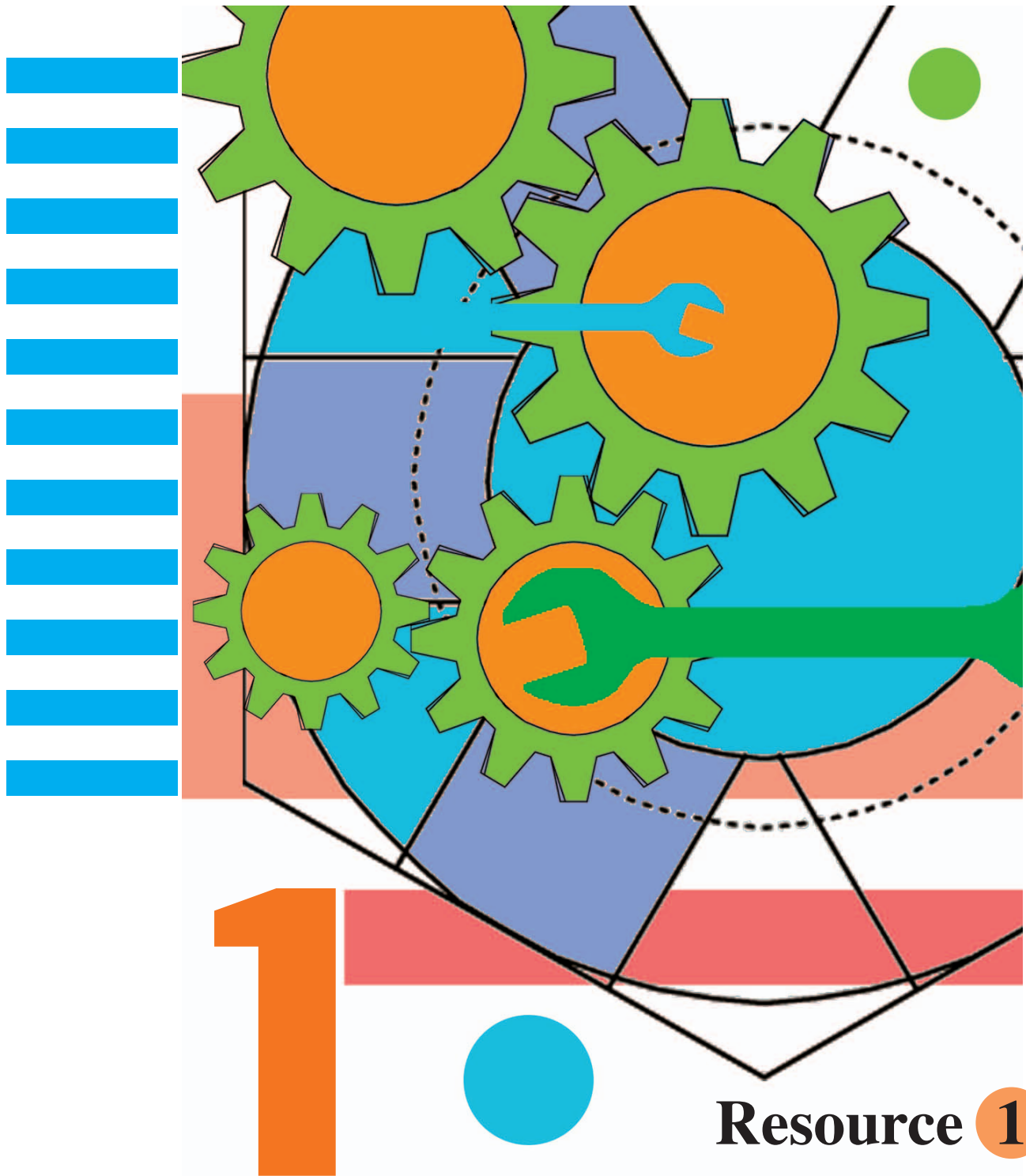


North East Improvement and Efficiency Partnership
Targeted Recruitment and Training (TRT)

TOOLKIT



Resource 1

Options for Action

North East Improvement and Efficiency Partnership

Targeted Recruitment and Training (TRT)

Toolkit

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Contents

1. Introduction 5

- 1.1 Structure of the Toolkit 5
- 1.2 Improvement and Efficiency Targets 5
- 1.3 Mapping the Field 5
- 1.4 Why use procurement and development agreements? 6
- 1.5 Why use planning obligations? 7
- 1.6 How to Buy Options 7
- 1.7 Beyond Construction 9

2. Policy Rationales 10

- 2.1 Identifying and Developing Policy 10
- 2.2 Sustainable development 10
- 2.3 Sustainable Community Strategy 10
- 2.4 Local Area Agreement 11
- 2.5 Opportunities for SMEs 11

3. Costs and Resources 14

- 3.1 Value for Money 14
- 3.2 Affordability 15
- 3.3 Resources and coordination 15

4. Summary of Legal Frameworks 17

- 4.1 Procurement 17
- 4.2 Planning and development control 19
- 4.3 Land development 20
- 4.4 Implementation through compliance 21

