. PLANNING THE PROCUREMENT

2. QUALITATIVE SELECTION CRITERIA FOR PROVIDERS

3. MINIMUM REQUIREMENTS APPLICABLE TO THE OBJECT OF THE PROCUREMENT

4. AWARD CRITERIA

5. CONTRACT TERMS APPLICABLE TO CONTRACT PERFORMANCE

## 1. Planning the procurement

It would be justified to take social considerations into account from the planning phase on, as many crucial decisions relevant to the procurement procedure and the content of the procurement are made in this phase. In procurement of social and health care services, continuing existing and long-term patient and customer relationships often plays a key role in the quality of the service. However, the candidates must be informed in advance of conditions related to the validity of contracts in case of long-term patient relationships in the invitation to tender documents.

Consulting the user groups of the object of the procurement often plays a significant part in defining the procurement needs and in the planning of the procurement. When specifying the requirements concerning hardware and software, for example, provision may be made for the needs of users with poor eyesight or hearing, and/or visual or hearing impairments. Similarly, the accessibility requirements of different user groups may



be taken into account in the planning of new facilities, buildings or access routes and the renovation of existing ones. Consulting with the users and customers using the product or service to be procured in the planning phase is in many circumstances a highly essential factor that affects the quality and outcome of the procurement. In public purchases that will be used by disabled persons, in particular, consulting with disabled persons and their families and friends before initiating the contract award procedure is always recommended.

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 the disabled. A key objective of the project is fostering the participatory involvement of the customers and developing dialogical practices with service providers in the provision of housing services.

In this project, the customer group was consulted in the planning phase before the procurement was implemented. In the planning phase, 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 customers, Espoo conducted a Housing Dreams survey among the customer group. The survey was carried out using the design probe method. Design probe is a working method based on self-documentation that provides the customers with a tool for expressing their views. The probes comprise of such tasks as drawing, photographs and journals. In the customers' responses, three themes emerged: communality, mobility, and individuality and flexibility of housing. A quality and impact workshop was also organised for the customers and their families and friends to ensure the success of the participatory method.

In addition to hearing the customers and stakeholders, it is often important and useful to engage in a dialogue with suppliers in the planning phase of the procurement. Market dialogue with suppliers can help to solicit from suppliers operating in the market ideas for implementing socially responsible procurements 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 contracts legislation can be observed in this dialogue by publishing a request for information in the open and free-of-charge website for procurement notices ([www.hankintailmoitukset.fi](http://www.hankintailmoitukset.fi), available in Finnish and Swedish). The request for information can explain the contracting authority's objectives and the project's background, and existing options for achieving the objectives can be discussed. The contracting authority may also organise an information event to which suppliers have free access.



In a technical dialogue that is part of the planning phase in procurements of facility user services (including cleaning services), Hansel Oy, the central purchasing body of the Finnish Government, 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 phase of the procurement also includes proceeding to the risk analysis referred to above. The risk analysis will help the contracting authority to identify the most efficient ways of taking social considerations into account in terms of their resources and the societal impacts.

When a contracting authority includes social considerations in its procurement procedures, 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 authorities 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 authorities 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 stressed to enable suppliers to anticipate the contracting authority's expectations.

## 2. Qualitative selection criteria for providers

Contracting authorities may set requirements that apply to both the actual object of the procurement and the economic operator submitting a tender. The requirements applicable to the economic operator are referred to as selection criteria. These criteria may be relevant to the qualifications of the supplier's staff, or the supplier's technical capacity, prior experience, and professional skill and financial standing. The economic operators must fulfil these criteria to be eligible to take part in the tendering competition. The purpose of these criteria is to ensure that the successful candidate will be able to cope with their contractual obligations. The contracting authority may not set the selection criteria unreasonably high considering the requirements and objectives of the procurement.

In addition to selection criteria, the Act on Public Contracts lists criteria for excluding a supplier. If any of these exclusion criteria are found to apply, the supplier may be excluded from the tendering process. Exclusion criteria include certain types of financial crime, non-fulfilment of obligation to pay taxes or social security contributions and being guilty of grave professional misconduct. A contracting authority can thus exclude from the tendering competition an economic operator who has failed to pay their taxes.

