

SME-

FRIENDLY PROCUREMENT

the CAN DO toolkit 2



Funded by

Llywodraeth Cynulliad Cymru
Welsh Assembly Government



IMPORTANT: All three resources that make up the toolkit provide advice in general terms only. Readers should seek legal advice before use.

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Section 1: Introduction

1.1 The Can Do Toolkit 2 – “SME Friendly Procurement”

The toolkit follows on directly from the **Can Do Toolkit: Targeted recruitment and Training for social landlords**, and should be used in partnership with the original document. Where there are strong links, readers will be signposted directly to the first toolkit, which has been updated to include any new policy and legal developments in this area. This Toolkit includes 3 linked resources:

Resource 1 – This introductory guide provides key information on how organisations can ensure that their procurement is SME friendly, and how opportunities for SMEs can be maximised.

Resource 2 – a comprehensive guide containing detailed information on legal and policy matters, as well as information for buyers on what and how to buy, and how to support SMEs. This resource is linked directly to the first Can Do Toolkit and is available for downloading on the i2i and Sell2Wales websites in a PDF format.

Resource 3 – a series of model materials and practical guidance on how to buy to be downloaded and adapted from the i2i and Sell2Wales websites in a PDF format.

How to use the Can Do Toolkit 2

This toolkit has been produced jointly by **i2i** and **Value Wales** as the next step in offering practical and clear guidance to public sector buyers and social landlords in Wales on maximising supply-chain opportunities through their contracts. It aims to help users by providing information and guidance on:

- useful actions they can take;
- legal and policy requirements and appropriate processes;
- sources of support and examples of relevant practice; and
- model clauses that may be adopted for use on a case-by-case basis.

1.2 How to use resource 3

Resource 3 provides a range of model materials, and a step by step approach to public sector SME friendly procurement from the policy adoption stage through to the award and monitoring of a contract containing SME friendly protocols.

It can be used to re-enforce and supplement the policy and legal guidance, as well as the range of SME friendly procurement options introduced in resource 2 by giving practical hints and tips on making a business case for and practically procuring goods, supplies and services in a way that maximises the opportunities for local SMEs. For a full policy and legal background please access **The can Do Toolkit – Targeted Recruitment and Training resource 2** by clicking on the link below. <http://www.whq.org.uk/docs/i2i/english/aboutDocE22.pdf>

2.1 Introduction

It is recommended that opportunities for SMEs be a consideration in deciding how to purchase works, goods or services and then 'what to buy': SME-friendly requirements could be part of the 'core elements' of what is being purchased and included in the contract notice. However, if you decide "how to buy" differently, then core contract conditions may not be necessary in order to maximise the opportunities for SMEs. These are matters for the purchasing authority to decide on the basis of its objectives, powers and policies, and should be included in the tender documents, and throughout the procurement process. The requirements should not be drafted in a way that disadvantages non-local bidders, for example by requiring opportunities for 'local SMEs'.

It is important that each purchaser decides if and how to include SME-friendly activities in their procurement through each of the following steps:

- adoption of clear **policies**;
- creating a **budget** for the activity, that could include 'supplier development' activities, facilitation and advice, **monitoring** and progress-chasing;
- the **business case** for the procurement;
- the **OJEU contract notice**;
- the **Prequalification Questionnaire**;
- the Specification and the **Invitation to Tender/Negotiate/Participate in Dialogue**;
- the **Contract Conditions**;
- the **award process** (where the SME-friendly activities are core requirements); and
- **Contract implementation** (including monitoring).

Where SME friendly activities are not included as a core requirement of a contract they cannot be considered in the award of a contract. However, voluntary commitments can be obtained during the course of a contract.

Most case law on social issues in procurement relates to the question of how far a non-core matter can influence the award of a contract. The best advice is that it should not. Case law supports the approach that it is for a purchaser to select the core requirements of the contract, based on their powers and policies, provided that these are not drafted so that they disadvantage non-local bidders.

The text below illustrates the number of approaches to SME friendly procurement undertaken by one social landlord. Some have included contract requirements and others are merely the result of a pre procurement dialogue where "how to buy" activities have been identified.

Maximising Opportunities for SMEs – the RCT Homes Approach.

1. Procurement through `lots`

The WHQS investment works were divided into six `lots` - two for internal works, two for central heating and insulation, and two for window and door replacement. This provided more scope for bids from companies based in the travel to work area of local residents. Three contracts were awarded to National companies and three to local companies. The national companies use local subcontractors as part of their extended supply chain.

2. Simplified PQQ

A joint staff and tenant procurement group went through each section of the PQQ to check what information was essential and to make sure that the language was clear. The document placed increased focus on the bidders experience and capacity, as opposed to 'tick-box' assessments.

3. Briefing Sessions

A briefing session was provided to all interested contractors to explain the PQQ requirements. A second session was held for the 47 tenderers to explain the specification and the contract requirements – including those relating to the supply chain and how consortium contractor bids could be submitted.