5. Supply-side Actions 21

- 5.1 Importance 21
- 5.2 Matching Opportunity to Need 21
- 5.3 Facilitation 23
- 5.4 Monitoring, Verification & Reporting 24

6. Next Steps 25

1. Introduction

1.1 Structure of the Toolkit

This Toolkit is a modified and updated version of the New Approaches to Public Procurement Toolkit that was introduced into the NE Region between 2003 and 2006. As well as updating the policy and legal context this Toolkit:

- reflects the learning from a targeted recruitment and training pilot programme that has been refined into a Process Map that will be used to guide practitioners in the use of this Toolkit;
- separates the procurement (Resource 2) and planning and development control (Resource 3) information into separate documents, since they tend to be used by different sets of practitioners. This document – Resource 1 – aims to provide an overview of key issues for policy and economic development practitioners.

1.2 Improvement and Efficiency Targets

This three-part Toolkit will help public bodies in North East England deliver their commitment to maximise the use of local people and suppliers in construction and asset management activities and thereby help achieve social and economic prosperity in the Region. The implementation of these policy goals needs to take account of:

- legal frameworks – relating to procurement, planning and property disposals;
- financial regulations; and
- best practice in organising and resourcing targeted recruitment and training (TRT) and SME-friendly procurement activity.

In relation to procurement and asset management this will help achieve the objectives set out by the North East Improvement and Efficiency Partnership. In relation to planning this will help achieve the policies set out in the Regional Spatial Strategy and the Integrated Regional Framework.

1.3 Mapping the Field

Discussion of the subjects of this Toolkit suffers from the lack of a shared vocabulary. However, the following hierarchy may be helpful in understanding this emerging field of policy and activity:



- the whole activity fits within the overarching public sector commitment to **sustainable development**—a concept that includes ‘social cohesion and inclusion’ and ‘equal opportunities’;
- **sustainable procurement** is a way that purchasers in the public and private sectors can achieve sustainable development through use of their mainstream budgets;
- **social issues** is a broad term that includes, for example, core labour standards (as established by the International Labour Organisation (ILO)), disabled access, disability, gender and race equality, employment and training issues, fair trade, and support for SMEs including social enterprises, black and ethnic minority enterprises and women and disabled-owned businesses;
- **community benefits** are a sub-set of social issues that aim to benefit the people and businesses in the area where delivery/development is taking place, including TRT, targeted equal opportunities, training for the existing workforce, targeted supply-chain initiatives, community consultation, ‘considerate contractor’ schemes, ‘Business in Education’, the promotion of social enterprises, and resources for community initiatives;
- **TRT and SME-friendly procurement** are community benefits that aim to address social exclusion and deprivation through the provision of jobs and training opportunities – either directly or through the use of a local supply-chain.

1.4 Why use procurement and development agreements?

A major benefit of social clauses relative to other approaches that are available to a wide range of public bodies - like grants, voluntary agreements and corporate social responsibility - is that they can fit well with good procurement practice. They offer:

- consistency and transparency: the opportunity for the purchaser to identify need and convert this into a specification that each bidder has to deliver;
- the opportunity to focus on measurable outputs rather than the delivery process;
- an approach that can be the subject of comparative evaluation which will help secure value for money; and
- the opportunity to include monitoring information requirements as a part of the specification, which will enable the purchaser to ensure that they receive the service they pay for.

Voluntary agreements and commitments to corporate social responsibility depend on the

goodwill of contractors which may not be sustained over time. Grants tend to support the core activities of the provider organisation, which may or may not coincide with the objectives of the procuring authority. Furthermore if purchasers are encouraged to link their procurement with grants, voluntary agreements and commitments to corporate social responsibility, the award process could become contaminated by taking into account informal promises to deliver social outcomes when these are not part of the subject of the contract – the ‘core requirements’.

SME-friendly procurement is perhaps easier to achieve since significant additional opportunities can be generated through the decisions made by contracting authorities on ‘how to buy’, including the use of framework contracts, the breaking down of large contracts into ‘lots’, splitting the purchase of components (such as kitchen and bathrooms) from the fitting of the components, setting aside up to 20% of the works for delivery by SMEs (the ‘small lots’ rule), and considering the benefits achieved by letting smaller one-off contracts. With TRT, most benefits are achieved by changes to the specification itself, rather than to the way in which the contract is procured.

1.5 Why use planning obligations?

Most development takes place through private investment. If a local authority wants to ensure that this contributes to local social and economic development in line with its policies and strategies, then the only means of doing so - other than through a voluntary agreement - is through the planning system, and specifically through a planning obligation. This is a mechanism that allows planning authorities (usually local authorities) to obtain commitments from developers that it feels are necessary in order to achieve planning policy – including sustainable development.

The alternative is a reliance on corporate social responsibility (CSR). The advantages of using planning agreements over CSR are:

- durability: the obligations pass on with the title of the property until the authority agrees that they have been fulfilled, which is important given the uncertainties around private development;
- it allows the planning authority to define how the benefits should be measured, to set targets, and to specify monitoring information to be provided: under CSR the private developer decides these matters; and
- resources can be obtained from the development towards the costs of training, job-matching and monitoring related to the development.