To verify that the eligibility criteria are met and that no exclusion criteria apply, the contracting authority must ask the tenderers to supply documentation proving this, for example as enclosures in their tenders. The contracting authority may require the tenderers to supply information on tax payment or a tax debt certificate. The tenderers in a tendering procedure may also be asked to submit a certificate or other documentation of their stable financial standing or previous deliveries. Compliance with the requirements is verified in the tender processing phase. If the information provided shows that a criterion is not fulfilled, or that an exclusion criterion applies, the contracting authority must basically exclude the economic operator in question from the tendering competition.

The requirements of fairness and non-discrimination in the public contracts legislation demand that the eligibility criteria are not set unreasonably high considering the background and objectives of the procurements. Neither can the contracting authority directly set providing certain documentation or meeting a specific standard as an eligibility criterion, as the economic operators must be given the possibility of demonstrating compliance in other similar ways.

**The Public Works Department in the City of Helsinki includes the following requirement and verification method in its invitations to 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 their 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.

To make sure that the tenderers are not guilty of professional misconduct, the contracting authority may include such as the following requirements concerning social considerations, environmental issues and combat against the grey economy in the invitation to tender:

**Hansel Oy includes the following requirement concerning professional misconduct and verification method in its invitations to tender:**

**REQUIREMENT:**

To submit a tender, the tenderers must have met their obligations laid down in provisions on taxation, environmental protection and working conditions.

**VERIFICATION:**

At the time of submitting their tender, the supplier assure that they have met all their statutory obligations concerning tax payment, environmental protection, labour protection, working conditions and terms of employment.

Yes/No

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

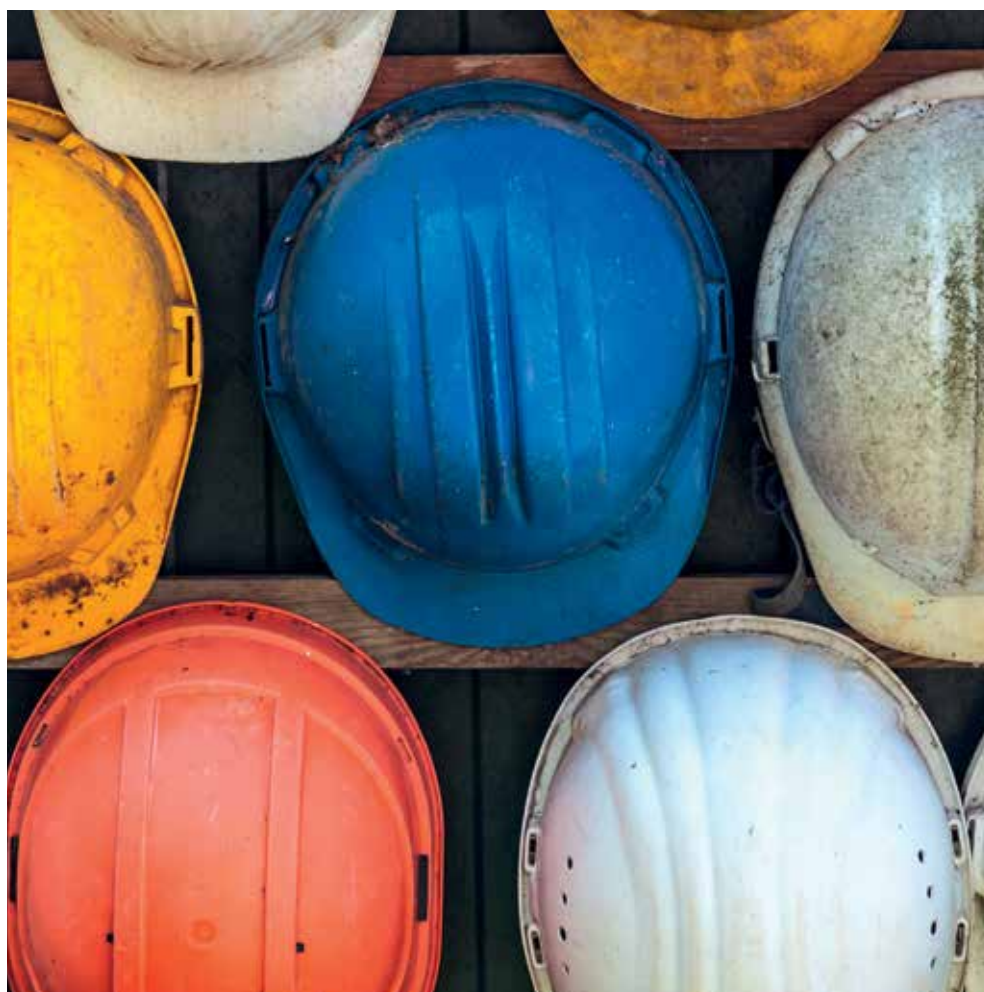
Hansel Oy includes the following requirements and verification methods concerning the supplier's prior experience in their invitations to tender:

**REQUIREMENT:**

The tenderer has experience of providing similar services dating back no more than three years. [As far as this requirement is concerned, the invitation to 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 should 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 authorities may set different requirements not only for the tenderers and economic operators but also for the actual object of the procurement. The contracting authorities 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 authority to check that the minimum requirements or the description of the object to be procured 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 authority, the tender must usually be rejected. Compliance with requirements is verified in the *tender processing phase*.

The description of the object to be procured and the minimum requirements set must be linked to the subject matter of the contract or some stage of its life cycle. For example, the contracting authority may not set as a requirement that the company engages in charitable work.

The minimum requirements concerning the object to be procured can be fine-tuned to take into account the needs of disabled users and any other accessibility requirements and criteria relevant to the users. Accessibility considerations are particularly important in ICT procurements, procurements of interpretation services and construction contracts. The requirements may be relevant to disabled access to buildings in a construction contract, easy accessibility in procurements of transport fleet or user-friendly features in device procurements.

Legislative requirements should not be forgotten when drawing up technical specifications, including the Land Use and Building Act provisions and the National Building Code. In the invitation to 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.

**Senate Properties, a government owned enterprise, has considered setting the following accessibility objectives to designers in invitation to tender documents of a procurement of design services in new building projects:**

- The walkways in outdoor areas shall be accessible and easy to see.
  - The surface of the walkway shall be hard, smooth and non-slip even when wet.
  - Contrasting materials and, for example, signs in covered/heated areas shall be used to guide visitors.
  - Outdoor areas shall have bright and even lighting.
- Elevators shall be as accessible as possible
  - Elevators must be easy to find and situated in an intuitive location in relation to the walkways.
  - Call and operating buttons shall have embossing and clear contrasting colours.
  - The elevator shall give a sound signal when it reaches a floor and, in individual cases, also audio information.

#### **VERIFICATION**

The tenders must describe how the aforementioned objectives will be realised in the designs.

**The City of Espoo included the following accessibility requirement in its invitations to 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 people 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 they so wish, the contracting authority also has the possibility of testing the offered products. However, the request to test the products must be clearly expressed in the contract notice or invitation to tender. The tenderers must also be allowed a sufficient time period to deliver their samples. The invitation to tender documents must further state the aspects on which the contracting authority will focus attention in the testing.

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

In an invitation to tender 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. Award criteria

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

The added value of using award 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 award criteria are used, a supplier may also compensate for low points scored for one award criterion by a higher score in another area. When award criteria are used, the tender that obtains the highest total score for all award criteria, i.e. the tender that is the most economically advantageous, will be successful.

The award criteria must be specified in advance in the invitation to tender documents. In addition, they must be fair and sufficiently detailed. In other words, the award criteria may not discriminate against or favour certain suppliers. The contracting authority must apply the





stated award criteria to each tender included in the award phase and justify the points awarded for each criterion with adequate clarity. When social considerations are included in the award criteria, the contracting authority 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 tenders.

