

Labour Standards in Public Procurement

**Background paper for DFID Labour Standards and Poverty Reduction
Forum, 23 May 2007**

This paper has been researched and prepared for discussion at DFID's Labour Standards and Poverty Reduction Forum by Ergon Associates. It does not necessarily represent the views of DFID.



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Executive summary

1. This paper identifies various practical possibilities for incorporating support for labour standards within public procurement. These findings are based on OGC guidance and on existing action by government departments and the private sector initiatives.
2. Public procurement is governed by EU rules, principally the EU Treaty and EU Public Procurement Directive 2004 which are intended to assure free movement of goods and services and non-discrimination against contractors on grounds of nationality. The Office of Government Commerce (OGC) has issued guidance on incorporating social issues in UK public procurement which identifies various stages of the procurement cycle and where there are opportunities to promote labour standards. However, in some cases, the possibility for including labour standards depends on circumstances and on how the process is undertaken, rather than there being a clear universal answer. There are varying interpretations of what is feasible under EU rules.
3. This paper also looks at opportunities beyond individual contractual relationships. Many organisations concerned with ethical trade are seeking to work collaboratively with suppliers and communities to deal with some or the fundamental issues leading to poor labour practices.
4. What are the opportunities to promote labour standards through public procurement?

Mapping the Supply Chain and Prioritising

- As with other sustainability issues within supply chains, a practical first stage is to map the supply chain and identify areas of spend for priority attention, based on assessment of risk. Such prioritisation is probably necessary to match the level of resources available within procurement departments. Promotion of labour standards can then be addressed either via the tenders and contracts process, or by a collaborative approach with suppliers.

Contracting Process

- *General support for labour standards:* authorities may promote and indicate support for labour standards in general material provided for potential contractors since this is a government policy commitment. The inclusion of a clear statement in tender documentation supporting compliance with ILO core standards can be a first practical step in any attempt to address supply chain labour standards.
- *Labour standards in product specification:* including adherence to labour standards as part of the specification is seen as problematic on the grounds that the conditions of production are not intrinsic to the quality of the finished product. However, there appear to be different interpretations in other EU member states about this. There are 'business case' arguments that adherence to good labour practices during production processes can contribute to product quality. Equally, there are questions of reputational risk: it is still in the interests of public authorities to retain public confidence in the reputation of government.
- *Excluding contractors for labour standard violations:* public purchasers may ask for evidence of convictions under labour law or professional misconduct and exclude a supplier on these grounds so long as these are not minor or immaterial. However, verifying such information may be difficult and there exists a poor degree of enforcement of employment laws in many developing countries, meaning that reliance on legal

process may not be sufficient to identify suppliers with poor standards. Moreover, simply excluding ‘higher-risk’ suppliers does little to secure the jobs – or improve the labour standards and working conditions – of those workers whose interests would ostensibly be the grounds of exclusion.

- *Evaluating tenders using labour standard criteria:* tenders must be evaluated on the basis of how well they meet the over-riding value for money (VfM) requirement in terms of the specification, so it is unlikely that labour standards can be used as a criterion if they were not in the original specification. Authorities may use labour issues as a tie-break where value for money considerations are equal. Where compliance with core labour standards is identified as a user’s requirement – as above – then due diligence in tender assessment could well entail an evaluation of the tenderer’s capacity to comply with this requirement.
- *Including labour standards performance in contract management conditions:* this is where there is most scope for introducing labour issues. Procuring authorities can require ongoing compliance with labour standards within contracts, and can monitor such compliance, as a performance condition in the contract. This is being pursued in several EU member states and also is broadly in line with that adopted by many private sector UK Ethical Trading Initiative (ETI) members.
- *Monitoring contractual performance conditions:* supplier reporting is an important step in seeing that contractual requirements have been met, but cannot provide credible assurance of the actual degree of compliance in situ. The effectiveness of using contract performance conditions as a way of promoting labour standards relies to a large degree on how well these are monitored. The costs of monitoring using an audit model can be substantial but these can be mitigated if the results of supplier audit programmes are shared. Furthermore there is unique scope for public sector procurement departments to share data on suppliers where they have similar supply chains.

Collaborative working

- Using contractual provisions to enforce labour standards through supply chains is only one way of promoting higher standards. Procuring authorities can also consider working co-operatively with suppliers to address labour standard issues, or work with other multi-stakeholder forums working on intractable issues or can encourage suppliers to join existing initiatives. Such a collaborative approach is increasingly being used in the private sector.
- Much of DFID’s procurement is in relation to its departmental function rather than as an end-user. Debate commonly reveals a perceived tension, or a need to prioritise, between a development agency’s desire to work with small-scale, developing country suppliers and the respect of core labour standards. However, this tension only comes to light where the procuring authority’s sole response to (risk of) non-compliance with labour standards at a local supplier is to exclude that supplier.

5. What is DFID doing to support labour standards through procurement?

- Outside the goods supply chain, DFID has already done some work in incorporating labour standards outcomes to donor-funded project procurement: the most notable is the Social Aspects of Construction study.

6. Questions for the Forum

- The paper suggests that there are a number of mechanisms for promoting labour standards through public procurement.
 - i. What can be done to encourage more activity?**
 - What incentives are needed?
 - What can be learned from work done on environmental standards?
 - What can be learned from other EU countries?
 - ii. What can public procurement organisations learn from initiatives in the private sector, such as ETI?**
 - Is an audit based model feasible for the public sector?
 - Lessons from specific sector/industry experience?
 - iii. Who should champion the consideration of labour standards within procurement strategies across government?**
 - What should be the role of DFID?
 - What is the role of OGC, Sustainable Procurement Task Force or other body?
 - What additional support and resources are necessary?

1. Introduction

This paper looks at practical approaches that may be adopted to incorporate requirements for complying with international labour standards in the procurement practices of the UK government.

We start by reviewing the levels and types of public procurement and the public policy background. We then look at the various stages of the procurement process to identify the scope for action and the strategies already being pursued by public authorities, in terms of:

- Identifying labour standards goals as part of the initial identification of need
- Including labour standards with procurement specifications
- Selecting contractors or evaluating tenders using labour standards criteria
- Including performance on labour standards as part of contract management conditions

We also discuss strategies for working with suppliers on labour standards that are outside a formal contract compliance model.

Whilst recognising that this is a complex area subject to a variety of views, we take as a starting point the guidance note issued by the Office of Government Commerce (OGC) in February 2006 – *Social Issues in Purchasing* ('The OGC Social Note'). This represents the latest and most comprehensive official guidance for public procurement available, and includes a structured analysis of the inclusion of social issues into the various stages of procurement, as well as an Annex summarising potential actions on labour standards.

This current paper seeks to build on the Social Note and provide the basis for further discussion by taking a more detailed look than the Social Note was able to do at the sorts of ways public procurement could reasonably promote international labour standards, in the context of DFID's poverty reduction mission.

In preparing it, we have reviewed government policy documents and proposals from other bodies, spoken to procurement officials in the OGC and various government departments, reviewed the relevant technical and academic literature, and have looked at examples of how other EU governments have implemented approaches to procurement that include reference to labour standards. We have also sought to draw lessons from the private sector and multi-stakeholder initiatives in terms of their experiences of working with supply chains to encourage ethical trading.

2. Context

2.1 What is procurement?

The term 'procurement' generally covers the acquisition of goods, works and services, from both third parties and from in-house providers.

It refers to a wider process than simply a purchase decision. Procurement covers a cycle of actions and decisions including identification of need, drawing up specifications and tenders, evaluating tenders, drawing up contracts and contracts performance conditions, and monitoring and reviewing contract delivery. We will refer to the 'procurement process' to cover the entirety of this cycle.

Procurement is undertaken by a variety of central government departments, executive agencies and local and devolved government. While buying decisions are generally managed at the departmental level, the Office of Government Commerce (OGC) – part of the Treasury – is charged with improving procurement standards by providing high level guidance and practical tools across government.

Central government departments and their executive agencies spend an estimated £15 billion per year on goods and services¹. However, the total public spend, including works contracts and spending undertaken by other public bodies such as local authorities, amounts to £150 billion.