1.6 How to Buy Options

The earlier Toolkits have primarily focussed on TRT as a way of achieving social inclusion, especially in the construction sector. The recommended approach was to include community benefit requirements in the subject of the contract - i.e. in what was being purchased. In this Toolkit an additional approach is being offered: maximising the provision of contract

opportunities for small and medium sized companies, especially those based in the area where the contract is being delivered. These contracts may also include TRT requirements.

SME-friendly procurement is perhaps best considered when deciding how the contract is being procured. A purchaser has considerable freedom to choose the size, value and subject matter of the contract that they think will best meet their needs. The 'needs' can include issues about quality, timeliness, cost, and contract management, but it can also include social and economic issues and concerns about maintaining competition. Taking this set of requirements as a whole a purchaser may decide that it is preferable to enter into smaller contracts: to tender the work in smaller lots or to offer bidders the opportunity to bid for smaller or larger volumes of work through a framework contract.

The chart below includes a list of potential 'how to buy' options, and these are described in more detail in Resource 2. Experience elsewhere suggests that procurement teams are comfortable with these options, perhaps because they have traditionally procured from local SMEs or are questioning the value for money they achieve from large contractors with no local commitment. The caveat to this may be a concern about whether they have the resources to manage a larger number of procurement processes and contractors. The 'cost of procuring' can be reduced by the use of frameworks contracts and procurement through 'lots' where there is one procurement process rather than many, while the 'management cost' may be an issue of perception: the client is paying for supply-chain management whether they do this in-house or include it in the main contract.

Options for Action on SME-friendly Procurement

'What to Buy' Options

- Pre-procurement market dialogue
- Supply-chain management
- Works and local economic development
- Works and supply-chain development
- Labour-only and supply-only contracts

'How to Buy' Options

- Smaller contracts – don't aggregate work unnecessarily
- Set-aside contracts – 20% option
- Set-aside contracts – Part B Services
- Division into 'lots'
- Framework contracts with smaller call-down volumes
- Changing the pre-qualification questionnaire

Source. Chartered Institute of Housing in Wales. CAN DO Toolkit on SME-friendly Procurement. 2010. Resource 2.

1.7 Beyond Construction

Much of the existing practice in the inclusion of social requirements in procurement and planning obligations has related to the construction sector. However, all of the matters considered in relation to construction can be applied to procurement of other services by the public sector (or the private sector in relation to planning agreements).

As will be seen from Resource 3, the inclusion of end-user requirements in planning agreements that relate to developments that will accommodate a workforce may require an approach that recognises the relatively weak leverage that the developer may have over the end-use employers.

Broadening the approach to non-construction jobs and a wider range of services and supplies contracts is important because no more than 10%-15% of any population will want to take up construction-related opportunities. However, some thought must be given to the potential benefits on a case by case basis: activities like retail, catering and personal services need a flexible workforce and pay modest wages so many of the employees will be local in any event. So what are the additional benefits that are being sought?

2. Policy Rationales

2.1 Identifying and Developing Policy

Officers in public bodies need to identify the policy basis for actions they take on TRT and SME-friendly procurement. These may be general in nature and as opportunities arise the policies should be made more explicit. Although there are increasing links between the policies adopted by different bodies there will remain very significant local differences in relation to where the supportive policies are to be found.

2.2 Sustainable development

The Government's over-arching policy of sustainable development includes, as one of five core elements, Ensuring a Strong, Healthy and Just Society... promoting personal wellbeing, social cohesion and inclusion, and creating equal opportunity for all".¹

Delivering sustainable development is an obligation on all public bodies in the UK. The 'well-being powers' of local authorities can be seen as providing for this at the local level. Including social issues in procurement and in development control is a way of achieving the 'just society' in North East England.

Community benefits in procurement and development – and especially TRT and SME-friendly approaches – have a particular role in helping to deliver sustainable development by:

- sharing the benefits of development across all parts of society - e.g. by opening access to new employment opportunities;
- expanding the labour market - by providing training and entry-level opportunities for non-working people – helping to maintain economic growth by avoiding skill and labour shortages;
- targeting new opportunities at existing residents which will help reduce commuting and facilitate shorter travel-to-work distances – resulting in lower levels of vehicle emissions and better use of natural resources.

2.3 Sustainable Community Strategy

All local authorities are expected to work with partners to produce a sustainable community strategy. These vary in style and content between local authorities but they are not usually drafted as a basis for supporting the inclusion of TRT or SME opportunities in the partners' procurements or other agreements. This may arise because a range of partners are involved in the drafting process, including some (e.g. Jobcentre Plus, the Learning and Skills Council and Connexions) to whom the approach is not relevant, and some to who it not a current priority

¹ Securing the future: delivering UK sustainable development strategy. 2005 Section 4.

(e.g. NHS Trusts – even through TRT would help reduce demand for their services).