The contracting authority may use social considerations as award 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 authority 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 mainly 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 authority 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 authority'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 invitation to tender allowed the contracting authority 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 authority 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 performance

Under the Act on Public Contracts, contracting authorities 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 Organisation (ILO) conventions, working conditions and employment terms or the recruitment of people with disabilities. This applies provided that the conditions are non-discriminatory and compatible with Union law and that they are indicated in the contract notice or the invitation to tender. The object of the procurement should also be suitable for the application of criteria related to providing employment. The possibilities the suppliers have of finding tasks in their activities that are suitable for e.g. long-term unemployed and disabled workers should be assessed as part of planning the procurement.

Social considerations can particularly efficiently be included in terms of this type set on contract performance. 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. While compliance with the procurement's minimum requirements or eligibility criteria is verified during the tendering process, fulfilment of contract terms is 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 purchases, the length of the supply chain, and the circumstances, prevailing culture and any problems in the object of the supervision. The contracting authority's possibilities of influencing the suppliers' activities depend on how large a share the contracting authority's purchases represent in the activities of the manufacturer and how complex the production and delivery chain is.

The supervisory duties of the contracting authority may be alleviated by using various types of certificates. Relying on certificates in the supervision of a procurement contract frees the contracting authority from the obligation of proceeding to detailed audits targeting various links of the supply chain. Certificates and more or less established audit practices often also permit the contracting authority 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 authorities 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.<sup>1</sup>

<sup>1</sup> 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

Contracting authorities 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 possibility of cancelling the contract as a response to certain violations can be incorporated in the contract. However, the contracting authority 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.

## 5.1 Contract terms on provision of employment

Contracting authorities may take into account considerations related to provision of employment by imposing an obligation to recruit disabled or long-term unemployed workers on their contract partners in the terms. A term of this type is appropriate in long-term service contracts. For example, the contract term can be worded as follows:

**The City of Espoo included the following requirement in the articles on contract terms in the invitation to tender 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 employment relationship begins. The employment measures and recruitment shall be completed at the latest within six months of the signing of the contract.

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

Another alternative 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:

**In an invitation to tender concerning a contract for demolishing certain buildings belonging to the city, the City of Oulu included the following requirement in the contract terms:**

### **CONTRACT TERM**

The supplier shall provide jobs for unemployed jobseekers so that at minimum 50% [x] of the on-site staff are persons employed on a pay subsidy.

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

The requirement to provide employment may also target other groups, including young people, disabled workers or immigrants. It is often justified to describe the persons to be employed in greater detail, including the contracting authority's definition of young

people, disabled workers or immigrants. If necessary, definitions in valid legislation can be utilised. When a requirement of providing employment is included in the contract, it is often also justified to specify details 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 earlier recruited a long-term unemployed or disabled worker, who thus no longer is unemployed at the time of submitting the tender.



The contract terms may also take into account aspects of on-the-job learning.

**The City of Espoo included the following requirement in the invitation to tender articles on contract terms in a procurement of cleaning services:**

**CONTRACT TERM**

The supplier undertakes to offer at least one on-the-job learning position/contract year for a person who is studying at educational institution [xxx].

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

As the obligation to provide employment affects the preparation and pricing of tenders, the invitation to tender documents must provide in sufficient detail in advance any other information that affects the preparation of tenders, including the volume of the procurement, its value, contract period duration and other essential contract terms.

## 5.2 Labour rights and human rights in contract terms

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

Key conventions of the International Labour Organization include

- **Abolition of Forced Labour Conventions** nos 29 (from 1930) and 105 (from 1957).
- **Freedom of Association** conventions, or
  - 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, or
  - 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, or
  - 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 1996).

For information on compliance with the conventions and supervision of compliance, see the website of the International Labour Organization ILO: [www.ilo.org](http://www.ilo.org). Information on ILO's activities and conventions in Finnish and Swedish can also be found on the website of the Ministry of Employment and the Economy<sup>2</sup>.

In this context, we should also remember that under section 49 of the Act on Public Contracts, a public works contract awarded by a central government authority to a private employer shall be accompanied by a clause, added to the contract before the contract is signed, according to which the employment contracts relating to the public works contract shall comply with the minimum terms of employment which must be observed in similar work pursuant to Finnish law and universally applied collective agreements. This rule shall also apply when another contracting authority, 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).