Table 1: Scale of public spend by department and type of spend

Spend areas	£bn	Departmental groupings	£bn
Construction	22.3	Local government	39.8
Health & social care	21.3	Third party public service provision (est.)	26.4
Pharmaceuticals	8.9	Health (inc NHS)	30.1
Office machinery & computers	6.5	Defence	16.9
Transport (cares & business travel)	5.4	Devolved administrations	15.4
Waste	4.5	Home Office	3.9
IT services	4.2	Environment	1.9
Telecoms, radio & TV	3.6	Transport	1.8
Energy	3.5	All other departments	13.8
Food	3.2		
Furniture	1.2		
Pulp & paper	1.7		
Clothing, uniforms, other textiles	0.9		
Chemicals	0.5		
White goods	0.1		
Non-priority areas	62.1		
Total	150		150

Source: Sustainable Procurement Task Force, 2006

As well as covering a variety of goods and services, this procurement activity involves different types of contract in terms of structure (e.g. partnership contracts, service-level agreements, one-off purchases etc), and also periods of contract. Some procurement is outsourced to specialist agencies, whereas others is undertaken in-house. Some contracts will involve an agent or a prime contractor with a potentially complicated supply chain of sub-contractors or second-tier suppliers, whereas others will involve only one contractor. It is not therefore possible to establish a typical procurement model; this will vary by department and product or service bought.

2.2 Scope of labour issues

For the purposes of this paper, we are restricting discussion of labour issues to the core ILO labour standards. The Core Labour Standards (CLS) covered in the ILO Declaration on Fundamental Principles and Rights at Work (1998) constitute fundamental human rights². To these may be added other standards which are commonly recognised as being of special importance, because they address serious problems, or because they concern problems that many workers encounter. These include: the right to a healthy and safe workplace; the payment of a

¹ Sustainable Procurement in Central Government, National Audit Office, September 2005

² Freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; elimination of discrimination in respect of employment and occupation.

living wage; the elimination of excessive hours; the provision of regular employment where possible; and the elimination of harsh or inhumane treatment. These form the basis of most codes of labour practice, including the ETI Base Code.

It should be noted that many, if not most, countries have labour laws which enshrine the rights and principles articulated in the CLS. Compliance with ILO Core Labour Standards is more often than not a case of compliance with national legislation, therefore, rather than expecting companies to adhere to a gold-plated standard.

The OGC states, in an Annex on Core Labour Standards in the Social Issues Note, that ‘inclusion of any clause related to the ILO standards must be considered on a contract-by-contract basis to ensure that suppliers from countries that have not adopted the standards into law are not excluded from participation’. This issue is key. Non-discrimination is a central theme of EC regulation on public purchasing. The OGC observation therefore seeks to remind procurement officials that no conditions of procurement should be established which would militate against suppliers from certain countries from being able to offer goods or services to UK government. However, the status of ILO core conventions differs from other international treaties. Under the 1998 Declaration of Fundamental Principles and Rights at Work, all 180 member states of the ILO are bound to respect and promote the standards enshrined in the core conventions, regardless of ratification. Therefore, reference to ILO core standards will very rarely give rise to potential discrimination – and only in the case of tendering parties established in (the very few) states which are not members of the ILO.

Discrimination in procurement on grounds of labour conditionality would be the result of excluding suppliers or contractors from procurement opportunities due to the risk of poor labour standards. As is noted later in this report, much of the experience of the private sector in addressing supply chain labour standards is framed by the rationale of working *with* suppliers and their workers to improve labour standards, with termination of the contractor/supplier relationship a final sanction only in the most intractable or egregious instances. Establishing poor labour practices as a criterion of exclusion constitutes one means of incorporating labour rights concerns into the procurement cycle; it does not constitute the only, or necessarily most effective, means of so doing.

In many countries, there are significant gaps in enforcement of national labour law. In this respect, many standard terms of public procurement – which commonly include a general provision that the supplier or contractor must ‘obey the law’ (of the state where procurement activity is undertaken) – will already provide a significant benchmark with regard to labour standards³. A key issue here would not then be the legitimacy of incorporating ‘new’ social commitments into public procurement contracts, under the guise of core labour standards, but recognising and effectively implementing those commitments to sound labour practices which are already contained in the requirement to comply with national law.

Fair trade and ethical trade

In some discussion of social issues in public procurement, the terms ‘fair trade’ and ‘ethical trade’ are used without clear distinction. Fairtrade certification entails adherence to a series of standards including the ILO CLS – albeit with variation in expectation according to production scale – and so public purchasing of Fairtrade products is a way of promoting compliance with labour standards through public procurement. However, Fairtrade is limited to certain products with

³ This is also the case in many government departments’ standard terms, which include reference to compliance with non-discrimination legislation.

traceable supply chains. It does not currently apply to most of the products bought by the public sector.

Typically, those Fairtrade products which are currently purchased by the UK public sector are foodstuffs. In many cases, Fairtrade will be presented as an option amongst others available to end-users, and hence any additional costs will be passed on to those individual end-users who themselves chose to consume Fairtrade products. Moreover, the provision of Fairtrade products in the public sector will typically, if not always, be undertaken by an outsourced catering provider, rather than by a public authority itself. For this reason, it is administratively and legally less complex for the procuring authority simply to specify its preference for the outsourced provider to offer Fairtrade – as an option or exclusively – as a condition of contract. This issue is discussed in greater detail below.

By contrast, the term ‘ethical trade’ applies to techniques adopted by private companies to encourage adherence to sound labour standards across the whole of their supply chains, typically by means of compliance with a code determined by a group of stakeholders also including trade unions and NGOs. It is concerned with the processes pursued in managing supply chain labour standards and does not result in a social label or certification. ‘Ethical trade’ has been adopted in the main by suppliers and retailers in garments/textiles, food and supermarket sectors.

There are other labour issues that have received some discussion in relation to procurement such as provision of training and local employment creation, specifically targeting key groups at risk of exclusion. These are outside the scope of this paper.

2.3 Existing policy and guidance

Public procurement is governed by EU rules⁴, principally the EU Treaty and EU Public Procurement Directive 2004, enacted in UK law by Regulations published in January 2006⁵. These rules are premised on the need to ensure free movement of goods and services within the EU without discrimination against contractors on grounds of nationality. The over-riding principle is achievement of value for money (VfM), which is defined as the optimum combination of whole life cost and quality to meet the user’s requirement.

Alongside its commitment to VfM, the government has, for a number of years, been exploring how to apply sustainability principles to procurement. For example it set up a cross-departmental Sustainable Procurement Group in 2001. A major milestone was the formation of the multi-stakeholder Sustainable Procurement Task Force (SPTF) in May 2005, following the publication of the Government’s Sustainable Development Strategy *Securing the Future* launched in March 2005 which set the goal of making the UK a leader in the EU in sustainable procurement by 2009.

⁴ There is also an ILO convention on labour clauses in public contracts (No. 94) which has been ratified by 60 countries, the UK having denounced it in 1982. The convention requires that public procurement contracts include clauses ensuring that wages, hours of work and other conditions are no less favourable than the industry and regional norm. Under the Convention, governments are obliged to consult workers’ and employers’ organisations on the terms of the clauses to be included in public contracts and must ensure that tendering parties are aware of the terms. In order to inform the ILO 2008 General Survey, ILO Member States were requested in 2006 to report on the progress made in giving effect to Convention 94 where it is not yet ratified, indicating the difficulties which prevent or delay ratification.

⁵ The Public contracts Regulations 2006 (SI 2005 No. 5), The Utilities Contracts Regulations 2006 (SI 2005, No.6)

In its report published in June 2006⁶, the SPTF stated: ‘Since the Task Force’s remit was sustainable (not just environmental) procurement, we urge that public sector organisations begin to understand and address social issues in their supply chains’. It went on: ‘...the Task Force recommends that government makes resources available so that public procurers can be made aware of emerging issues in their supply chains and the actions required to address them.’

The government’s response to the Sustainable Procurement Task Force reiterates that ‘our goal is for the UK to be among the European Union (EU) leaders in sustainable procurement by 2009’⁷, although the response is focused almost exclusively on environmental issues with only passing reference to the social elements of sustainability. While the SPTF was deliberating, the OGC Social Note was issued in February 2006. This originated from a recommendation of the Sustainable Procurement Group and discusses how ‘social issues can legitimately be incorporated into the purchasing cycle’. This is discussed in more detail below.