For TRT and SME-friendly procurement there is particular problem with a multi-agency development of the community strategy: the local authority is not seen as the lead organisation in relation to employment and training and business opportunities. Furthermore, the lead agencies (JC+, LSC, Connexions and the Small Business Service) mainly operate on the supply-side: they aim to provide their clients (non-employed people and local SMEs) with support but have a less-developed approach to encouraging employers and other businesses to utilise this local supply.² Ensuring that express commitments are made to using procurement to maximise local jobs, training and business opportunities should be a priority for any revisions to the Sustainable Community Strategy.

2.4 Local Area Agreement

The negotiation of a Local Area Agreement (LAA) or a Multi-Area Agreement (MAA) may involve similar issues.

LAAs and MAAs are the delivery plan for the Sustainable Community Strategy and focus on a relatively small number of priorities for improvement. Some of these will be agreed in negotiation with Government and will reflect national priorities. Others will be purely driven by the Local Strategic Partnership and will concentrate on more local priorities affecting local citizens and communities. LAAs and MAAs form the central delivery contract between central Government and local government and its partners.

In this multi-agency policy development context the economic development officers of the local authorities need to make a strong case for the inclusion of text that will support the intention of the local authority and other partners to use their procurement and other activities to ensure that opportunities are targeted at local residents³ who are disadvantaged in the labour market.

2.5 Opportunities for SMEs

The provision of contract opportunities for SMEs (firms with under 250 staff or a €50m turnover⁴) has been the subject of concern within the ‘public procurement community’ and has generated research, recommendations and initiatives. Published documents include:

- The “Glover Report” - *Accelerating the SME economic engine*: HM Treasury 2008
- *Smaller supplier ... better value?* Office of Government Commerce (OGC) and the Small Business Service (SBS)

² JobcentrePlus have introduced Local Employment Partnerships as a form of voluntary agreement with employers

³ It is appropriate to refer to ‘local’ in the context of a Community Strategy, but this should not translate into ‘local employment’ requirements in a procurement context.

⁴ SMEs comprise micro enterprises (less than 10 employees or €2m turnover), small firms (11-49 employees or under €10m turnover) and medium-sized firms (50-249 employees or under €50m turnover).

- *Think smart ... think voluntary sector!* OGC and Home Office 2004
- *Small Business Friendly Concordat* Office of the Deputy Prime Minister and the Local Government Association

The Glover Report collected and commissioned relevant research. However, it reflects the key Government rationale in promoting opportunities for SMEs: increasing competition that will lead to better value for money for the public sector in the longer term. Key benefits that increasing the opportunities for SMEs is expected to bring are:

- increased numbers of good quality firms in the market (in part achieved by enabling micro and small firms to grow incrementally): competition will control prices and promote quality;
- innovation and a focus on the client's needs: SMEs are reputed to be better at this;
- user focus: the staff of local providers (especially social enterprises) are likely to be drawn from the communities in which they are working and therefore be more understanding of the needs of service users e.g. in social welfare and housing provision;
- greater leverage for the purchaser: the contract will form a large part of the workload of an SME;
- easier contract management: although large contracts may produce savings at the procurement stage some of these may be lost later because it is difficult for the client to manage a large and potentially diverse contract.

Recommendations for increasing opportunities for SMEs are identified as:

- advertising contract opportunities through websites and increased e-procurement;
- pruning the pre-qualification information requirements, but giving more scope to demonstrate innovation;
- standardising pre-qualification requirements and documents across sectors;
- reversing the trend towards aggregation, (combining similar requirements into a larger contract), and bundling (putting different types of requirement into a single contract);
- encouraging main contractors to advertise their sub-contract and supply opportunities;
- increased use of outcome based specifications and procurement processes that encourage innovation.

In the 'procurement community' literature there may be little or no reference to the importance of SMEs in the local economy. The literature on this subject tends to come from the New Economics Foundation (nef) and includes:

- *The Money Trail: measuring your impact on the local economy using LM3*. Justin Sacks at nef. 2002
- *Public Spending for Public Benefit* Justin Sacks at nef. 2005
- *Measuring Value: a guide to Social Return on Investment*. nef. Second Edition. 2008
- *Unintended Consequences: how the efficiency agenda erodes public services and a new public benefit model to restore them*. nef. 2007.

The nef literature presents much public procurement as inefficient because it doesn't maximise public benefit. Essentially, 'best value' is assessed against a narrow range of criteria that typically excludes 'community benefits' and the potential contribution to the local economy. This argues for the use of procurement criteria that secure wider public/community benefits through appropriate specifications and the use of 'local multiplier' (LM3) and Social Return on Investment (SORI) measures.

There are some shared elements in the two sets of literature described above, most notably on the problems associated with 'aggregation' and recognising the benefits that small and community-based providers can bring.

3. Costs and Resources

3.1 Value for Money

Definition of Value for Money	Definition of Best Value
... the optimum combination of whole-life costs and quality (or fitness for purpose) to meet the user's requirement. (OGC 1998)	... make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to combination of economy, efficiency and effectiveness (LGA 1999 s.3(1))

Value for money is one of the core requirements of good public sector procurement set down by Government. 'Best Value' introduces an additional dynamic for local authorities: their procurement is expected to produce 'continuous improvement'.