4. Supply-chain opportunities

Prior to the procurement process RCT Homes developed a specification (e.g. for kitchen units) and agreed a price and training/employment benefits with a number of local suppliers. In the specification for the main contracts bidders were instructed that they had to use these suppliers unless they could get better value from another supplier. Through this method a window and door supply contract has been provided for a local social enterprise.

5. Selection and Award

The PQQ required potential bidders to provide a statement on how they would `actively participate in the protection of the environment whilst building the social and economic regeneration of the community and surrounding areas`. This was not scored as part of the selection of the tender list, but was set as a differentiator in case of close scoring.

A scoring matrix was developed for the assessment of tenders and the award of contracts. This included scores for `supply chain management (1.5%), sustainability (1.5%) and employment and training (10%)`.

The scoring panel included tenants and non-technical staff and was done on a 50/50 cost to quality ratio. However, 10% of the quality score was based on a visit to a current site and 10% on an interview with the scoring panel. The visits and interviews were only carried out with bidders that were within 20% of the score achieved by the best bidder for each `lot` on the basis of the tender evaluation.

6. Partnering Contracts

RCT Homes has used 4-year strategic partnering contracts. This avoids the costs of repeated tendering processes and provides a framework for joint working that will help achieve the social objectives. The contracts have been operationalised through Strategic and Operational Core Groups, so that inclusive collaborative working is led at the highest levels within each partner business.

The contracts also require that the same terms and conditions be provided for sub-contractors and suppliers as are included in the main contract. Suppliers with back-to-back contracts have an equal voice at the core groups.

Contact: Greg Montgomery. Investment and Regeneration Director. RCT Homes.
Tel 01443 494404 e-mail GregM@rcthomes.co.uk

2.2 Explicit Policy

The following provides text that could be included in a procurement or corporate strategy. It should be noted that there is no specific reference to the locality from which the beneficiaries – either people or SMEs - will be drawn, but it is legitimate for a public body to have a policy of producing local benefits from its procurement and other activities provided that the actions it takes do not disadvantage non-local companies and (for employment) do not breach UK equal opportunities legislation.

Targeted Recruitment and Training and Supply-chain Opportunities

[.....] (enter name) is committed to achieving economic, social and environmental well-being for its residents and implementing the [Community Strategy] so as to ensure a better quality of life for everyone, now and for generations to come. To achieve this it commits to the following actions to the fullest extent possible within the relevant legal and policy frameworks and the available funding:

- I. when selecting the strategy for each procurement, to consider what recruitment and training, equal opportunities and SME opportunities could be obtained from each works contract;
- II. to include training, equal opportunities and recruitment requirements, and SME opportunities in its service requirements, where it considers this appropriate;
- III. to include other social and environmental matters in its service requirements, where it considers this appropriate; and
- IV. to use these requirements in all stages of the selection and contract award process, and as contract conditions.

The proposed text is intentionally non-specific in the benefits that will be sought. This is because the strategy should be flexible: it should be capable of lasting for a long time without needing to be amended as priorities change.

2.3 The Procurement Process

2.3.1 Market Dialogue

To understand the opportunities and potential benefits of using an SME-friendly procurement approach – and what this approach should be – it may be necessary to obtain information on:

- SMEs that operate within the travel-to work area of the investment site(s), including contractors, manufacturers (e.g. kitchen unit and window / door suppliers) and service providers (e.g. professional, cleaning, environment etc);
- Perceived and actual barriers to participation in the tendering process.

Some of this information may already be available within the organisation (e.g. from earlier 'select tender lists') or through local business listings. However, at this early stage it will be worthwhile contacting the Supplier Development Service and Constructing Excellence who has regional 'clubs' for contractors that may provide an opportunity for market consultation.

Market Consultations – Merthyr Valley Homes

MVH feels that the way to get the best value for money is to involve potential contractors and to communicate with them. A contractor who understands what a client wants and feels that he can work with them is more likely to submit a competitive bid, than one who doesn't understand the contract or feels he can't work with the client.

Prior to tendering, MVH officers met with several of the larger contractors in order to gain opinion on the proposed packaging, regeneration commitment and TR&T clauses to be included. In all these meetings the contractors felt the proposals would provide Value for Money, would not add cost to the works and be a contract they would wish to provide a tender for.

Even before the housing stock transfer an event was held for contractors and SME's to inform all interested parties of who MVH was, how we intended to package the works, what timescales we had. This gave them the opportunity to comment on the packaging of our proposed contracts.

Contact: Mike Williams. Asset Management Director, Merthyr Valley Homes.
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2.3.2 Business Case

"If we were starting again I would include a commitment to community benefits in the selection of consultants and build up the in-house team earlier so that we had more capacity to manage smaller contracts."

Contact: Mike Williams. Asset Management Director, Merthyr Valley Homes.
Tel. 07595 088269 E-mail michael.williams@mvhomes.org.uk

To be able to justify a business case fully, a purchasing authority should draft a high-level definition of its project requirements to ensure that there is a clear and agreed understanding of the business goals and what is required of contractors to meet those goals. Before embarking on any procurement process a purchasing authority can use 'market dialogue' to assess the extent to which the procurement could deliver SME opportunities and other social benefits and work this into the business case for the procurement.