Against this backdrop, various government departments have developed policy statements on sustainable procurement with greater or lesser reference to social and labour issues. Some of the main ones are listed in Annex 1.

It is fair to say that the main thrust of government policy and practice has been on the environmental aspects of sustainability. Indeed the Sustainable Development Commission’s 2006 Annual Report⁸ includes a section on sustainable procurement based on departmental responses to a standard questionnaire. As summarised, all responses mention consideration of environmental issues exclusively. There is thus considerable scope for the development and implementation of policies that take account of social issues, and, in the context of this paper, labour standards.

It should be noted that procurement of infrastructure in developing countries funded by development donors and lenders – such as the Multilateral Development Banks including the World Bank, on whose Board the UK is represented by the Secretary of State for International Development – has been the subject of more debate to date on the incorporation of labour concerns into the procurement cycle. This experience is discussed toward the end of this paper.

2.4 Focus on supply chains in developing countries

One reason why progress on social aspects of sustainability has lagged behind the environmental agenda may be the broad range of issues that come under the social umbrella. The breadth of the agenda is recognised in the OGC Social Note.

For the purposes of this paper, we are concentrating on procurement issues and supply chains that affect social and economic development. While it should be emphasised that labour standards abuses can and do occur everywhere, in light of DFID’s remit, the focus here is on goods and services that originate from or pass through developing countries.

2.5 Prioritising issues

Whilst it may seem more comprehensive to adopt a consistent approach to labour standards applicable to all supply chains, many organisations work within their resource limitations by prioritising activity according to various criteria. It is worth noting that the SPTF identified two ‘priority’ areas of government spend with labour standard implications where they considered initial focus could be applied as they fell within existing policy commitments:

⁶ Procuring the Future, Defra, 2006

⁷ UK Government Sustainable Procurement Action Plan, March 2007

⁸ Sustainable Development in Government, Fifth Annual Report, Sustainable Development Commission

- textiles (improving labour standards within contracts)
- food (encouraging Fairtrade or equivalent within contracts).

Prioritising products or aspects of a supply chain is an approach used by the majority of ETI corporate member companies who ‘scope’ section of their supply chains for inclusion within their ETI activities or risk assess suppliers on a variety of criteria. These criteria typically include:

- size of spend
- country of location
- key risk issues (e.g. particular labour standards, gender issues)
- position within supply chain (e.g. homeworkers, finishers)

Although the SPTF has identified food and textiles as immediate priority areas, individual departments may come to other views depending on their spending areas. For example, computer hardware could emerge as an area of focus due to levels of spend and the risk of labour abuses, which has been recognized by the industry itself with the recent development of an industry code of conduct in response to NGO concerns over manufacturing labour practices⁹.

Undertaking a basic risk analysis is a relatively simple desk-based process that need not be resource-heavy. It can utilize already existing materials produced by other bodies with ethical trade or investment programmes such as companies, banks and institutional investors as well as NGOs, trade unions and other governments. The ETI website (www.ethicaltrade.org/Z/resrcs/index.shtml) has resources on how to go about mapping supply chains and assessing risk.

Traceability of supply chains is a key issue and can be problematic if procurement officials are used to dealing only with first tier suppliers or agents. Moreover, many supply chains associated with procurement of goods for the private sector will typically involve intermediaries such as agents, alongside a potential range of sub-contractors. Accordingly, supply chains may be long and complex, and it follows that at each stage of remove from the procurement relationship – between authority and provider – there will be less direct influence to address labour standards. Nonetheless, it may be that work is already being undertaken to map supply chains in relation to identifying environmental impacts, and this is potentially an important overlap between environmental and social aspects of sustainable procurement.

Having identified risk, there remains a key question of how to incorporate an awareness of social risk into a ‘sustainable procurement’ strategy. While questions of exclusion may arise in cases of egregious poor practice, the experience of private sector ‘ethical trade’ is that trading relationships can and should be used to promote continuous improvement in labour conditions. Ceasing, or refusing, to trade should be a last resort. This approach is reflected in the Sustainable Procurement Guide published by the Environment Agency. The section of the Guide on ‘Developing World Social Risk’ states: ‘Having identified the likelihood of a developing world supply chain the next question is what to do about it? Firstly, do not cancel contracts and source within the developed world. This approach just exacerbates the problems of the developing world

⁹ Electronic Industry Code of Conduct www.eicc.info and GeSI Global e-Sustainability Initiative www.gesi.org. Other sectoral initiatives including labour standards include: EITI and International Council on Mining and Metals (extractives), AIAG/BSR initiative (automotive), WWF-initiated sustainable commodities initiatives (sugar, soy, palm oil, cotton), International Cocoa Initiative, Common Code for the Coffee Community. Such initiatives have varying content and may not all include all core labour standards.

and leads to even greater social problems within the supply chain. The key stage of this is deciding as an organisation what are the minimum social standards for doing business with you.’

Example: identifying priorities
 The UK Environment Agency’s Sustainable Procurement Guide lists ‘Products with the Greatest Environmental and Social Impact’ as follows: Aggregates, Chemicals, Construction, Energy, Horticulture, Machinery (including pumps), IT / Electronics, Timber, Vehicles / Plant, Waste Management (Office, depot and special waste as a result of pollution clean up activities)

SenterNovem (www.senternovem.nl/duurzaaminkopen/English/Index.asp), an agency of the Dutch Ministry of Economy, has developed an information pack for public procurement professionals, with specifications for environmental and social criteria for 32 products and services, which are updated annually.

3. The procurement process

The OGC Social Note sets out the main stages of the procurement process. These are:

- Identifying need
- Specification
- Selection
- Tender Evaluation
- Contract Management Conditions

The OGC Social Note was compiled to interpret the requirements of the EU rules on public procurement which are based on free movement of goods and services and non-discrimination against contractors. While there are caveats and complexities, at the risk of generalization, the OGC identifies various do’s and don’ts at each stage of the procurement cycle.

UNPROBLEMATIC	PROBLEMATIC
<p>Identifying need Generally promoting and indicating support for labour standards in general material provided for potential contractors</p>	<p>Identifying a goal of promoting labour standards as an over-riding requirement of the contract since this may conflict with value for money concepts.</p>
<p>Specification</p>	<p>Including adherence to labour standards as part of the specification since this is unrelated to product quality or delivery</p>
<p>Selection Asking for evidence of convictions or professional misconduct and exclude a supplier on these grounds</p>	<p>Excluding a supplier for minor or immaterial infractions</p>
<p>Tender evaluation Using labour issues as a tie-break where value for money considerations are equal</p>	<p>Excluding a contractor on the basis of factors unrelated to the goods or services being purchased</p>
<p>Contract management conditions Requiring compliance with labour standards as an ongoing performance condition in the contract, and monitoring such compliance</p>	
<p>Voluntary action Working with suppliers to promote the take-up of core labour standards</p>	

3.1 Identifying need: including 'social' objectives

The first stage of the procurement process is identifying the user's need. Need encompasses issues of affordability and cost-effectiveness but also compliance with the law, including labour legislation, and potentially wider social policy. The OGC Social Note states that at this stage 'procurement staff should be aware of which social policy priorities the Government and governmental organizations are pursuing in the UK and abroad', and it cites the Sustainable Development Strategy and the Government's policy on CSR as examples. Awareness of labour legislation impacts such as equality in employment is also highlighted. For the purposes of this paper, the DFID White Paper's commitment to 'promote good labour standards and get rid of child labour' is relevant¹⁰, since it represents a clear policy commitment.

The OGC Social Note makes clear that it is perfectly appropriate to make statements of general support for policies and standards in procurement documentation. Such statements can be in general procurement policies or in formal documentation and can send powerful signals to the marketplace.

While the OGC does not go further and explicitly endorse the inclusion of a goal of respecting and promoting supply chain labour standards in a user's definition of need, neither does it preclude such a possibility so long as certain suppliers are not discriminated against. In particular, where the respect and promotion of core labour standards is intrinsic to the mission and values of a procuring authority, it is arguable that the respect of these standards may be included in the definition of the needs of the procuring authority.