The question of whether a tender provides value for money has to be judged against the requirements in the specification, and those alone. So if TRT and SME-friendly concepts are included in the procurement process because they are part of the 'quality' the purchaser is seeking then they should form a part of the tender appraisal, even if they are given a low weighting. Conversely, if the requirements are not included in the contract notices and the specification they should not form any part of the award process.

However, this quite straightforward position now needs to be considered in the context of the HM Treasury 'Green Book' on Value for Money and a 2007 HM Treasury 'Simple guide to value for money and sustainability'. This includes the following statement:

Government policy is that value for money must be assessed over the whole lifetime of the project ... estimating costs and benefits to society as a whole, not simply those directly relevant to the purchaser – e.g. environmental impact – as set out in the Treasury's Green Book.⁵

This statement demonstrates that value for money is not just judged on the specification but also the benefits to the wider society. How is this reconciled with the principle that public bodies can only take action where this is within their powers and has a policy basis?

There is an internal inconsistency in the way the Green Book addresses the treatment of social issues that cannot be overlooked (see Resource 2B Section 3 for a longer discussion of this issue).

In effect, 'contributions to sustainable development' can form part of the 'whole life costing' that underpins all value for money judgement. However, sustainable development is different

⁵ *Simple guide to value for money and sustainability*, HM Treasury, March 2007, available from http://www.hm-treasury.gov.uk/data_greenbook_money_sustainability.htm

in nature and perhaps the best way forward is to understand sustainable development policy as a sufficient basis for any public body to include relevant social and economic matters in the whole procurement process. This makes it much easier to take into account in their procurement and in the award of the contract.

Local Authorities and other 'best value authorities'⁶ also have to deliver 'best value'. This is discussed in 4.1.2 below.

3.2 Affordability

The question of affordability needs to be distinguished from the question of value for money, or 'best value'. These questions relate primarily to public sector procurement, although there is a secondary question (discussed below): will an assumed additional cost deter private sector development?

Affordability relates to the budget that is available. Concerns are typically based on little knowledge about what the inclusion of specific recruitment and training or supply-chain requirements will add to the cost of a development. So they represent a fear of the additional cost rather than knowledge of the actual impact, which could be positive, detrimental or neutral depending on the requirements themselves and the supply-side resources that are available.

The questions of affordability and value for money or best value are therefore different. However, both are best addressed through an early consideration of what community benefit requirements should be included in order to meet the purchaser's policy objectives – including the social policy and service improvement objectives – and how these can be designed so they fit with the resources available.

There may be an assumption that including TRT or SME-related requirements in planning agreements or property disposals will deter private sector investment. This is based on an assumption that these requirements will add to the developer's costs. This need not be the case. Indeed, the expansion of the construction labour market will help contain construction costs and encourage development: if costs rise faster than the property prices then developers will delay their investment.

3.3 Resources and coordination

A final concern for the 'gatekeepers' to contracts and agreements is how to specify, measure and monitor the TRT and SME-friendly activities. Such requirements may be outside their previous experience, and are not provided for in standard documents or precedents.

These issues will be addressed in Resources 2 and 3 of this Toolkit but may require the involvement of economic development officers in transactions that have not traditionally required their involvement. For example, the procurement of a schools building programme

would traditionally involve a client department (Education) and service departments (perhaps Procurement and Legal). To include TRT in the building programme requires the involvement of recruitment and training officers as both a client (i.e. they are representing the authority's desire to purchase these outcomes) and as a service department that can advise on what outcomes should be specified and the way these can be resourced without impacting on the school building budgets.

4. Summary of Legal Frameworks

4.1 Procurement

Some local authorities in North East England have determined to use a contractual approach to implementing their policy commitments through TRT and SME-friendly procurement. This is because they understand that their requirements can be enforced through this route: the 'traditional' approach of asking contractors and developers to make voluntary commitments has not been enforceable.

4.1.1 EU Frameworks and Government Guidance

In recent years there has been a significant change in the legal frameworks and Government Guidance on including social issues like TRT in public sector procurement. Changes include: the introduction of the EU's 'Consolidated Directive' on procurement,⁷ implemented in UK law, which includes provisions such as:

- “(1) A contracting authority may stipulate conditions relating to the performance of a public contract, provided that those conditions are compatible with Community law and are indicated in
 - (a) the contract notice and the contract documents; or
 - (b) the contract documents.
- (2) The conditions referred to in paragraph (1) may, in particular, include social and environmental considerations.”⁸
- under an Order introduced in 2001 the impact of section 17(5) of LGA 1988 has been ameliorated such that local authorities can take some of the previously prohibited 'non-commercial considerations'⁹ into consideration where this is necessary for the achievement of their 'best value' objectives. (see 4.1.2 below).