In preparing a business case a purchasing authority must consider many issues, including:

- confirming that it has the powers and policies to undertake the procurement, including the desired social issues;
- ensuring that financial provisions are made for the entire project, including SME-friendly requirements and other social outcomes;
- ensuring that all of its SME and other social objectives can be quantified and measured, which will help evaluate how far they represent value for money;
- identifying the weighting to be given to the provision of SME opportunities in the procurement process if a core requirement and what procurement strategy will best achieve this; and
- identifying what SME opportunities could be provided in the supply-chain and how this is best achieved.

Once a business case has been developed, a purchasing authority should be able to appreciate all the issues involved and what will be required – in relation to SME opportunities – in the procurement process, the delivery of the contract and the monitoring of SME involvement.

Once a purchasing authority has prepared its business case for procurement, it must be able to confirm that the case is robust and feasible. For SME-friendly activities this will mean ensuring that it is sufficient to achieve the purchasing authority's objectives and that it is affordable and deliverable.

2.3.3 Selection of the Procurement Approach

On the basis of the Business Case Assessment the purchaser can decide on the most appropriate approach to procurement in order to maximise value for money or best value based on their objectives for the procurement.

Providing SME opportunities may be a factor in selecting 'how to buy' that particular contract and then 'what to buy' – 'the subject of the contract'. The greatest impact is probably made at the 'how to buy' stage where options include:

1. *Use Frameworks or smaller value contracts/tenders to minimize the impact of the financial dependency clause.*
2. *Ensure that the PQQ requests feasible and relevant qualifications. (i.e. if you were commissioning a painting a full QA Management System is not a useful qualification) (A Supplier Qualification Information Database (SQulD) has been developed which provided guidance on which questions should be asked dependant on the risk associated with the procurement. For more information please go to the Sell2Wales website or contact Karen.Coombs@wales.gsi.gov.uk.)*
3. *Ensure the insurance coverage requested is in relation to the size of the contract: excessive insurance demands can negate or minimise any profit and therefore preclude potential good suppliers from bidding.*
4. *Allow companies who demonstrate relevant experience outside of working for L.A.s or the public sector comparable scoring to those that have. It`s the quality of work that counts, not who it was done for.*
5. *For smaller value contracts perhaps advertise locally only e.g. local press, business groups, or a SDS network event. Publication on Sell2wales opens up the competition nationwide.*

Contact: Phil Spooner, Supplier Champion, Supplier Development Service (SDS) in SE Wales.
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Using frameworks to maximising opportunities for SMEs – Powys County Council

To achieve its policy commitment to support the local economy the Council agreed to procure its £4.6m in WHQS works through a Framework Agreement divided into 8 categories: kitchen replacements, bathroom replacements, rewiring and internal decorations for the North and then the South of the County. Contracts will be issued in these 8 categories over the next 4 years with an annual expenditure for each contract typically under £400,000.

Through this process 3 contracts were awarded to larger and non-local suppliers, and 5 were awarded to local SMEs, where `local` is defined as based in Powys or an adjoining authority. This broad definition of `local` was considered necessary in order to get the required competition.

The Council has now procured framework contractors for property maintenance and construction jobbing and small projects with a value of less than £25,000. The framework has four Lots, two for `jobbing works` (North and South) and two for Small Projects. To provide service managers with appropriate local options 61 contractors have been appointed to the frameworks, of whom 59 are `local` and most are SMEs.

In each procurement process the Council worked closely with the Local Supplier Development Service, *Mente ra Busnes*, that was able to advise and assist local companies. The Council advertised the contract opportunities in the local Press, the Welsh Assembly website (*sell2wales*), simplified the PQQ form and issued guidance on how to complete the PQQ.

Contact: Claire Woodhead. Powys County Council.
Tel. 01597 826469 E-mail Claire.woodhead@powys.gov.uk

2.3.4 Relevant KPIs

An essential element of public procurement is that the requirements of the contract can be measured, so that the client knows whether the requirements have been met. Contract management is vital to ensuring that the specific contract requirements are met, and this is as applicable to community benefits and supply chain requirements as to anything else.

Where `what to buy` actions include, for example, `benefits to the local economy`, then there is a stronger need to use KPIs that measure the economic impact. These could seek to measure:

- the value of contracts awarded to `local businesses` - which will add to the local GDP;
- the number of local residents that are employed and the average (or actual) wages paid to them.

The above `measures` are really proxies for a proper economic assessment using a `local multiplier` (LM3) approach. The full local multiplier assessment would gather information on how local suppliers used the contract income to make purchases from other local suppliers and pay wages to local residents. In an LM3 approach this is done for three transactions:

- Tier 1 – payments to the main contractors and their employees and self-employed operatives;
- Tier 2 – payments to the sub-contractors and suppliers and their employees and self-employed operatives;
- Tier 3 – payments to the suppliers to the Tier 2 companies, and the suppliers employees and self-employed operatives;

The expenditure patterns of the employees at each level are also taken into account: i.e. how much of their income is spent within the local economy.

