

**NHMF Maintenance Conference 2007**

**Social requirements in procurement  
– the art of the possible**

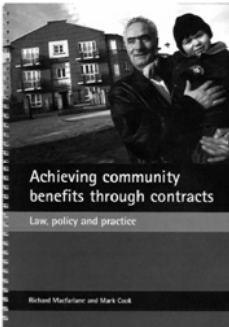
**Mark Cook**  
**Partner, Anthony Collins Solicitors LLP**

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**What do we mean?**

- Community benefits
- Social issues in procurement
- Sustainability
- Plenty of experience (and some good practice) in local government and social housing sector

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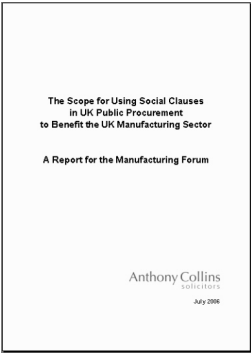
**Achieving community benefits through contracts**  
Law, policy and practice  
Richard Macfarlane and Mark Cook

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**DTI report, 2006**

The Manufacturing Forum website:  
<http://www.dti.gov.uk/sectors/manufacturing/manufacturingforum/publicprocurement/page18129.html>

The report itself:  
<http://www.dti.gov.uk/files/file34323.pdf>



**The Scope for Using Social Clauses  
in UK Public Procurement  
to Benefit the UK Manufacturing Sector**  
A Report for the Manufacturing Forum  
Anthony Collins  
solicitors  
July 2006

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**GHA PROCUREMENT –  
CASE STUDY**

- UK's largest stock transfer – 80500 units
- Neighbourhood renewal is key objective
- £2.9 billion investment programme
- £750m programme 2006-2010
- So far 9 packages of work let to 11 firms
- Training requirements in 344 PQQs assessed
- 84 Training Method Statements rigorously scored

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**CONTRACT REQUIREMENTS**

- Every vacancy to be notified to named agencies
- 10% of person-weeks to be delivered by new entrant trainees from named agencies
- Work experience placement opportunities
- Provision of monitoring information in specified form
- Must obtain external funding to pay additional costs
- Method Statement required with the tender

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### IMPACT ON QUALITY & VfM

- No lack of bidders
- At PQQ stage the best bidders overall also scored higher on Training
- All submitted a Method Statement
  - training was 5% of the quality score: 1.5% overall score
  - only 13% of bidders scored below 60%
  - highest bid was always over 90%
  - in most cases achieved by the firms with highest overall quality score
- Conclusion: best quality bidders also score best on training elements

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### OUTCOMES AFTER 6 MONTHS

- 14.6% of total person-weeks provided by new entrant trainees
- Highest contractor 40%
- Lowest contractor 3.5%
- 297 new local jobs
  - 5657 weeks of work
  - includes 141 new trainees (2974 weeks)

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### GOOD PRACTICE

- Important to brief bidders well before tenders submitted
- Bidders liked the clear specification of requirements: 'level playing field'
- Most contractors able to comply
- Rigorous scoring of bids added internal credibility
- Develop the monitoring processes early (IT based)
- Ensure that training resources and job-matching are robust.
- Need to recap on the rationale as staff change

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### UK PROCUREMENT POLICY

Value for Money =

*“the optimum combination of whole-life costs and quality (or fitness for purpose) to meet the user's requirement”*

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### GOOD PRACTICE IS GOOD PRACTICE

- What are your purposes/aims?
- What policies have you adopted?
- What can you buy?
- What are you buying?
- “Core” -v- “secondary” requirements
- Contractual -v- voluntary

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### THINGS TO WATCH

- EU procurement implications
- Specific requirements for local authorities and other public bodies in the UK
- Discrimination under UK equal opportunities legislation
- Data protection
- State aid
- Enforceability under contract law

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## EU PROCUREMENT RULES (1)

- Case law
- Interpretative Communications:
  - Environmental (July 2001); and
  - Social (October 2001)
- New consolidated directive – specific recitals and articles

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## EU PROCUREMENT RULES (2) CONSOLIDATED DIRECTIVE- EXAMPLES

Recital 33

Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements – applicable during performance of the contract – to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.

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## EU PROCUREMENT RULES (3) CONSOLIDATED DIRECTIVE- EXAMPLES

Article 26

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

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## LOCAL AUTHORITY POWERS TO PROMOTE COMMUNITY BENEFITS

- Best Value – Local Government Act 1999
- Non-commercial considerations – Exclusion Order 2001 – “to the extent that a best value authority considers it necessary or expedient to facilitate compliance with best value”
- Well being – Local Government Act 2000
- Community strategy

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## PRACTICAL STEPS

- Determine your overall policy
- On any project write in the specification
- Run the competition following the EU rules (e.g. correct wording in OJEU Notice)
- Contract conditions for target community benefits supported on supply-side

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## Supply-side (making trainees etc available)

- Local authorities
- Collaboration between RSLs eg Fusion 21
- CITB
- LSC
- Colleges
- Contractors' own resources
- Regional frameworks which are employer-led

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