The Office for Government Commerce has issued advice on how to incorporate social issues (including recruitment and training) in public sector procurements.¹⁰ This has become increasingly explicit:

*The Government's policy on social issues in procurement is that central Government departments and their agencies should consider and incorporate social issues in their procurements where they are relevant and proportionate to the subject matter of the contract.*¹¹

7 Directive 2004/18/20 of the European Parliament of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, known as the 'Consolidated Directive' as it amalgamates the law which was previously divided between three different directives.

8 Regulation 39 of the Public Contracts Regulations 2006, through which the Consolidated Directive is implemented in England and Wales.

9 About which see section 4.1.2

10 Including Social Issues in Purchasing, in 2006, and Buy and Make a Difference, in 2008, both available from http://www.ogc.gov.uk/delivering_policy_aims_through_public_procurement_social_issues.asp

11 *Policy Principles - Social Issues in Procurement*, Office of Government Commerce (OGC), 2009, page 1, available from: http://www.ogc.gov.uk/documents/Policy_principles_-_Social_Issues.pdf

Finally, HM Treasury has advised that value for money should take account of benefits to society as a whole not just to the purchaser.¹²

Taken together these changes represent a strong policy position in favour of taking social issues into account in public procurement.

Resource 2B of this Toolkit sets out a range of regulatory issues that need to be considered in implementing TRT and SME-friendly procurement, including the processes to be used to ensure that any requirements are compatible with EU law. However, the changes referred to above mean that the key issues for including social requirements in contracts and agreements relate to drafting and the process: how it is done rather than whether it can be done.

4.1.2 Local government law

There are two pieces of local authority legislation that can be used to support TRT and the inclusion of related matters in local authority contracts.

Part I of the Local Government Act 1999 requires local authorities, as ‘best value authorities’, to make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

The focus for the improvement of services is to depend, in part, on a Community Strategy which is to be the subject of local consultation (under the Local Government Act 2000) and Best Value Performance Plans which are to be the subject of periodic review.

In some sectors, like construction, it may be reasonable to argue that upskilling the local workforce or increasing the range of competitive SMEs will help achieve continuous improvement` by helping to control inflation and deliver better quality services. However, `best value` does not need to be based on economic benefits. It is equally valid to argue that the improved delivery of the authority`s social inclusion and sustainable development policies represents `best value`.

Section 2 of the Local Government Act 2000 is also relevant. This gives local authorities the power to do anything they consider necessary to achieve the economic, social and environmental well-being of their area, or a part of, or group of persons within, their area. This gives local authorities an explicit power to take action to promote economic and social inclusion, and could be used to justify TRT and support for SMEs where they believe this will assist in achieving their local economic development or “inclusion” objectives.

A caveat on the use of the well-being powers is that the local authority’s actions must not contravene any other legislation by which they are governed or restricted - including, for example, equal opportunities legislation. In this regard the Local Government Best Value (Exclusion

¹² *Simple guide to value for money and sustainability*, HM Treasury, March 2007, available from: http://www.hm-treasury.gov.uk/data_greenbook_money_sustainability.htm

of Non-commercial Considerations) Order 2001 is important. Under Section 17(5) of the Local Government Act 1988 certain labour force matters were to be treated as ‘non-commercial considerations’ in local authority procurement. This means that they could not be considered in procurement activity. The 2001 Order ameliorates the impact of this provision in relation to two of these ‘non-commercial considerations’:

- *the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (section 17(5)(a)); and*
- *the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (section 17(5)(d))*

Local authorities can take these two considerations into account to the extent that they consider it necessary or expedient to comply with their Best Value duties under Part I of the 1999 Act (Best Value)¹³ – for example, where those labour force matters are core to the subject of contract.

4.2 Planning and development control

In relation to planning and development control the conventional wisdom has been that TRT could not be included in a planning obligation because it would be difficult to demonstrate that this met two Government tests: that it was “necessary to make the proposal acceptable” and “relevant to planning”. These concerns need to be modified in response to the following three documents:

- the Government’s Planning Policy Statement 1 includes a section on “*social cohesion and inclusion*”, and refers to “*ensuring that development supports ... communities with good access to jobs..... for all members of the community,*”¹⁴ and “*the creation of sustainable communities ... which will enable people to meet their aspirations and potential.*”¹⁵
- The Government’s Planning Policy Statement 4 on sustainable economic growth includes as policy objectives “*promoting regeneration and tackling deprivation*” and “*reduc(ing) the need to travel, especially by car ...*” and includes as factors to be considered in determining planning applications “*... the impact on deprived areas and social inclusion objectives and local employment*”.
- Circular 05/2005 Planning Obligations clarifies the meaning of the test of necessity: “*to bring the development in line with the objectives of sustainable development as articulated through the relevant local, regional and national planning policies.*”¹⁶

These revisions to planning policy are clearly linked. Including TRT (linked to the development site) in a planning agreement can be considered necessary in order to achieve social inclusion (one element of the national policy of sustainable development), and tackle local deprivation and reduce commuting (that are part of sustainable economic growth).