It is likely that this more sophisticated evaluation will need to be undertaken by a specialist organisation rather than by the contractors or the client. But any such research requires the cooperation of the contractors and the supply-chain, and potentially should be part of the contract conditions. However, the cost implications of this approach must be considered during the pre-contract stage by the buyer.

LM3 shows the impact of the Local Multiplier for three rounds

The Principle

Imagine that Acme School is renovating its premises and uses LM3 to assess the impact of its most recent capital project so they can make improvements:

Round 1:	£2,000,000 (original income/budget)
Round 2:	£ 800,000 (amount spent on locally-based suppliers & staff)
Round 3:	£ 300,000 (amount spent locally by suppliers & staff)
Total:	£3,100,000 (Rounds 1-3)
LM3:	1.55 (Total divided by Round 1)

This means that the capital project generated an additional £0.55 for the local economy for every £1 spent by Acme School.

Example

North Norfolk District Council compared two construction contracts. The LM3s are set out below. Note that the smaller contract in fact generated more money for the local economy!

This example shows the importance of economic linkages. It's not just where you spend your money, but what happens to your money after that. Contract 1 generated an additional £1.15 for the local economy for each £1 of initial investment. For contract 2 this was only £0.23!

North Norfolk District Council

	Contract 1	Contract 2
Round	£72,000	£12,000
Round	£57,000	£20,000
Round	£24,980	£ 6,760
Total	£154,580	£147,160
LM3	2.15	1.23

Contact Adam Wilkinson on +44 (0) 7811160822 or adam@adamwilkinson.com, or Elizabeth Cox at nef Tel. 020 7820 6381 or Elizabeth.Cox@neweconomics.org.

You can find more information on: <http://www.lm3supplychain.com> or http://www.pluggingtheleaks.org/resources/plm_lm3.htm

2.3.5 OJEU Contract Notice

The use of social considerations in contract conditions must be specified in any OJEU Contract Notice. The following model wording is suggested, typically under the section in the OJEU Contract Notice headed "Additional Information".

"Under this [procurement / project] the [contractor / developer] is required to participate actively in the economic and social regeneration of the locality of and surrounding the place of delivery for the [procurement / project]. Accordingly contract performance conditions may relate in particular to economic, social and environmental considerations."

2.3.6 PQQ

Use a simplified and standardised approach to the PQQ stage of the procurement process. This is the approach advocated and recommended by Value Wales through the work undertaken as part of the SQulD. This resource is on line and ready to be used by purchasers and suppliers and you can access this document by linking to; <https://www.buy4wales.co.uk/PRP>

However, this is an example of model text that can be used as part of the PQQ process. It must be remembered that this section should be flexible and appropriate to the contract being let.

Targeted Recruitment and Training and Supply-chain Opportunities

1 Is your company willing to work with the contracting authority on any or all of the below, and explain how you would do this?

- Identifying 'additional SME suppliers' that you have not utilised before and that are based in and around the localities where you are working;
- Utilising Sell2Wales and other supply-chain listings and working with Supplier Development Programmes;
- Nurturing and supporting these additional SME suppliers so that they are better able to meet your needs;
- Implementing best practice in payment and other terms in relation to your SME supply-chain.

2 "How would you plan to be involved in any of these activities, or do you have any examples of how you have already been involved?"

2.3.7 Specification

The specification sets out the detailed requirements for the contract, including the social / community benefits (ideally based on the business case). Options here include:

- Supply-chain management;
- Works and supply-chain development;
- Labour-only and supply-only contracts.

Examples of possible text for inclusion in the specification are included in Appendices 1 to 4.

While the details will vary from contract to contract there are a number of common elements that are included in SME-friendly specifications. These include:

- some reference to the policy or legal underpinning for the requirements;
- measurable performance indicators either within the specification or in an addendum, relating to:
 - the required outputs, and/or
 - a process for identifying 'target SMEs' that has to be followed;
 - monitoring and performance review requirements; and
 - a disclaimer to protect the client from 'claims' relating to any SME-friendly interventions they make.

As with all other elements of the specification, care will need to be taken in determining what SME-friendly requirements are appropriate and deliverable. These need to be drafted into clauses that are unambiguous and provide a 'level playing field' in the tendering process for contractors. A key element of achieving this 'level playing field' may be making use of the Supplier Development Service and Construct Wales, who can gain access to and work with local SMEs. Sell2Wales can provide initial contacts for contractors delivering public sector and other social housing contracts.

2.3.8 Award Process

It is good practice to ask bidders to submit with their tender (or response to an invitation to negotiate / participate in dialogue) a method statement setting out how they will achieve SME-friendly activities that form part of the specification or contract conditions. Where the SME-friendly activities are core elements of the procurement this method statement can be scored, and this score included in the qualitative assessment of the tender. Where the SME requirements are non-core elements the method statement should be disregarded in the award process but can be used in negotiations once the contract is awarded, and supply chain activities are expected.

Where the SME requirements are to be scored a scoring framework should be used to ensure a robust and fair evaluation of method statements. All contract award criteria and sub-criteria and weightings must be published in the original contract notice.

A scoring framework:

- lists the subjects where a response from the bidder was expected, with each subject given a weighting (number of points); and
- lists the types of actions that were expected to be offered under each subject, with each action then being given a weighting – a breakdown of the points available for that 'subject'.