So identifying labour standards compliance as part the user's requirement would seem a possibility, so long as it could be shown that such a goal was cost-effective, that it was not the over-riding requirement of the contract and that it was in line with government policy.

Examples: statements of support for labour standards

DFID's Invitation to Tender Instructions state that 'DFID wishes to work with suppliers who embrace [DFID's mission], and also demonstrate Corporate Social Responsibility (CSR) by taking account of economic, social and environmental factors. These practices, whether operated locally, regionally or internationally, should also comply with International Labour Organisation (ILO) core standards on labour and social matters'.

The Greater London Authority's Sustainable Procurement Policy has a section on Ethical Sourcing Practices, stating that 'When sourcing suppliers for our contracts we will seek to work with suppliers who [inter alia]:

- Afford their employees the freedom to choose to work for them. Employees should be free to leave the supplier after reasonable notice is served. Suppliers should not use forced, bonded or non-voluntary prison labour;
- Establish recognised employment relationships with their employees that are in accordance with their national law and good practice. Suppliers should not seek to avoid providing employees with their legal or contractual rights;
- Can demonstrate a commitment to equality of opportunity for individuals and groups enabling them to live their lives free from discrimination and oppression;
- Impose working hours on their staff which are compliant with national laws or industry standards;

¹⁰ Making governance work for the poor, DFID, July 2006

- Under no circumstances abuse or intimidate, in any fashion, employees and have appropriate disciplinary, grievance and appeal procedures in place;
- Take appropriate measures to ensure the health and safety of their workforce and the wider public;
- Support our view that the long-term elimination of child labour is ultimately in the best interests of children, and have taken measures to ensure that child labour is not utilised in their operations;
- Offer wages and benefits that at least meet relevant industry benchmarks or national legal standards.

We will encourage ethical sourcing practices among our suppliers, partner organisations and the broader market.’

The NHS PASA Sustainable Procurement Policy includes an aim to ‘promote the adoption of minimum labour standards and worker rights throughout supply chains in line with principles set out in ILO conventions on human and employee rights’.

Equally, it would be possible for a department to ‘welcome’ bids from contractors who were compliant with the rights and principles embodied in the ILO Core Conventions or had high standards of labour practice, so long as demonstration of this is not a condition for bidding or award.

The inclusion of a clear statement in tender documentation supporting compliance with ILO core standards is also the first practical step in any attempt to address supply chain labour standards. Suppliers must be made aware of the standard expected of them in order that they can perform to this standard. Experience in infrastructure procurement on behalf of development donors and Multilateral Development Banks, alongside that of private-sector supply chain initiatives, suggests that awareness-raising – and clarity on the precise meaning of standards – is key to suppliers and contractors being able to comply with these standards. It is generally recognised in the developing field of ‘sustainable procurement’ that the earlier sustainability concerns are incorporated into the procurement cycle, the more effective their inclusion.

3.2 Specification: inclusion of labour standards conditions in tenders

The OGC Social Note emphasises that social issues can only be included in specifications where they are relevant to the subject of the contract (‘a core requirement’). Thus, in the example given by the OGC, organic coffee can be specified because it relates to the quality of the coffee, but fair-trade coffee cannot be specified as this relates to the social and economic conditions of the coffee growers (‘a secondary issue’). These secondary issues are regarded as not related to the subject of the contract, and potentially adding to costs. (Fairtrade is characterized by the payment of a product premium and a social premium to Southern producers, in order to realize greater equity in trading relations, and therefore will seldom represent the lowest cost option.)

This position appears to militate against specifying compliance with labour conditions at this stage on the grounds that the conditions of production are not intrinsic to the quality of the finished product. However, it should be noted that there are ‘business case’ arguments prevalent in the private sector that adherence to good labour practices during production processes can contribute to product quality by virtue of the commercial benefits of maintaining a stable, trained and motivated workforce.

Neither is it necessarily the case that higher labour standards will equate to higher costs for suppliers and therefore for procurers. Certainly among ETI corporate members there is considerable exploration of the relationship between raising labour standards among suppliers and commercial outcomes. While the pros and cons of the business case for CSR and for labour standards in particular are too complex to summarise here, it is perhaps simply worth noting that it cannot simply be assumed that labour standards are unrelated to product quality.

Example: relating workplace conditions of production to product quality

The *Cabinet Office's Code Of Practice On Workforce Matters In Public Sector Service Contracts* (which focuses on terms and conditions of employment under transfers of undertakings) recognises that 'there is no conflict between good employment practice, value for money and quality of service. On the contrary, quality and good value will not be provided by organisations who do not manage workforce issues well.'

Equally, a key issue for many private sector companies, and one which may well have relevance for the public sector as well, is that of reputational risk. Association with a supplier with poor labour practices can be a major risk for consumer-facing companies. While government does not face the same commercial risks of a consumer backlash, it is still in the interests of public authorities to retain public confidence in the reputation of government.

While the OGC's position on labour conditionality in Specifications is clear, there appear to be different interpretations in other EU member states about the possibilities for including labour standards requirements in product specifications. It is unclear how these have been implemented in practice as part of the procurement process.

3.3 Selection: exclusion of contractors on grounds of labour standards

The OGC Social Note makes clear that candidates can be excluded from consideration if they have been convicted of an offence concerning professional misconduct 'proven by any means that the contracting authority can demonstrate' or convictions under the national laws of the country in which they are based. This means that convictions under labour law are relevant.

The OGC is concerned with convictions or proven misconduct, so the case of a supplier alleged to operate contrary to Core Labour Standards but which has not been convicted under national legislation is a different matter. However, UK procuring authorities should be mindful that there exists a poor degree of enforcement of employment laws in many developing countries, meaning that reliance on legal process may not be sufficient to identify suppliers with poor standards.

Consideration of any convictions or serious breaches should take account of their proportionality or materiality to the contract. It would therefore be inappropriate for a minor breach at one supplier site to disbar a contractor from consideration. However, a recent conviction on a high profile issue such as forced labour would be relevant.

Methods that could be used by a procurement authority to ascertain information about convictions or misconduct could include:

- pre-qualification questionnaire
- questions included in tender documents about legal convictions and compliance record
- information supplied by other relevant bodies (e.g. other government departments, trade unions, NGOs, commercial ethical screening research bodies).

Pre-qualification questionnaires are commonly used to draw up short-lists of potential contractors who have the capability to perform contracts. Pre-qualification criteria are usually restricted to personal standing, economic and financial standing, technical capacity and, for service contracts, ability. However, workforce matters that affect the suitability of a candidate can be considered and it would be appropriate to ask for information about convictions or grave misconduct related to labour standards via such questionnaires.

Example: pre-assessment questionnaire on labour practices		
<i>The Environment Agency</i> Sustainable Procurement Guide provides the following example of a self-assessment questionnaire aimed to elicit information – frequently by means of appropriately open questions – on labour practices from potential agents or contractors/suppliers at pre-qualification stage:		
9.	Do you have overseas operations? YES/NO	
10.	How do you comply with the local legal minimum age for employment?	
11.	Do you have a policy for managing your overseas operations. YES / NO If YES, What does it cover?	ف
	Working conditions	ف
	Age of employees	ف
	Pay	ف
	Trade Union membership for staff	ف
	Equality of employment opportunities	ف
12.	Do you purchase goods or materials from overseas? YES / NO	
13.	How do you ensure that your suppliers comply with the local legal minimum age for employment?	
14.	Do you have a policy for overseas sourcing. YES / NO If YES, What does it cover?	ف
	Working conditions	ف
	Age of employees	ف
	Pay	ف
	Trade Union membership for staff	ف
	Equality of employment opportunities	ف
15.	How do you assess the effectiveness of your policy for overseas sourcing?	
	Don't assess	ف
	Internal assessment	ف
	Comply with SA8000	ف
	Other independent assessment	ف

However, the procurement community should be mindful of the potential negative impacts on development of excluding developing country suppliers on grounds on labour risk. As noted above, aiming for ‘clean procurement’ by excluding higher-risk suppliers on grounds of geographical location does little to secure the jobs – or improve the labour standards and working conditions – of those workers whose interests would ostensibly be the grounds of exclusion.