**Hansel Oy has included the following requirement in the invitation to tender articles on contract terms in its procurements of goods:**

#### **CONTRACT TERM**

The supplier shall comply, and ensure compliance by their subcontractors, with the International Labour Organization ILO's 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 29 and 105);
- minimum wage standards (Convention 131);
- hours of work standards (Conventions 1 and 30);
- freedom of organisation and right to collective bargaining (Conventions 87 and 98);
- ban on discrimination (Conventions 100 and 111);
- occupational safety and health and occupational health care (Conventions 115, 155 and 170);
- consequences of termination of employment at the initiative of the employer (Convention 158).

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

<sup>2</sup> Ministry of Employment and the Economy, [http://www.tem.fi/tyo/kansainvalinen\\_tyoelamayhteistyo/kansainvalinen\\_tyojarjesto\\_ilo](http://www.tem.fi/tyo/kansainvalinen_tyoelamayhteistyo/kansainvalinen_tyojarjesto_ilo), retrieved on 1 Oct 2013.

**Alko Ltd, an independent limited company wholly-owned by the Finnish Government, includes the following section on ethics in its procurement contract terms:**

Alko is a member of the Business Social Compliance Initiative organisation (BSCI). Alko expects its partners to comply with ethical trade procedures throughout the contract period. The partners will be responsible for their potential subcontractors' actions to ensure ethical trading.

The BSCI's Code of Conduct contains the following principles of ethical trade:

- Respecting the workers' freedom of association and the right to collective bargaining.
- No discrimination is practised. No discrimination on the basis of colour, race, gender, religion, political conviction, ethnic or national origin or other similar reason.
- Child labour is prohibited.
- At least the legal minimum and/or industry standard wages are paid. The employees are entitled to statutory annual leave.
- Working hours are compliant with national laws and do not exceed 48 hours regular + 12 hours overtime a week.
- There is no forced labour and disciplinary measures.
- The workplace is safe and healthy.
- The environment is respected. The supplier undertakes to comply with laws, orders and/or generally accepted European Union operating principles of environmental protection.
- There is a clear procedure for corporate social responsibility.
- There is a clear procedure for anti-bribery and anti-corruption policy. The supplier undertakes not to engage in bribery, money-laundering or other unethical actions to promote their business
- The supplier undertakes to comply with both Finnish laws and international provisions and orders in their operations, and they are responsible for their subcontractors' activities as if for their own.

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

**The Finnish Defence Force's West Finland Logistics Regiment included the following requirements in the articles on contract terms in their invitation to tender:**

In the contract to be concluded, the requirements of corporate social responsibility shall 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 Supervision of contract terms

### 5.3.1 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 included in their invitations to tender the following requests for information to verify the fulfilment of contract terms described in the invitation to tender:**

#### **CONTRACT TERM**

The supplier shall submit a plan for employing disabled, difficult to employ and long-term unemployed persons during the term of this contract by [deadline].

The supplier shall submit by [deadline] a plan for offering on-the-job learning places to persons studying at educational institution [xxx].

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

**The Cities of Espoo and Oulu have included in their invitations to tender the following requests for information to verify fulfilment of contract terms described in the invitation to tender:**

#### **CONTRACT TERM**

The supplier shall report to the contracting authority on steps taken to provide employment at [time]-monthly intervals, counted from the date on which the contract is signed. For example, a copy of the employment contract and information on the positions of the persons employed in the supplier's organisation can be included in the report.

#### **CONTRACT TERM**

The supplier shall report to the contracting authority on the on-the-job learning places offered to persons studying at educational institution [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 authorities can impose penalties for contract violations. However, the penalties must be stated in the contract. For example, the contracting authority may oblige the contracting partner to pay a sum of money as a contract penalty. In case of major contract violations, the contracting authority may even reserve the right to cancel the contract. However, the contracting authority

ty should primarily strive to solve problems in cooperation with the contracting partner.