Pro-forma method statements should be issued to ensure that all bidders answer the same questions and provide the same core information. This helps ensure a level playing field is put in place between bidders and reinforces the message that these are not voluntary or 'best endeavours' elements of the contract, but contractual requirements.

2.3.9 Contract Conditions

Specific contract conditions can be developed on a project by project basis. In procurement processes that allow scope for negotiation (for example on the basis of a service delivery plan or method statement) specific clauses can be incorporated into contract documentation to tie the contractor/developer to specific targets and outcomes.

The model clauses in the appendices can be used as a starting position for all procurements, including those covered by the EU rules.

Section 3: Development Agreements

Public bodies (and potentially RSLs) enter into agreements with third parties (for example, private sector development companies) to undertake the development of a site or neighbourhood. Typical examples would be the development of commercial or mixed-use sites after public sector clearance, decontamination, reclamation and 'land assembly', or the sale of social housing sites for redevelopment through a mix of social and affordable housing. Because these developments often include both the sale of property and the provision of new facilities (e.g. roads, social housing, community facilities) for the public sector it is common for a development agreement to let through a 'procurement process'. The scale of development means that these procurements are subject to the EC Procurement Directive.

In a Development Agreement the building contracts will be issued by the new developer, not by the public body. In some cases the Developer involved in the initial contract will sell on their interest in the site to other developers, or they may be restructured or taken over. Where the public body that owns the land or undertakes the initial investment wishes to ensure that its social priorities (for example SME-friendly procurement) are delivered by the developers it can do so through a covenant that is a requirement of the development agreement. However, this must be durable in light of the fact that often there can be no assumption about who will develop and who will occupy the development site, or when the development will go ahead.

Most of the obligations under a development agreement are relatively short term, and will be fulfilled by the original landowner and developer. However, unless the agreement provides otherwise, the obligations in the original agreement – including any covenant to deliver the SME and community benefits - will only be enforceable between the two original contracting parties.¹

3.1 The Problem of "Positive Covenants"

If a public body is selling land and wants to include a 'community benefit' covenant, it faces a problem where these covenants are positive (as a rule of thumb a positive covenant is a covenant which requires someone to spend some money), as the general rule is that the burden of a positive covenant will not bind anybody who subsequently buys that land

In this context there are three recommended approaches:

- the land-holder enters into a conditional contract to sell the land, but retains their freehold interest until the SME-friendly procurement requirements have been achieved;
- the contract to sell the land/buildings includes a requirement that the first purchaser makes a joint application (with the vendor) to the Land Registry to enter a restriction that no disposition is to be registered without the vendor having certified that it has received an executed Deed of Covenant relating to the SME-friendly procurement in its favour – this would ensure that the new landowner is committed to undertaking the SME-friendly procurement;
- the contract to sell the land/buildings includes a requirement that the first developer provides a financial 'deposit sum' on signing of the development agreement (or on a phased basis), which they receive back with interest as the SME-friendly procurement processes are delivered.

There are no known examples of SME-friendly procurement being included in a Development Agreement. Appendix 5 offers an example of a development agreement that can be used to ensure SME-friendly procurement requirements.

¹ The old general rule that only a party to a contract can sue on it ('Privity of Contract') is now reversed by the Contracts (Rights of Third Parties) Act 1999, but in practice most contracts reinstate the old rule. It follows that strangers to a contract cannot have obligations imposed on them to which they are not parties.

Appendix 1 Specification requiring the provision of information on supply opportunities to SMEs based in a designated area

In line with its commitment to supporting SMEs and the local economy as set out in the [...] Strategy it is a condition relating to the delivery of the contract that the following activities be undertaken to maximise supply-chain opportunities for targeted SMEs.

- ...1 To work with the Supplier Development Programme [contact...] or a suitable alternative organisation agreed by the client to develop a programme of activities and support so as to maximise the provision of information on subcontract and supply opportunities to SMEs with a [...] postcode and to maximize the number and competitiveness of bids in response to these opportunities from these SMEs.
- ...2 Within four weeks of commencement of the contract to report on the actions that have been taken to provide information and contract opportunities to SMEs with a [...] postcode, including a list setting out telephone and/or e-mail information for SMEs from the target area that have been involved in the activities in ...1.
- ...3 One week prior to each [monthly contract review meeting] to provide to the client a report setting out the numbers of SMEs with a [...] postcode that have been invited to tender / price for sub-contract and supply work, the number of these that have been awarded a contract and the total value of these contracts. This should be reported for the latest period and the contract to date.
- ...4 This requirement does not comprise or imply any promise on the part of the Client to provide suitable employees, subcontractors or suppliers. Any action taken by the Client to broker relationships between the Contractor and local individuals, businesses or agencies does not imply that they consider the individual, business or agency as suitable for engagement by the Contractor.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on the Supplier Development Service and local service providers and the contact for any available register of SMEs based in the target area.