3.4 Tender evaluation: labour standards as a factor in the award of a contract

Tenders must be evaluated on the basis of how well they meet the over-riding value for money (VfM) policy. This encompasses both whole life costs and quality to meet the user’s requirements – i.e. what was included in the specification. OGC suggest that it is possible to use social issues as a ‘tie-break’ if two bids are equal on value for money criteria, but cautions that that strict equality with regard to VfM will be rare.

It is currently unclear the extent to which social sustainability criteria may be factored into the tender evaluation process. For instance, the UK Environment Agency suggests that the ‘scoring’

of tenders on sustainability grounds may be used to reflect sustainability concerns that may go beyond those in the Specification. ‘The tender assessment is the opportunity to go into more specific detail about how the supplier is going to deliver the requirements of your organisation from a cost, quality and sustainability perspective. Through risk assessment, sustainability criteria may have been set that are so important that a supplier must have them in order to bid, typically these are addressed through the specification and are considered as pass/ fail criteria. Items that are important but not vital are dealt with through asking the supplier for information that is then scored, called sustainability criteria’ [Sustainable Procurement Guide].

In addition, London Underground (LU) – the only public sector procuring authority which has joined a voluntary initiative on supply chain labour standards, the ETI – states that ‘the degree to which a supplier monitors their supply chain and can adhere to the ETI Base Code will be a key part of our tender evaluation criteria’.

The capacity of a potential contractor or supplier to comply with the labour expectations is an important practical question for a procuring authority wishing to implement sustainable purchasing. The OGC note does not expressly comment on the legitimacy of such an assessment. However, where compliance with core labour standards is identified as a user’s requirement – as above – then due diligence in tender assessment could well entail an evaluation of the tenderer’s capacity to comply with this requirement.

In the context of infrastructure procurement by donor agencies and IFIs, there has been some discussion¹¹ of the importance of including an itemised costing of elements of compliance as prime cost items in the tender – namely, the costs of provision of appropriate personal protective equipment; payment at or above the national statutory minimum wage or binding collectively agreed wage; working schedules calculated on the basis of operating within statutory maximum hours with costed payment of voluntary overtime. This issue has greater relevance to provision of services – such as contracting engineers – where labour costs will be presented as a discrete component of the tender costing. In the case of provision of goods, labour costs will be implicitly reflected in product price, but seldom expressly stated.

3.5 Contract management: attaching labour standards performance conditions

It is at the contract management stage that there is most scope for introducing labour issues since this stage includes the performance conditions that are attached to a contract. The OGC Social Note highlights Recital 33 from the EC public procurement Directive that states ‘[...] mention may be made [...] of the requirements – applicable during the performance of the contract – [...] to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law [...].’

Thus, so long as contract performance conditions do not undermine value for money considerations and are non-discriminatory (i.e. they could potentially be complied with by all contractors), the door is open to inclusion within contracts of conditions requiring adherence to labour conditions.

This approach has been taken by some EU procurement authorities.

Examples: contract performance conditions

¹¹ *Modifying Infrastructure Procurement To Enhance Social Development*, Engineers Against Poverty, 2006 (www.engineersagainstopoverty.org/docs/Procurement%20Report.pdf)

The French Finance Ministry guidance on Article 14 of *Code des marchés publics* indicates that contract performance conditions can require that goods are produced in circumstances which comply with internationally recognised conventions and that the tender must show how the supplier will ensure compliance. A new reform, which is being presently formulated, will introduce sustainable development and high quality environment in public procurement criteria.

The legislation in Belgium transposing the EC procurement Directive enables contracting authorities to include a performance condition that requires suppliers to comply with the core conventions of the ILO in the country of production. This condition can apply to contracts for services, works and goods and requires suppliers to take responsibility for their supply chains.

While it may be argued that it would be better to award contracts on the basis of labour conditionality rather than raising labour compliance at post-award stage, it should be noted that the latter practice is broadly in line with that adopted by many private sector ETI members. They tend to have an initial screening process to identify the most serious abuses (equivalent to the pre-qualification questionnaire or conviction-related questions set out above), but do not expect full compliance with all clauses in the Codes of Conduct immediately. Rather they seek to work with suppliers over time to raise standards.

A practical lesson from work on labour standards in infrastructure procurement by donor funds¹² is that a key step in realising labour standards in procurement is the provision of information materials upon award of contract, stating *how* the appointed contractor or supply can comply with the expected standards. Such materials would inform contractors or suppliers of which records of labour management practices should be kept, and which indicators of labour compliance should be reported on.

3.6 Monitoring contractual performance conditions

The first step in implementing contractual performance stipulations is for the supplier or contractor to report on their performance, according to reporting indicators clearly communicated to them. This practice is already embedded in some procurement arrangements. For instance, the Cabinet Office's *Code Of Practice On Workforce Matters In Public Sector Service Contracts* provides for the following reporting arrangements: 'throughout the length of the contract, the service provider will provide the public sector organisation with information as requested which is necessary to allow the public sector organisation to monitor compliance with the conditions set out in this Code. This information will include the terms and conditions for transferred staff and the terms and conditions for employees recruited to work on the contract after the transfer.' However, reporting requirements should be commensurate to the capacity of the supplier or contractor: for instance, the Cabinet Office code suggests that 'such requests for information will be restricted to that required for the purpose of monitoring compliance, will be designed to place the minimum burden on the service provider commensurate with this, and will respect commercial confidentiality'.

Supplier reporting is an important step in seeing that contractual requirements have been met, but cannot provide credible assurance of the actual degree of compliance in situ. The effectiveness of using contract performance conditions as a way of promoting labour standards relies to a large

¹² Key learning here is from the DFID-supported 'Social Aspects of Construction' project in the construction of feeder roads in Ghana (http://wedc.lboro.ac.uk/projects/new_projects3.php?id=55); the French development agency AFD has also sought to apply the experience of this project in its C2D Cameroon roads project (www.afd.fr/jahia/Jahia/lang/en/home/Entreprises/pid/814)

degree on how well these are monitored. The private sector model that has evolved over the past decade or so typically involves:

- identifying priority areas or suppliers based on a desk-based risk assessment or self-assessment questionnaire
- an inspection programme of supplier sites to assess compliance with a code of conduct undertaken by in-house staff or third-party commercial auditors
- corrective action plans agreed with suppliers when non-compliances are found
- follow-up visits to ensure improvement actions have been implemented.

This approach has costs attached. However, these can be mitigated if the results of supplier audit programmes are shared. In the private sector, there have been some barriers to this owing to commercial confidentiality/anti-trust, but such concerns do not affect the public sector. There is thus unique scope for public sector procurement departments to share data on suppliers where they have similar supply chains.

Example: sharing supplier information

More than 140 retailers and importers are now members of Sedex, a web-based database of over 12,000 suppliers to which all Sedex members have access. Suppliers upload their data and audit reports to Sedex, and any potential customer can then have access.

The Environment Agency's Guide on Sustainable Procurement recognizes that resources are key to effectively incorporating 'social aspects' into sustainable procurement. For the Agency, 'the preferred approach is to work with suppliers to raise the standard. However, achieving this will involve funding and again your organisation will need to decide if it is willing to invest to improve its social record within the supply chain. A potential way of dealing with this is to use procurement cost savings from other contracts to fund social improvement within the supply chain. Areas of such improvement may be buying protective equipment, raising wages or sponsoring education of workers. Again this needs to be the subject of a policy decision at an organisational level reflecting values, culture and financing, but it is only by addressing these issues that organisations can truly say they are becoming more sustainable.'

3.7 Beyond auditing

In recent years, questions have been raised about the real effectiveness of this audit-based model¹³. Identified problems include the superficiality of many audits that fail to identify breaches either through lack of rigour or deliberate fraud by suppliers, multiple audits of the same site ('audit fatigue') and inconsistent corrective action plans. There are also more fundamental criticisms that a policing-style strategy fails to embed improvements in supplier practices and does not address the underlying social and economic conditions that give rise to poor labour practices.

ETI has set out recommendations for improving audits, and also is encouraging its members to put more effort into collaborative projects working with suppliers to build their own capacity to adopt improved working practices.