¹³ Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001(SI 909/2001)

¹⁴ PPS 1. Delivering Sustainable Communities. S.5.

¹⁵ Ibid S.6.

¹⁶ ODPM Circular 05/2005. Section B8.

Because many Local Plans were prepared before the above policies were in place the social inclusion elements of national policy may not be adequately represented. It is important to make sure that these elements are fully and explicitly included in Local Development Frameworks and Documents as these are produced under the current Planning Acts. In the meantime it may be possible to rely on National and Regional policies when taking planning decisions.¹⁷

4.3 Land development

Local authorities are given powers under the Local Government Act 1972 to dispose of land in any manner they wish, including selling their freehold interest, granting a lease or assigning any unexpired term on a lease, and granting easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies) unless the Secretary of State consents to the disposal.

Prior to 2003 the general consents given by the Secretary of State were complicated in the variety of limbs available. The General Disposal Consent (England) 2003 is still issued to give local authorities autonomy to carry out their statutory duties and functions and to fulfil such other objectives as they consider necessary or desirable. However, when disposing of land at an undervalue, local authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.

The terms of the 2003 Consent mean that specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In considering this matter, local authorities should also have regard to their Community Strategy and decide whether decisions taken comply with any other relevant governing legislation. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2million.

In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the 2003 Consent, the local authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.

Sometimes in land developments requirements for TRT are said to deflate land values. This is not necessarily the case, but if the amount of undervalue is less than £2million, the 2003 Consent offers a route for clearing this through consideration of the local authority's discharge of its well-being powers. This heightens further the importance of the Community Strategy as a document promoting the use of TRT requirements.

¹⁷ It should be noted that the Government is currently consulting on a replacement for Circular 05/2005 on the use of Planning Obligations, in a context where arrangements for the local introduction of a Community Infrastructure Levy are now in place.

4.4 Implementation through compliance

So the approach taken in this Toolkit is that the question “is it legal?” needs to be changed to “how can we do this in a compliant way?”. This shifts the focus to the drafting of relevant policy, the drafting of the requirements, and the way the latter are incorporated into the relevant processes.

5. *Supply-side Actions*

5.1 Importance

The ‘supply-side arrangements’ include:

- for TRT: training provisions including trainee management and support, recruitment and job-matching provisions, access to funding for training; and
- for SME opportunities: a register of small firms, social enterprises and other ‘additional suppliers’ within the target areas, and providing these firms with information, training and support to enable them to better bid for contract opportunities.

These arrangements are very important because:

- they can eliminate or very significantly reduce the cost of implementing the requirements: costs that are otherwise borne by the client for the works or the vendor of property under a planning or development agreement;
- the potential that the requirements can be delivered in a cost-neutral way makes it much easier to obtain support for the proposals from the ‘gatekeepers’ to the contracts and agreements;
- for public procurement, ensuring that the recruitment of workers, trainees or additional suppliers is done through agencies that focus on recruitment from specific communities provides a means of targeting the benefits without specifying ‘local recruitment’ or ‘local SMEs’; and
- good supply-chains for trainees, workers and SMEs from the target communities will make it easier for contractors to deliver their obligations, and this will improve outcomes.

5.2 Matching Opportunity to Need

The availability of supply-side services should be one factor influencing the community benefit requirements that are put into contracts and agreements. To specify outcomes for which there are poor supply-side arrangements and therefore potentially greater cost implications will make it more difficult to obtain ‘gatekeeper’ support for the requirements and less likely that the contractor will succeed in delivering the requirements.

For each route into the training or work it is important to ensure that each ‘step on the ladder’ is in place and resourced. The table below provides an example of what could be provided to assist people to become job-ready. A similar schedule could be developed for supporting local SMEs so that they are able to grow by taking on more and larger contracts.

Steps into Work

Steps on the ladder	Possible actions
Initial recruitment and assessment	Outreach work. Taster sessions. Work with schools. Skill assessments. Profiling possible supply-chain companies, including their speciality, capacity and financial strength.
Pre-recruitment training	Short-course training, including bespoke training for employers needs. College NVQ 1 courses. Intermediate labour market employment and training.
Job-matching and supply chain contacts	Pre-selecting candidates for employers to select from. Work trials. Support for candidates coming off benefits. Support for employer and employee to sustain the job. Providing supply-chain contacts to contractors.
Employment	Continued in-service training. Training management services. Provision of training and accreditation. Grants to cover time off for continued training (e.g. from CITB). Support for employer and employee to sustain the job.
Progressions	Facilitating the placement of trainees with new employers if the first employment is not providing the required training or experience, or if it ceases. Advice on self-employment.

For longer-term developments and contracts the durability of the supply-side services can be important. There may be an expectation that these services should be provided by other public bodies like the Learning and Skills Council and Jobcentre Plus and their provider networks, using public resources. However, as a ‘supply-chain’ to the contractor / developer they may be very unstable because their policies and programmes change frequently, often at relatively short notice, in response to regional or national policy changes. The latter may reflect changing political attitudes to issues such as training and unemployment.