Appendix 2 Specification requiring tender / pricing opportunities to be provided for targeted firms listed on Sell2Wales

...SME-friendly Purchasing

In line with its commitment to supporting SMEs and the local economy as set out in the [...] Strategy it is a condition relating to the delivery of the contract that the following activities be undertaken to maximise supply-chain opportunities for targeted SMEs.

- ...1 For each sub-contract or supply contract to ensure that a minimum of [2] 'target firms' with a [...] postcode that are on a list of SMEs held by [Sell2Wales] are invited to submit a price or tender (where suitable firms are on the list) and that these firms have an equal opportunity in competing for the contract.
- ...2 One week prior to each [monthly contract review meeting] to provide a list of the 'target firms' identified under ...1 above in the period and the contract to date, showing whether or not the 'target firm' was appointed, and where they were not appointed the percentage their tender / price represents of the price submitted by the appointed sub-contractor or supplier.
- ...3 This requirement does not comprise or imply any promise on the part of the Client to provide suitable employees, subcontractors or suppliers. Any action taken by the Client to broker relationships between the Contractor and local individuals, businesses or agencies does not imply that they consider the individual, business or agency as suitable for engagement by the Contractor.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on how a bidder can access Sell2Wales and local Supplier Development Service providers and the contact for any available register of SMEs based in the target area.

Appendix 3 Specification requiring tender / pricing opportunities to be provided to 'new suppliers' based in a target area

...SME-friendly Purchasing

In line with its commitment to supporting SMEs and the local economy as set out in the [...] Strategy it is a condition relating to the delivery of the contract that the following activities be undertaken to maximise supply-chain opportunities for targeted SMEs.

- ...1 Provide a method statement setting out the steps that will be taken to procure that [10%] of the value of the contract is delivered by 'new suppliers' based in areas with a [...] postcode, where 'new suppliers' are:
- 'enterprises with less than 20 staff that are not a part of a larger company or group' and have not previously been engaged by a contractor that is engaging sub-contractors and suppliers; or
 - social enterprises or social firms that have not previously been engaged by a contractor that is engaging sub-contractors and suppliers.

The method statement must include information on how the 'new suppliers' will be nurtured and supported through the work on issues like health and safety, pricing, site management, financial planning and control, documentation and accreditation.

- ...2 One week prior to each [monthly contract review meeting] to provide a list of the names and contact details for 'new suppliers' identified under ...1 above in the period and the contract to date, and the value of work awarded to each [or the aggregate value awarded].
- ...3 This requirement does not comprise or imply any promise on the part of the Client to provide suitable employees, subcontractors or suppliers. Any action taken by the Client to broker relationships between the Contractor and local individuals, businesses or agencies does not imply that they consider the individual, business or agency as suitable for engagement by the Contractor.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on how a bidder can access SMEs from the target areas e.g. through Sell2Wales, the local Supplier Development Service providers, and any available register of SMEs based in the target area.

Appendix 4 Specification requiring tender / pricing opportunities to be provided to 'new suppliers' based in a target area

...1 Economic Impact

...1.1 In line with its commitment to supporting the economy in and around the 'target area' of delivery, defined as postcode areas commencing [... to ...], set out in the [...] Strategy, please provide an Economic Impact Method Statement with each valid tender setting out how information relating to the following:

- actions that will be undertaken to maximise the supply-chain opportunities provided to SMEs that are based within the target area other than a company that is part of the same group of companies as the tendering company;
- an aspirational target for the percentage of the total contract value that will be delivered by SMEs based in the target area that are not a part of the same group as the tendering company;
- an aspirational target for the number of person-weeks engagement on site for persons directly engaged (i.e. employed and self-employed persons that are not provided through the supply-chain) on the site and the average wage costs per week of these persons..

...2 Monitoring Reports

...2.1 One week prior to each [monthly contract review meeting] to provide to the client a report setting out for the latest period and the contract to date:

...2.1.1 the numbers of SMEs with a [... to ...] postcode that have been invited to tender / price for sub-contract and supply work, the number of these that have been awarded a contract and the total value of these contracts;

...2.1.2 a calculation of the value added to the area in and around the area of delivery of the contract from the use of supply-chains and the engagement by the main contractor of persons whose main residence is in this area.

2.2 when requested by the client, to facilitate research to establish the local multiplier impact (LM3) and / or social return on investment related to the client's investment, including facilitating research with employees and the supply-chain to the contract.

...3 This requirement does not comprise or imply any promise on the part of the Client to provide suitable employees, subcontractors or suppliers. Any action taken by the Client to broker relationships between the Contractor and local individuals, businesses or agencies does not imply that they consider the individual, business or agency as suitable for engagement by the Contractor.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or in an associated briefing session on how a bidder can access SMEs from the target areas e.g. through Sell2Wales, the local Supplier Development Service providers, and any available register of SMEs based in the target area.

Appendix 5 Text requiring a Covenant to be included in a Development Agreement

... SME-friendly Development

In line with the policies set out in its [...] Strategy [...] is seeking to ensure that the proposed development delivers measurable improvements to the economic, social and environmental well-being of the residents in and around the area where the development is taking place, defined as areas with post-codes commencing [... to ...], through the provision of targeted recruitment and training and SME opportunities in full respect of EU and national law. The development partners and employers will be required to participate in this.