In terms of improved auditing, ETI recommends:

- creating an environment that encourages honesty among suppliers
- doing fewer, high quality audits

¹³ Getting smarter at auditing: tackling the growing crisis in ethical auditing, ETI 2007

- working with stakeholders, particularly trade unions
- sharing audit reports and corrective action plans
- reviewing purchasing practices (pricing, lead times, changes in specifications) so these do not undermine achieving higher labour standards
- building the capacity of suppliers especially factory managers to adopt better human resource practices.

This is an ambitious agenda which is proving a challenge to ETIs private sector members, but it should inform any inspection-based programme adopted by public sector procurement departments.

One aspect of the evolving private sector supply chain labour standards agenda which may be of particular relevance to public procurement is the length and continuity of trading relationships. The consistent finding of best practice experience in this area is that long-term trading relationships provide the scope for durable improvements in labour practices to take root. By way of example, NHS PASA confirms that, on average, its trading relationships tend to last 3-5 years. While this constitutes adequate time for all parties to work to remediate labour standards breaches, it is noted, as elsewhere, that there are significant challenges for procuring authorities to make labour standards remediation a discrete rationale for the continuation of trading relationships.

3.8 Collaborative projects

All of the above discussion has presupposed that any action to support labour standards will be undertaken via the enforcement of some kind of contractual provision binding on suppliers or contractors. However, while supply chain monitoring is the prevalent means by which the private sector seeks to pursue ethical trade, there are other approaches and possibilities. Alongside inspection programmes or as an alternative to them, many organizations concerned with ethical trade are seeking to work collaboratively with suppliers and communities to deal with some of the more fundamental issues leading to poor labour practices. Examples include the MFA Forum, the ETI Homeworkers project and Temporary Labour Working Group which paved the way for the Gangmasters Licensing Act.

The OGC Social Note emphasizes that there may be more opportunities for working co-operatively with suppliers and that it is important to consider whether strategies other than contractual requirements may be more effective when social goals are identified.

Example: collaborative projects

Established in 2004, the *Multi-Fibre Arrangement Forum* (MFAF) is a network of over 30 brands/retailers, trade unions, NGOs and multi-lateral institutions DFID is also a member. The Forum is working to try to mitigate the impact of the end of quotas on countries whose garment industries could suffer in the current environment of open competition and increased uncertainty.

In June 2005 the MFA Forum in collaboration with the United Nations Development Program (UNDP) launched a joint initiative to identify a road map to a viable, profitable and internationally responsible and competitive textile and garment industry in Bangladesh. This has made significant progress, with a multi-stakeholder National Forum for Social Compliance now established and meeting in Bangladesh. ETI will be working to support NGO and TU involvement in the Bangladeshi National Forum for Social Compliance.

One possibility would be for public procurement departments to support such collaborative projects as were already in existence relevant to their supply chains. Alternatively, they could encourage their major suppliers to get involved themselves. This could be in relation to specific projects or encouragement to join existing voluntary multi-stakeholder initiatives such as the ETI, the Fair Labor Association or Fairwear Foundation. A range of industry-only initiatives also exist with a variety of membership requirements. Membership of such bodies cannot be made a contractual requirement, but purchasing authorities may find they have considerable influence in persuading suppliers to consider membership.

There is also scope for collaboration between government departments. The possibility for sharing data on suppliers in terms of their labour standards performance has been mentioned. There is also the possibility for DFID to take a lead with other procurement departments in education and encouragement to consider labour standards, as well as provision of information about key issues relating to worker rights.

Example: working collaboratively between departments and agencies

In 2004, the city authorities of Enschede, Netherlands, implemented a European tender procedure for corporate clothing. Accordingly, five departments purchased clothing in one collective process from a supplier who is also a member of the Fair Wear Foundation (the Dutch equivalent of the ETI), and is therefore committed to further sustainable improvement of labour conditions inside the factories in countries where the clothing is manufactured.

One key issue frequently mentioned by procurement officials is their lack of resource for considering labour standards issues or indeed sustainability issue in general. DFID could consider creating a specialist advisory resource for departments and agencies to work on training procurement staff on social aspects of sustainable procurement, as well as developing practical implementation plans with them.

3.9 Aspects of procurement particularly relevant to DFID

Much of DFID's procurement is in relation to its departmental function rather than as an end-user. In 2006, the total value of new procurement contracts was c£200m, of which c£25m was accounted for by goods and services procured for DFID offices in UK and around the world. The remaining c£175m represented the procurement of goods and services for development recipients. That is, DFID purchases the majority of goods and services as part of its development work for deployment in field and as part of projects.

Debate commonly reveals a perceived tension, or a need to prioritise, between a development agency's desire to work with small-scale, developing country suppliers and the respect of core labour standards. However, this tension only comes to light where the procuring authority's sole response to (risk of) non-compliance with labour standards at a local supplier is to exclude that supplier. As observed above, though, much of the most innovative comparable private sector work on supply chain labour standards is predicated precisely on using the trading relationship between developing country supplier/contractor and Northern off-taker in order to address poor labour practices, albeit while clearly stating minimum acceptable standards at the outset.

Outside the goods supply chain, DFID has already done some work in incorporating labour standards outcomes to donor-funded project procurement. The most notable is the Social Aspects of Construction study, which aimed to draw international attention to how infrastructure procurement can be a major contributor to poverty reduction and labour rights. In 1996, DFID proposed that contracts for DFID-assisted infrastructure programmes should be based upon the

requirements laid down by ILO international conventions and on other relevant standards. It was proposed that these standards could be encouraged by the insertion of suitable social clauses in the Special Conditions of Contract in works contracts. In order to test the viability of this idea the Social Aspects of Construction study began in 1997.

The study was initially conducted by state and/or regional government departments in three pilot countries: Ghana, Zambia and India (Kerala). The approach involved government, private contractors, trade unions and NGOs working together to find ways of implementing labour standards through the contracting process. The Ghana case study suggests that ‘a win-win situation can be obtained both for the contractor and the workers. A first step was to review the contract documents and to include social clauses that reflect the nine labour standards. Thereafter, the main instrument for achieving success was a programme of stakeholder workshops to discuss, resolve and monitor implementation issues, an awareness-training programme for all parties, and regular site monitoring visits.’¹⁴

In 2004 the French development agency AFD funded a project that sought to take into better account labour standards in road construction in Cameroon, following the DFID experience in Ghana. Beyond strengthening the application of labour standards, the goal was also ‘to ensure the recovery of a certain balance between companies put in competition with each other, as some were likely to violate social and environmental standards in order to be able to provide an offer for a lower price’¹⁵. AFD indicates that the study confirmed that:

- Contractual commitment are an important tool for improving compliance with labour standards
- Requirements must be adapted to the local regulatory context and must be negotiated and broken down (in terms of responsibility) between the different project participants
- It is possible to establish a compliance monitoring system without incurring major additional costs, provided that this is planned for far enough in advance (i.e. project design phase).

A further area of relevance to DFID is in relation to infrastructure project procurement funded by international financial bodies such as the World Bank, on which the Secretary of State has a seat. The World Bank currently has a commitment to require compliance with two of the ILO core labour standards – child labour and forced labour – in all of its project funding¹⁶. Moreover, there exist specific Conditions of Contract published by FIDIC – the International Federation of Consulting Engineers – which apply to infrastructure procurement by the Multilateral Development Banks (MDB). These stipulate compliance with national labour law and the prohibition of child and forced labour, alongside provisions on worker health and safety, HIV-AIDS, wages and accommodation.

¹⁴ *Inclusion of social benefits in infrastructure: Ensuring social benefits for road workers through implementing labour standards*, Mary Jennings, Andrew Cotton, Sarah Ladbury, DFID, 2003

¹⁵ *Normes du travail & travail décent – l’expérience du C2D Cameroun : une démarche RSE institutionnalisée*, AFD, 2004

¹⁶ There has been much speculation that this commitment will increase in scope to cover all four core standards in infrastructure procurement (www.ituc-csi.org/spip.php?article491). However the World Bank has not publicly confirmed this policy development.

Annex 1: Current selected public procurement policies and practices with regard to labour standards

The Cabinet Office

Cabinet Office purchasing is devolved within the central department to management unit level with each area responsible for purchasing as required to meet its own business objectives. Some of the key areas include: IT; office stationery and non-IT equipment; property management services, building works, maintenance; training and consultancy.