### 5.3.2 Supervision of contract terms concerning labour rights and human rights

As far as *domestic suppliers* are concerned, contracting units 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:

**Hansel Oy has considered including in their invitations to tender the following conditions to verify the fulfilment of conditions described in the invitation to tender:**

#### **CONTRACT TERM**

The contracting authority, or an independent third party appointed by the contracting authority, has during the contract term the right to, at their cost, to inspect and supervise compliance with the contract terms on corporate social responsibility applicable to the Supplier and to report on the results of the inspection.

Unless the Supplier produces a corporate social responsibility report, the Supplier shall conduct a self-evaluation by [time] by filling in and returning the corporate social responsibility questionnaire to be sent out separately/enclosed in Appendix x, which is used to survey compliance with contract terms on corporate social responsibility in the supply chain.

Should any violations of the contract terms be observed, the contracting authority and the Supplier will jointly draw up a plan of measures to rectify any deviations and to eliminate shortcomings.

The Supplier shall complete the measures contained in the plan following the agreed schedule.

In addition to the aforementioned examples, contract clauses may also specify a 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 ways of achieving improvements.

**Alko has included the following conditions in its contracts to verify fulfilment of contract terms on ethical action described in the invitation to tender**

The supplier accepts that Alko has the right to carry out, or have a third party carry out, requisite inspections covering all aspects of the procurement, including subcontractors, transport chain etc. to ascertain compliance with these terms.

We should bear in mind that this is about supervision of compliance with contract terms carried out by the contracting authority or a party appointed by the contracting authority. 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 CSR audit or certification for the product to be procured 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 authority to the supplier.

As far as supervision of foreign suppliers is concerned, we should remember that the contracting authorities primarily work with their main partner in Finland, not directly with foreign subcontractors. The contracting authorities do not usually have the resources or capacity for making supervision visits to the suppliers' facilities or procuring audit services that target foreign suppliers. If the supplier has been audited, and a report on this audit is available, the contracting authority can 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 whose aim is to improve the suppliers' working conditions in high-risk countries to 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 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 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 eva-

luation 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 authorities consider addressing a request for information to the supplier, it would be a good idea to start from establishing if the product group that is the object of the procurement is within the scope of SA 8000 certification in general.

In addition to a BSCI audit and SA 8000 certification, contracting authorities can consider using other existing certificates or auditing systems in supervising contract terms. In this respect, however, they should investigate in detail which individual and specific supervision measures each system comprises. More information on the supervision measures covered by various certificates, see for example the website of Finnwatch at <http://finnwatch.org/julkaisut/julkisethankinnat> (available in Finnish).

As part of conducting audits or requesting certificates during the contract period of public procurements, the contracting authority must consider what should be the focus of the audit or other certification measures: which link in the production or supply chain, or which factory or work phase associated with one of these links. In the procurements of private companies, the auditing requirement is often brought to bear on the next link in the supply chain. The contracting authority 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 phase that is associated with the greatest social risks.

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

**Hansel Oy has considered including in their invitations to tender the following conditions to verify the fulfilment of contract terms described in the invitation to tender:**

#### **CONTRACT TERM**

The supplier shall submit to [party and deadline] a CSR report, or a certificate of a CSR audit or certification, or a certificate or other documentation of socially responsible action endorsed by a third party concerning the product/the manufacturing process of the product, if such certificates or accounts are available for the product in question.

If the Supplier does not draw up a CSR report, or the Supplier does not have a CSR audit or certification for the products/services that the contract concerns, or other certificate or documentation of corporate social responsibility endorsed by a third party, the Supplier shall conduct a self-evaluation by [deadline] by completing and returning a CSR survey to be sent out separately/attached in Appendix x, which is used to survey compliance with contract terms on [corporate social responsibility] in the supply chain. [As the survey also contains many questions about environmental and financial responsibility, the questions to be included in the CSR survey must be selected in each individual case.]

If the CSR survey brings up any deviations from the contract terms, Hansel/the Customer 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 shall complete the measures contained in the correction plan following the agreed schedule.



**The Finnish Defence Force's West Finland Logistics Regiment set the following conditions in an invitation to tender to verify compliance with contract terms described in the invitation to tender:**

The Tenderer shall 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; or
- 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 shall engage in dialogue during the contract period.