...1 It will be a condition of contract that the development partner enters into an Economic Benefit Covenant - see Addendum 1.

Potential development partners are required to:

...1.1 prepare and submit with each valid tender an Economic Impact Method Statement with their proposals setting out how information relating to the following:

- actions that will be undertaken to maximise the supply-chain opportunities provided to SMEs that are based within the target area other than a company that is part of the same group as the tendering company;
- an aspirational target for the percentage of the total contract value that will be delivered by SMEs based in the target area that are not a part of the same group as the tendering company;
- an aspirational target for the number of person-weeks engagement on site for persons directly engaged (i.e. employed and self-employed persons that are not provided through the supply-chain) on the site and the average wage costs per week of these persons.

...2 Provide a statement that:

...2.1 they fully support the objectives of [...] in relation to the targeting of economic benefits from the development;

...2.2 if appointed they will enter into and fully implement the Economic Benefit Covenant as set out in Addendum 1.

Failure to provide this Statement could be construed as an unwillingness to comply with one of the conditions relating to the delivery of the contract.

...3 The developer and contractor are encouraged to make full utilisation of the services and resources provided to employers by Construct Wales, the WAG Supplier Development Service and its local providers, and Sell2Wales, as well as Job Centre Plus, the Learning and Skills Council, Constructing Excellence and ConstructionSkills and other construction training providers and relevant public agencies. All of these agencies are equal opportunities providers and will offer their services to developers and employers from any EU Member State.

To ensure a level playing field for bidders from anywhere in Europe it is important to provide information with the tender or other information sent to the prospective developer, or in an associated briefing session on how a bidder can access SMEs from the target areas e.g. through Sell2Wales, the local Supplier Development Service providers, and any available register of SMEs based in the target area.

DATED

20[]

[] [Client]

AND

[] [Developer]

DIRECT AGREEMENT

relating to the provision of local economic benefit

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham B3 2ES
DX 13055 Birmingham 1

Tel: 0121 212 7472

Fax: 0121 212 7434

Ref: GEM 22717.00012

"Project Local Economic Benefit Report and Performance Statement"	means the report and performance statement referred to in clause 2 means the report and performance statement referred to in clause 2 of this Agreement a proforma for which is set out at Schedule 1;
"Project Site"	means a site that is the subject of the Contract on which construction and associated work will take place;
"Specified Date"	means one week prior to implementation of each project or a schedule of dates as agreed under clause 4.2;
"Target Businesses"	are businesses with a [...] postcode that are on a list of SMEs held by [Sell2Wales];
"Wider Impact Area"	means an area identified by the Client from time to time and defined by the first four digits of the post-code that is the target area for identifying businesses that will benefit from sub-contracts and supply contracts for the site. Initially this will be areas with post-codes commencing [...], [...] (etc) (enter the selected codes);
"Working Day"	means any day other than Saturday, Sunday and bank or public holidays.

1.2 In this Agreement expressions shall have the same meanings as in the Contract unless set out in clause 1.1 or the context requires otherwise;

1.3 In this Agreement (unless the context requires otherwise):

1.3.1 references to clauses and sub-clauses are to clauses and sub-clauses of this Agreement;

1.3.2 the headings are not to affect its interpretation;

1.3.3 the masculine includes the feminine and neuter and the singular includes the plural and vice versa;

1.3.4 references to legislation, regulations, determinations and directions include all amendments, replacements or re-enactments and all regulations, determinations, directions and statutory guidance made or given under it; and

1.3.5 "consent" or "approval" means the prior written consent of the consenting or approving Party.

2. LOCAL ECONOMIC BENEFIT REQUIREMENTS

The Developer covenants that it shall:

2.1 procure that [10%] of the value of the contract is delivered by New Suppliers based in areas with a [...] postcode;

2.2 work with the Supplier Development Programme [contact...] or a suitable alternative organisation agreed by the Client to develop a programme of activities and support so as to maximise the provision of information on subcontract and supply opportunities to SMEs with a [...] postcode and to maximise the number and competitiveness of bids in response to these opportunities from these SMEs;

2.3 within four weeks of the date of this Agreement report on the actions that have been taken to provide information and contract opportunities to SMEs with a [...] postcode, including a list setting out telephone and / or e-mail information for SMEs from the target area that have been involved in the activities in clause 2.1 above;

2.4 for each sub-contract or supply contract ensure that a minimum of [2] Target Businesses are invited to submit a price or tender (where suitable Target Businesses are available) and that these Target Businesses have an equal opportunity in competing for the contract.

