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## **Report to the Finance Strategic Policy Committee**

### **Development of Social Clauses Measures in the Procurement Process**

#### **1.0 Background**

As part of its 2018 Work Programme, the Finance Strategic Policy Committee has included the matter of the development of social inclusion measures in the procurement process. In particular, the work programme provides that Dublin City Council will seek to apply social inclusion measures on a pilot basis to selected contracts.

#### **2.0 Procurement**

In commencing this initiative, Dublin City Council sought expert procurement advice to give guidance on the appropriate procurement measures that would support the successful incorporation of social inclusion measures. Dublin City Council has a Procurement Advisory Service Framework of which Greenville Procurement Limited are a member and are ranked number 2 on the Framework.

The Framework operates by way of cascade method whereby all advisory services are offered to Innovative Procurement Services (IPS) in the first instance, as our ranked number 1 advisor. The Framework is utilised by 13 Local Authorities.

At the time of requesting the advice on Social Clauses/Award Criteria IPS declined the work due to workload and a limited experience in working on tenders that included social clauses and/or a social award criterion.

This report is influenced by engagement with and specific advice from Greenville Procurement Partners Ltd.

#### **3.0 Purpose**

Dublin City Council is embarking on a long-term strategy in order to fully integrate social and employment related considerations into its procurement procedures. Recognising the critical importance of favouring the social integration of disadvantaged persons and members of vulnerable groups amongst the persons assigned to delivering the services required by the Council, it is now proposed to take significant steps towards the employment of long-term job seekers and the implementation of training measures for the unemployed and young persons in the course of performance of certain contracts, commencing with the security services contract to be awarded in the near future. While embarking on this new strategy, Dublin City Council recognises at the same time that as a Contracting Authority subject to the EU public procurement rules, it cannot infringe either the EU Treaty or the public procurement directives, relating in particular to the free movement of persons.

## **4.0 Award Criteria**

As a first step in implementing a proactive programme for social inclusion, one recommendation Dublin City Council intends to use is the relevant award criteria. It is emphasised that contracting authorities such as Dublin City Council are permitted to use award criteria relating to the services to be provided under their public contracts, while at the same time acknowledging that the award criteria should not be chosen or applied in a way that discriminates directly or indirectly against natural persons or economic operators from other Member States. Notwithstanding this consideration, however, it is still possible for the Council to introduce a well-chosen social strategy for the furtherance of a positive long-term social and employment-related policy in the award of certain substantial contracts. Having said that, it must be stated that to date very little practical guidance has been offered by the EU Commission for direct implementation in that regard. The latest Commission guidance on the matter was issued as recently as February 13<sup>th</sup> 2018 by the Regional Policy Directorate, but again it lacks any specific or helpful guidance on how social or employment policy can be put into effect in any practical sense.

Dublin City Council has therefore drawn up its own independent strategy to progress this matter, having examined the various possibilities associated with the use of contract award criteria, variants and contract performance conditions as different options.

## **4.1 Contract Award Criteria**

Under EU rules public contracts should be awarded on the basis of objective criteria, following a comparison of the relative value of tenders in conditions of effective competition in order to determine which tender is the most economically advantageous. Also, to ensure compliance with the principles of equal treatment and transparency all tenderers must be fully informed in advance of all the criteria and rules to be employed in making the award decision for the contract.

The award criteria are chosen in order to identify the best tender on the basis of qualitative and quantitative (cost or price) criteria which are linked to the subject matter of the contract. The criteria should thus allow for a comparative assessment of the level of performance offered by each tenderer.

### **4.1.1. Social Award Criteria**

The use of social criteria under the banner of “contract award criteria” is expressly allowed under the Public Sector Directive (Dir 2014/24/EU, Para 67(2)), on condition that these are linked to the subject matter of the contract. As with other qualitative criteria, social criteria should be accompanied by specifications which allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria, with the accuracy of the information provided by tenderers being verified in case of doubt.

Weighting of Criteria

### **4.1.2. Weighting of Criteria**

Dublin City Council is required to specify, in the procurement documents, the relative weighting which it gives to each of the chosen criteria which collectively will determine the most economically advantageous tender. In cases where a social criterion is used, it will therefore be very important to make a prudent decision on the weighting to be chosen in order to achieve the best outcome for the Council. If the weighting is too high then there is a likelihood of having an over emphasis on the social policy to the detriment of the key elements of the service. On the other hand, if the weighting is too low, tenderers will tend to place little or no importance on the social criterion. Having considered this issue, we are recommending that for the security services contract an appropriate weighting for the social criterion should be 20% with a 50 or 60% minimum score required. This latter rule means that the tenderer cannot ignore the social inclusion requirement as to do so will result in their elimination from the competition.

## **5.0 Target No. 1 – Contract for Security Services**

### **5.1 Security Services**

Security services are included among the social and other specific services listed in annex XIV of directive 2014/24/EU (CPV 79710000). The EU threshold for such services is €750K and the intention to award such services must be advertised by means of a contract notice (or a PIN notice) in the OJEU, containing specific information in accordance with a model notice contained in Annex V, part H of the Directive and incorporated in standard forms established by the Commission (Standard Form 21 in Commission Regulation 2015/1986).

Known as the “light touch regime”, the provisions of Arts 74-76 of the Directive afford considerable scope to contracting authorities in awarding these contracts through their choice of procedures which are not constrained by the formal procedures set out elsewhere in the Directive. It is mandatory to ensure compliance with the principles of transparency and equal treatment deriving from the EU Treaty. This means that the award procedure must be conducted in conformity with the information provided in the standard contract notice and that the methodology for the award of the contract be based firmly on this procedure.

Regarding the implementation of social or employment policy considerations, it is important to highlight any requirements at the commencement of the competition, so that intending participants are aware from the outset of such requirements. This therefore will satisfy the transparency requirements which are so important.

## **6.0 Incorporating Social Requirements**

### **6.1 Application in the Case of the Contract for Security Services**

To begin with the aim is to use the tender documentation to encourage tenderers to enrol long-term unemployed persons into their employ and to equip them with all of the necessary training and skills development requirements appropriate to their particular sector of industry, in this case the private security industry.

In the case of security services there is a strict legislative regime relating to licensing for both the companies involved and the persons employed by them. It is proposed that the Council should include an award criterion directly relating to social conditions as set out below.

### **6.2 Recommended Wording for Social Related Award Criterion**

Dublin City Council intends to use the following award criterion as one of the qualitative criteria in the tender documentation.

	Criterion	Weighting	Maximum Score	Minimum Score Required
(A.)	Social Inclusion Proposal for the Contract	20%	2,000	1,200
In order to support Dublin City Council’s policy of proactively promoting social inclusion and employment, tenderers should describe how they will give effect to a programme of sustainable employment (inclusive of all the appropriate mentoring and training) for resources to be allocated over the life of the contract.				

## **7.0 Conclusion**

Dublin City Council will shortly advertise for security services. This process will incorporate social inclusion measures targeting long term unemployed.

**Kathy Quinn**

**Head of Finance**

**With Responsibility for Information & Communications Technology**