To maximise the participation of local SMEs in contract delivery may require some or all of the following:

- providing increased information on opportunities: advertising contract opportunities through local newspapers and websites, procurement portals, and through ‘meet the buyer’ events;
- removing unnecessary pre-qualification information requirements;
- avoiding unnecessary aggregation of requirements into larger contracts;
- disaggregating the delivery of the requirements through the use of ‘lots’ and frameworks with smaller call-off contracts;

- encouraging main contractors to advertise their sub-contract and supply opportunities e.g. through newspapers and ‘meet the buyer’ events;
- helping local SMEs to access ‘supplier development support’: specialist one-to-one support to help the company become better managed, more cost-efficient and better equipped for a competitive tendering process.

In this context a public body seeking to implement the contractual approach may need to take a lead in the provision of supply-side services. It can work in partnership with other public agencies, but it must ensure that the step-ladder to employment is maintained for its ‘priority communities’ and that the services are employer-focussed. Part of this role will be to put together additional funding to ‘top-up’ and underwrite the services provided from time to time by other public agencies.

5.3 Facilitation

Success in achieving TRT and increased SME opportunities relies on good facilitation at both the tender and contract award stages and at the contract delivery stage. The facilitator may be sourced from the contracting authority’s economic development team or via a specialist body operating on a local or sub-regional basis. This is where the commitment is likely to be strongest, there is knowledge of what outcomes are required, and there is knowledge and contact with the supply-side (for example, training and job-matching agencies).

It is also important that the facilitator has experience of the relevant sector e.g. construction: its contracting processes and training arrangements.

For procurement there are six elements to the facilitation role:

- prior to the tendering process, working with the client and the procurement team to identify the approach to incorporating TRT and SME opportunities, helping them identify appropriate targets, and helping them adopt / develop appropriate wording for the documents;
- evaluating information on community benefits provided by potential bidders - e.g. in response to a pre-qualification questionnaire - and inputting this into the selection of the bidders invited to tender;
- during the tender period to provide briefing to tenderers on the community benefit requirements and supply-side resources in an even-handed way;
- setting up a scoring framework for the bidders’ responses to the community benefit requirements (for example, the method statements), undertaking a scoring of these elements of the tenders and taking part in the award process;
- progress-chasing when the contractor starts on site to make sure that there is a good relationship with supply-side agencies and that action on TRT and SME opportunities starts early; and
- routinely receiving and responding to monitoring information on behalf of the client department, including attending site meetings to discuss any problems with the TRT and SME-friendly delivery.

A similar range of facilitation activities are needed in relation to Planning policy and development control functions.

From the above list it can be seen that the lack of the facilitation resources could limit the scope for the proper delivery of community benefits within the contracting authority/ planning authority.

The facilitation role needs to expand as the number of operational projects / contracts increases. It is likely that one facilitator could eventually manage 10-15 contracts with some administrative support. To maximise the benefits it is important to target the facilitation resources at large and longer-running contracts /developments. However, the capacity will be significantly reduced if the facilitator also has to do extensive work with training and job-matching agencies to ensure the availability of suitable services for the contractors.

To reiterate, facilitation is an essential service that the economic development department or an external agency will need to provide to the client / developer and the procurement or development control team to enable them to extend their core requirements to include TRT.

5.4 Monitoring, Verification & Reporting

Monitoring and verification are critical issues when TRT and SME requirements are included as contract conditions. It is important for the client / development control team to know what is being delivered, especially where they are paying for the outcomes.

Monitoring refers to the supply of information on performance. Verification aims to provide the client with a means of checking the monitoring information.

In a procurement context there is no point in specifying outcomes that cannot and will not be monitored and verified. This risks diverting the effort of the client team and the contractor for little measurable gain, and probably little actual gain. So the decision about what requirements to include in the specification must be influenced by the systems and resources available for the monitoring and verification of outcomes. This requires choices to be made, and the choices depend on priorities. It is better to include a few requirements and know these are being delivered than to be over-sophisticated in setting targets and then not be able to monitor and verify the outcomes.

As indicated above, the facilitation of the approach set out in this Toolkit is quite labour-intensive. Improved value from this investment in facilitation will be achieved if the monitoring and verification system is electronic and fairly automatic. The development of a standardised monitoring and reporting system for the NE Region will add significantly to the efficiency of the TRT activities.

6. *Next Steps*

This Resource has aimed to provide policy makers and practitioners with an overview of the actions that can be taken to use public sector leverage to pursue the social and economic well-being aspects of sustainable development that are reflected in national policies, regional planning policy, Sustainable Community Strategies and Local Area Agreements. Such actions will in practice be delivered through procurement contracts and land disposals, or planning obligations as part of a development control function. More detailed information on legal and policy matters and good practice in relation to these functions is set out in Resource 2 (Procurement and development) and Resource 3 (Planning and development control).

Whilst every effort has been made to ensure the accuracy of this Toolkit at the time of its compilation, legal advice should be taken before action is taken or refrained from in specific cases. This is especially important in relation to 'planning and development control' where new laws, regulations and guidance are currently being introduced.