- 2.5 one week prior to each [monthly contract review meeting] provide to the Client a report setting out:
- 2.5.1 the numbers of SMEs with a [...] postcode that have been invited to tender / price for sub-contract and supply work, the number of these that have been awarded a contract and the total value of these contracts. This should be reported for the latest period and the contract to date;
 - 2.5.2 a list of the names and contact details for New Suppliers identified under 2.1 above in the period and the contract to date, and the value of work awarded to each [or the aggregate value awarded];
 - 2.5.3 a list of the Target Businesses identified under 2.4 above in the period and the contract to date, showing whether or not the Target Business was appointed, and where they were not appointed the percentage their tender / price represents of the price submitted by the appointed sub-contractor or supplier;
 - 2.5.4 a method for calculating the value added to the area in and around the area of delivery of the contract from the use of supply-chains and the engagement by the main contractor of persons whose main residence is in this area, and the total of the added value.
- 2.6 Within 4 weeks of completion of each 13 week period following implementation of each Project the Developer shall provide the Client with a Project Local Economic Benefit Report and Performance Statement setting out in relation to the period and the contract to date:
- 2.6.1 actions to be taken to rectify any shortfall between the obligations set out in clause 2.1 above and the achievements detailed in the quarterly Local Economic Benefit Report and Performance Statement;
 - 2.6.2 the names of firms based in the Wider Impact Area that have delivered sub-contract works or supplies in the period and to date, and the aggregate value of these transactions;
 - 2.6.3 what actions will be taken to increase the involvement of firms based in the Wider Impact Area in the provision of sub-contracts and supplies.
- 2.7 Monitoring Reports
- 2.7.1 When requested by the Client, the Developer shall facilitate research to establish the local multiplier impact (LM3) and / or social return on investment related to the Client's investment, including facilitating research with employees and the supply-chain to the Contract.
- 2.8 When requested by the Client the Developer shall participate in additional initiatives to identify and nurture additional supply-chain organisations based in or around the area where the development is taking place;

3. LOCAL ECONOMIC BENEFIT METHOD STATEMENT

Eight weeks prior to commencement of works on a Project Site the Developer shall submit a Local Economic Benefit Method Statement for the Project Site to the Client using the pro-forma at Schedule 2, setting out how the requirements in clause [...] above shall be achieved without cost to the Client. The Local Economic Benefit Method Statement must include information on how New Suppliers will be nurtured and supported through the work on issues like health and safety, pricing, management and financial control, documentation and accreditation.

4. SUBCONTRACTOR AND SUPPLIER COMPLIANCE

The Contractor shall develop a working method that shall deliver the Local Economic Benefit Requirements and related monitoring and verification data, and obtain the full cooperation of subcontractors and suppliers in delivering these requirements

5. SUPPORT

The inclusion of the Local Economic Benefit Requirements does not comprise or imply any promise on the part of the Client to provide suitable employees, subcontractors or suppliers. Any action taken by the Client to broker relationships between the Developer and local individuals, businesses or agencies does not imply that they consider the individual, business or agency as suitable for engagement by the Developer. All recruitment, supervision and discipline responsibilities rest with the Developer and subcontractors. Within this context the Client shall work with local agencies to help facilitate the achievement of the Local Economic Benefit Requirements.

6. LIABILITY OF PARTNERS

Where the Developer is a partnership, references in this Agreement to "the Developer" shall be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Agreement shall be deemed to be joint and several.

7. NOTICES

Any notice to be given by a Party under this Agreement shall be sufficiently served if sent by hand, or by post to the registered office set out above or if there is none the last known address of the Party to be served. Any notice sent by hand shall be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45pm on any day it shall be deemed to be served on the next working day. Any notice sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a working day and otherwise on the next working day.

8. ASSIGNMENT

8.1 The benefit of and the rights of the Client under this Agreement may be assigned without the consent of the Developer on one occasion only to any person acquiring the whole or substantial part of the Client's interest in the project and the Client shall notify the Developer in writing within 10 working days of any such assignment specifying the name and address of the assignee and the date of the assignment. The benefit of this Agreement may not be assigned further without the Developer's consent (such consent not to be unreasonably withheld or delayed);

8.2 The Developer shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Agreement (whatever the state of such breach) by reason only that that person is an assignee and not the original Client hereunder or by reason that the original Client or any intermediate Client escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that original Client or any intermediate Client has not suffered any or as much loss provided that the liability of the Contractor to such assignee shall be the same but no greater than the liability the Contractor would have had to the original Client had the transfer not taken place;

8.3 For the avoidance of doubt in the event that the Developer is a substitute Developer who has been appointed in place of the original Developer it shall only be liable under this Agreement in relation to that part of the services and works in respect of which it has been appointed substitute Developer.

9. INSPECTION OF DOCUMENTS

The Developer's liabilities under this Agreement shall not be in any way reduced or extinguished by reason of any inspection or approval of the documents or attendance at site meetings or other enquiry or inspection which the Client may make or procure to be made for its benefit or on its behalf

10. APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales and be in all respects subject to the exclusive jurisdiction of the courts of England and Wales.

11. THIRD PARTY RIGHTS

This Agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of the Agreement pursuant to the Project Agreements (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this Agreement is executed as a Deed and is delivered on the date first stated above.

THE COMMON SEAL of)

[**][Client]**)

Was hereunto affixed in the presence of:)

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of)

[**][Developer]**)

was hereunto affixed in the presence of:)

Authorised Signatory

Authorised Signatory

The following schedules should be added to this Agreement:

- Schedule 1 - Project Local Economic Benefit Report and Performance Statement
- Schedule 2 - Local Economic Benefit Method Statement