The Cabinet Office has issued a *Code Of Practice On Workforce Matters In Public Sector Service Contracts* (which focuses on terms and conditions of employment under transfers of undertakings). The Code recognises that ‘there is no conflict between good employment practice, value for money and quality of service. On the contrary, quality and good value will not be provided by organisations who do not manage workforce issues well.’ The Code also provides for the following monitoring arrangements: ‘the service provider will provide the public sector organisation with information [to] include the terms and conditions for transferred staff and the terms and conditions for employees recruited to work on the contract after the transfer.’

Department for Environment, Food and Rural Affairs (DEFRA)

Through its network of purchasing staff in the core department and its Executive Agencies, DEFRA spends in the region of £400 million each year on a wide range of goods and services. The goods and services purchased by the department include: facilities/building management; agricultural machinery; animal foodstuffs; ICT and office equipment; office cleaning; furniture; protective clothing; veterinary products.

Department for International Development (DFID)

The Department for International Development finances substantial purchases of goods and associated services for the benefit of developing countries. DFID does not procure goods and associated services directly. In 2003, DFID ran a competition to select three procurement agents to carry out purchasing duties in the UK and some overseas divisions. These are: Crown Agents; Charles Kendall and Partners; International Procurement Agency (IPA).

DFID standard tender documents are prefaced by the following statement: ‘DFID wishes to work with suppliers who embrace the above, and also demonstrate Corporate Social Responsibility (CSR) by taking account of economic, social and environmental factors. These practices, whether operated locally, regionally or internationally, should also comply with International Labour Organisation (ILO) core standards on labour and social matters.’

DFID Standard Terms of business include one ‘social’ clause, stipulating that ‘[the Consultant] shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986, and the Disability Discrimination Act 1995 (as revised, amended or supplemented from time to time) [and the Consultant] shall take all reasonable steps to secure that the Consultant’s Personnel do not unlawfully discriminate as set out [above]’.

Department for Work and Pensions (DWP)

Procurement in DWP is carried out within centrally controlled Centres of Expertise, split into commodity groups. The procurement and management of corporate supply contracts is

undertaken by the department on behalf of the individual business units such as Jobcentre Plus and the Pensions Service.

The DWP commercial strategy states that ‘we will apply EU policy and processes to integrate social considerations into public procurement’. Furthermore, DWP confirms that ‘it is DWP procurement policy to purchase sustainable goods and services wherever possible; and ethical and Fair Trade issues across the whole supply chain’.

The DWP Sustainability report states that ‘audits have been commissioned to specifically address how businesses are incorporating and recording sustainable development in their decisions, and the findings will enable further training to be targeted on weak areas’. DWP also refer to the Cabinet Office Workforce Matters Code (see above): ‘[the code] brings what could be considered as a ‘social’ issue – the conditions of service of outsourced staff – very centre stage in the procurement and evaluation process, with the sanction of elimination from the exercise for non-compliant suppliers and the use of comparative compliance data at tender evaluation. The Commercial Policy Team will make appropriate alterations to the Procurement Reference Manual over the coming few months. It is recommended that the Code should be mentioned in any ongoing dialogue with suppliers of existing outsourced contracts, and their principle competitors, so that it does not come as a shock when the contract comes up for renewal.’

Department of Trade and Industry (DTI)

The DTI operates a devolved budgeting system which delegates purchasing authority to managers so that they can purchase direct from suppliers. However, in headquarters a number of goods and services are either purchased centrally, or through centrally let call-off arrangements, or under PFI deals (e.g. IT services). Executive agencies have their own purchasing arrangements.

The DTI *Sustainable Procurement Strategy* states that DTI ‘will provide a checklist of environmental and social considerations for each stage of the procurement process’ and that DTI ‘will incorporate a process of environmental and social risk assessment in to our procurement activities. Environmental and social risk assessments undertaken by project owners will identify procurements which constitute high environmental and social risk. Responsibility will lie with project owners to mitigate the risk.’

The DTI Standard Terms of business stipulate that contractors will comply with all UK anti-discrimination legislation (including race and disability discrimination). The Standard Terms also stipulate that, alongside compliance with environmental legislation, ‘the Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with all other applicable law’.

DTI has also convened a Manufacturing Forum to look at the potential for public procurement to support skills and training in UK industry.

Environment Agency

The Environment Agency Sustainable Procurement Guide includes guidance on ‘ethical’ supply chain elements – i.e. labour standards in developing country supply chains – in terms of risk assessment, tender evaluation on sustainability grounds, managing social risks and reporting.

In particular, the section of the Guide on ‘Developing World Social Risk’ states: ‘Having identified the likelihood of a developing world supply chain the next question is what to do about it? Firstly, do not cancel contracts and source within the developed world. This approach just exacerbates the problems of the developing world and leads to even greater social problems

within the supply chain. The key stage of this is deciding as an organisation what are the minimum social standards for doing business with you. For example, you may wish to base this around the SA8000 standards'

Higher education institutions

The UK's higher education and research institutions spend in excess of £4 billion annually on goods and services. Their purchasing areas include: audio-visual services; biochemicals; vehicles; janitorial and maintenance services; energy; catering supplies and services; ICT and office equipment; building materials and services; laboratory supplies. HEI purchasing activities come under the control of a steering group – the Joint Procurement Policy and Strategy Group (JPPSG). JPPSG has developed a 'Whole-Life Costing Tool' to assist in the evaluation of competing bids and is currently developing this tool to include both environmental and social considerations explicitly.

The HEI Sustainable Purchasing Guidance – produced jointly by Forum for the Future and Higher Education Partnership for Sustainability – suggests that '[HEIs] should seek to ensure that the products you buy are not exploiting child labour, or labour and economies in the developing world and that you meet recognised fair trade standards wherever possible'. The guidance also proposes potential social evaluation criteria including: health & safety; wages & benefits; training/education; child labour, forced labour; freedom of association. There is no specific guidance on implementing these criteria.

Home Office

The Home Office and its agencies spend over £500 million per annum on a wide range of goods, service and works. It has a number of specialist procurement units who purchase items including: ICT and office equipment; scientific and laboratory equipment; construction; maintenance; consultancy services.

Local Authorities

Local Authorities buy a wide range of goods and services. They make their own decision on the way they invite tenders and award their procurement contracts, subject to the law and financial propriety, and in accordance with their own standing orders which are made under Section 135 of the Local Government Act 1972.

In awarding contracts, authorities must comply with the European Public Procurement Rules and also with UK legislation which includes the Best Value legislation laid down by Part 1 of the Local Government Act 1999. The Order made under Section 19 of the Local Government Act 1999 provides, in respect of local authorities, for 'workforce matters' to cease to be defined as 'non-commercial' matters for the purposes of Part II of the Local Government Act 1988 to the extent that they are relevant to the achievement of best value, and also in circumstances where they are relevant for the purposes of a TUPE transfer.

For example, the GLA Group Sustainable Procurement Policy focuses substantially on employment and labour standards in procurement, emphasising a commitment to payment of a Living Wage in all contracts, alongside respect for freedom of association.

In terms of supply chain labour standards for goods procurement, the GLA Policy states that it will 'seek to work with suppliers who:

- Afford their employees the freedom to choose to work for them. Employees should be free to leave the supplier after reasonable notice is served. Suppliers should not use forced, bonded or non-voluntary prison labour;
- Establish recognised employment relationships with their employees that are in accordance with their national law and good practice. Suppliers should not seek to avoid providing employees with their legal or contractual rights;
- Can demonstrate a commitment to equality of opportunity for individuals and groups enabling them to live their lives free from discrimination and oppression;
- Impose working hours on their staff which are compliant with national laws or industry standards;
- Under no circumstances abuse or intimidate, in any fashion, employees and have appropriate disciplinary, grievance and appeal procedures in place;
- Work within the laws of their country
- Take appropriate measures to ensure the health and safety of their workforce and the wider public;
- Support our view that the long-term elimination of child labour is ultimately in the best interests of children, and have taken measures to ensure that child labour is not utilised in their operations;
- Offer wages and benefits that at least meet relevant industry benchmarks or national legal standards'

Ministry of Defence (MoD)

Every year the MoD spends around £9 billion on a vast range of goods and services. Although MoD deals with many companies directly, much of that business is carried out by sub-contractors at various tiers.