In addition to the aforementioned examples, contract clauses may also specify a response to neglecting measures described in the correction plan. When recording such responses in the contract it should be noted, however, that the aim is to improve the responsibility situation in cooperation with the supplier, and that financial penalties or cancelling the contract are not necessarily the best ways of achieving improvements.

## CSR evaluation form

**WHEN INVESTIGATING** the fulfilment of contract terms relevant to social considerations, the contracting authority may use CRS evaluation forms, which such contracting authorities as Hansel Oy have sent for suppliers to complete. Similar forms have also been referred to in the examples above. The Ministry of Employment and the Economy's online tool, the CSR compass (<http://csr-kompassi.fi>) contains a template for a self-evaluation form in Finnish, Swedish and English. The site also provides instructions for filling in this form in the three languages and guidelines for evaluating the information presented in it.

<http://julkinen.csr-kompassi.fi/itsearviointilomake>

## Abnormally low tenders

**UNDER THE ACT ON PUBLIC CONTRACTS**, a contracting authority may reject tenders that are abnormally low if the reason for such low prices is, for example, violations of the workers' rights or breaches of legislation. Before rejecting the tender, however, the contracting authority must request for an explanation for the grounds of the abnormally low price in writing. If the information received shows that there are acceptable reasons for the low price, the tender should not be rejected. If it is rejected, a reasoned decision should be made, of which the supplier having submitted the rejected tender will be informed.

The Centre for Economic Development, Transport and the Environment of Southwest Finland included in their invitation to tender the following references to the possibilities contained in the Act on Public Contracts:

### **ABNORMALLY LOW TENDERS**

The contracting authorities may reject tenders that are abnormally low in relation to the quality and scope of the contract on the grounds that the tenderer is not deemed to have the capacity to fulfil the contract at the price tendered and as required in the quality criteria.

## Reserving a contract for sheltered workshops

**UNDER THE ACT ON PUBLIC CONTRACTS**, contracting authorities may reserve the right to participate in public contract award procedures in favour of sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are people with disabilities who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions. The public contract notice must indicate that the contract is reserved for sheltered workshops or programmes.

Under the Social Welfare Act (710/1982), the main focus of such work programmes shall be activities for disabled persons. The operation of social enterprises, on the other hand, is based on the Act on Social Enterprises (1351/2003). The purpose of the Act is to provide employment opportunities particularly for the handicapped, disabled and the long-term unemployed. At least 30 per cent of the employees in the social enterprise must be disabled, or disabled 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. In addition, the enterprise must be entered in the register of social enterprises maintained by the Ministry of Employment and the Economy<sup>3</sup>. A social enterprise may only take part in an invitation to tender reserved for sheltered workshops if it meets the criteria set for a workshop.

## Fair Trade products

**IN THE LIGHT OF CASE-LAW** concerning public procurement, contracting authorities may also procure Fair Trade products. 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.

However, a contracting authority may not directly require a product to be procured to have a certain label or a certificate, and the requirement should focus on the criteria that a product must fulfil to be granted the label or certificate in question. For example, the contracting authority may require in the contract 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 authority 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 invitation to tender*.

The contracting authority must also allow other ways of proving that the criteria are met. If the offered product does have a Fair Trade label or certificate, fulfilment of the criteria can already be established during the tendering process. If compliance is verified by other means, on the other hand, this usually takes place during the contract term. 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 authority 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 authority may require the supplier to fill in the evaluation form discussed above.

<sup>3</sup> Ministry of Employment and the Economy, Register of social enterprises, [http://www.tem.fi/yritykset/sosiaalinen\\_yritys/sosiaalisen\\_yrityksen\\_rekisterointi/rekisteriin\\_merkityt\\_yritykset](http://www.tem.fi/yritykset/sosiaalinen_yritys/sosiaalisen_yrityksen_rekisterointi/rekisteriin_merkityt_yritykset), retrieved on 30 Sep 2013.

In their future invitations to tender, Hansel Oy will formulate their terms related to Fair Trade products as follows:

**CONTRACT TERM**

The supplier shall 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

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# Notes



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