National Assembly for Wales

To facilitate its administrative functions, the National Assembly procures a wide range of goods and services valued at more than £20 million per annum. In 2005, the Welsh Procurement Initiative and Forum for the Future developed a Sustainability Programme Assessment Tool, intended to ascertain the extent to which sustainable procurement is being considered within the organisation.

National Health Service Purchasing and Supply Agency (NHS PASA)

The NHS Purchasing and Supply Agency is an Executive Agency of the Department of Health. The agency negotiates contracts and purchasing arrangements that can be accessed by the whole of the health service in England. Trusts can buy goods and services directly from suppliers under 'call off' contracts. The current total value of these contracts is c£2.5 billion.

The NHS PASA Sustainable Procurement Policy is notable as it makes an express commitment to 'promote the adoption of minimum labour standards and worker rights throughout supply chains in line with principles set out in ILO conventions on human and employee rights [and] promote equitable working relationships throughout the supply chain'.

The NHS PASA website states that 'the Agency believes that within the context of public procurement rules and regulations, social considerations in purchasing are about the following:

- considering the social impacts that arise from the procurement activity itself

- identifying social areas of concern that are associated with the product or service being procured
- managing those impacts through careful specification and the use of appropriate conditions of contract, in accordance with the EU rules and domestic policy
- liaising with contracted suppliers to improve their social performance, including in areas such as health and safety, promoting fair wages and working conditions, and equal opportunities.’

NHS PASA has also overseen the development of a series of Collaborative Procurement Hubs (CPH), whereby individual Trusts work together on a regional basis to take full advantage of NHS buying power. Some of the CPH have begun to explore social aspects of sustainable procurement. For instance, in Nottinghamshire, re:source is already working closely with Forum For the Future in relation to socially and environmentally responsible procurement.

Office of Government Commerce

The role of the Office of Government Commerce (OGC) was set up in April 2000 with the overall aim of improving Government's commercial performance. The former Buying Agency now form OGCbuying.solutions, which is a separate entry. A Supplier Management team builds on relationships with its existing suppliers, and encourages more suppliers to compete for contracts.

A guidance note was issued by OGC in February 2006 – *Social Issues in Purchasing*. This represents the latest and most comprehensive official guidance for public procurement available, and includes a structured analysis of inclusion of social issues into the various stages of procurement, as well as an Annex summarising potential actions on labour standards

OGCbuying.solutions

OGCbuying.solutions is an Executive Agency of OGC and provides a range of procurement services for the public sector in categories which include: ICT; buildings; catering; healthcare; safety equipment. In January 2007, OGCbuying.solutions joined Forum for the Future: over the next three years both organisations will work together to increase OGCbuying.solutions’ sustainability credentials and improve the sustainability aspects of the goods and services made available to the public sector under its contracts.

The Scottish Executive

The Scottish Executive a non-governmental department which consists of six main departments plus the support functions of Corporate Services, Finance and the Executive Secretariat as well as a number of agencies and associated departments. A wide range of goods and services are purchased, including those normally required by most large organisations, such as: stationery; cleaning; catering; furniture; equipment; ICT; maintenance; uniforms.

HM Treasury

HM Treasury has a central purchasing unit that it is responsible for all the goods and services purchased by the department. Service requirements include: cleaning; electricity; travel; consultancies of all types; stationery.

Sustainable Procurement Task Force

In May 2006, the Sustainable Procurement Task Force was charged – by DEFRA and the Treasury – with drawing up a National Action Plan to bring about the necessary step-change in

sustainable procurement. It was set the following ambitious goal: For the UK to be recognised as amongst the leaders in sustainable procurement across the EU by 2009. The National Action Plan identifies priority areas of public sector spending and makes six key recommendations.

There are 10 priority spend areas:

- Construction,
- Health and social work,
- Food,
- Uniform, clothing and other textiles
- Waste
- Pulp, paper and printing
- Energy
- Consumables - Office machinery and computers
- Furniture
- Transport (business travel, motor vehicles)

Annex 2: Consultees

Public procurement professionals

Kate Nutt, Head of Policy Through Procurement, OGC

Tony Gardner, Head of Procurement Group, DFID

Graham Geddes, Senior Procurement Manager, DTI

Darian McBain, Head of Policy, NHS PASA

Shirley Justice, Sustainable Procurement Adviser, SenterNovem, Netherlands

Trade union

Tim Page, Senior Policy Officer, TUC

Gemma Freedman, Project Officer, International Relations Department, TUC

NGO

Jill Wells, Programme Officer, Engineers Against Poverty

Consultants

Stuart Williams, Principal Adviser, Procuring Sustainable Health Programme, Forum for the Future

Conor Cradden, Publicworld (consultant to DFID Equity and Rights Team on public procurement)

Annex 3: References

- CARPE Guide to Responsible Procurement*, EUROCITIES Secretariat, Brussels, 2005
- Clean Clothes Campaign Seminar Report: Working Towards Ethical Procurement of Work Wear*, Barcelona, 2005
- Code Of Practice On Workforce Matters In Public Sector Service Contracts*, Cabinet Office, 2002
- Corporate Social Responsibility and Public Procurement*, Christopher McCrudden, University of Oxford Faculty of Law Research Paper Series: No 9/2006, April 2006
- DTI Sustainable Procurement Strategy*, DTI, December 2005
- DWP General Terms and Conditions of Contract for the Supply of Goods*, DWP, September 2003
- Ethical Business Practices In Purchasing And Supply Management*, Chartered Institute of Purchasing and Supply, October 1999
- Fair Trade Procurement Best Practices*, European Fair Trade Association,
- Getting smarter at auditing: tackling the growing crisis in ethical auditing*, ETI 2007
- Guidance for buyers and their internal customers: Advice for public sector bodies on integrating sustainable development into food and catering services contracts*, Public Sector Food Procurement Initiative/Defra, May 2004
- Inclusion of social benefits in infrastructure: Ensuring social benefits for road workers through implementing labour standards*, Mary Jennings, Andrew Cotton, Sarah Ladbury, DFID, 2003
- Integration of social considerations in public procurement - perspectives and constraints*, George Jadoun, The International Training Centre of the ILO, November 2006
- Invitation To Tender Instructions*, DFID, March 2007
- Making governance work for the poor*, DFID, July 2006
- MDB Harmonised General Conditions of Contract*, FIDIC, 2005
- Modifying Infrastructure Procurement To Enhance Social Development*, Engineers Against Poverty, 2006
- Normes du travail & travail décent – l'expérience du C2D Cameroun : une démarche RSE institutionnalisée*, AFD, 2004
- Procuring the Future*, Defra, 2006
- Public Procurement and Race Equality: Guidelines for Public Authorities*, Commission for Racial Equality, July 2003
- Purchasing for Sustainability: Guidance for Higher Education Institutions*, Forum for the Future/Higher Education Partnership for Sustainability, 2003
- Social Issues in Purchasing*, Office of Government Commerce (OGC), February 2006
- Submission On The Proposed Social Note On Government Procurement*, CAFOD, June 2004
- Sustainable Development in Government*, Fifth Annual Report, Sustainable Development Commission, February 2007
- Sustainable Procurement And Procurement Efficiency Implementation*, OGC, February 2005
- Sustainable Procurement Guide*, Environment Agency, 2002
- Sustainable Procurement in Central Government*, National Audit Office, September 2005
- Sustainable Procurement in the European Union*, The European Coalition for Corporate Justice, February 2007
- Sustainable Procurement Policy*, NHS PASA, October 2006
- The GLA Group Sustainable Procurement Policy*, GLA, December 2006
- The Scope for Using Social Clauses in UK Public Procurement to Benefit the UK Manufacturing Sector: A Report for the Manufacturing Forum*, Anthony Collins Solicitors, July 2006
- UK Government Sustainable Procurement Action Plan*, HM Government, March 2007
- Work in progress: Labour policies of workwear companies supplying public authorities in Europe*, Sanne van der Wal & Bart Slob, SOMO, October 2005