

Linking social requirements in tenders and contract performance

Electronics Watch and the Circular and Fair ICT Pact (CFIT) are pleased to co-host a structured dialogue between public buyers and their ICT hardware resellers on supply chain due diligence. The series recognises the need for improved coordination between these parties to achieve effective supply chain due diligence, and the unique challenges and opportunities that each party faces in that regard. The dialogue series creates space for mutual problem solving around known challenges, including the identification of good practices and proposed solutions.

The second meeting in the series took place on 10 February 2025. It discussed how to better link the social requirements in tenders and contract performance to improve coherence and incentivise effective human rights due diligence. This document provides a summary of the discussion, which was held virtually under the Chatham House Rule. Not including the organisers, 34 individuals participated. The following institutions, listed in alphabetical order, were represented among the meeting participants:

Academia, Adda, Advania, Atea, Bechtle, City of Copenhagen, City of Malmö, City of Oslo, Crown Commercial Service, Dustin, Greater London Authority, ITDZ, Jigsaw24, KU Leuven, Netherlands Enterprise Agency (RVO), NHS Commercial Solutions, North Western Universities Purchasing Consortium (NWUPC), Office of Government Procurement (Ireland), Protinus, Secretariat for Economic Affairs (Switzerland), SCC, SLTN, Converge Technology Solutions, Sykehusinnkøp, Techstep, and UNOPS.

SUMMARY OF DISCUSSION

For public buyers: What steps does your organisation take to ensure alignment between the social requirements outlined in the tender criteria and the contract performance conditions (CPCs)? What are the outstanding barriers to improving alignment between these requirements?

- One public authority expressed the role of the responsible procurement function in supporting the alignment of requirements. Its responsible procurement team has recently updated the CPCs for high-risk procurements to better align with Human Rights Due Diligence (HRDD) requirements. They have tried to standardise these as much as possible with respecting the need for category-specific differentiation. That organisation does not have a harmonised approach to social requirements in the tender criteria, which tend to vary a lot and are not always aligned with the CPCs. The responsible procurement function is taking two steps to overcome this. First, building the knowledge and capacity of the relevant procurement staff. Second, serving as a support function in tendering, providing questions and supporting the evaluation of responses to these by bidders.
- Another public buyer indicated that, because their organisation is decentralised, there are different entities involved in tendering and contract management. Similarly, because of how they are funded, those involved in tendering have little control over the scope or substance of the social requirements included. The public buyer acknowledged that their set-up is not representative of most public purchasing authorities. Nonetheless, it creates challenges for establishing ambitious social requirements and monitoring compliance with them.

For resellers: How does the alignment (or misalignment) of social requirements in tenders and contracts influence your company's willingness or ability to proactively implement HRDD?

One reseller indicated that there has been an increase in social requirements in public tenders and in the engagement of public buyers on these. Previously, the speaker noted, one might see requirements in the tender criteria, but these were seldom accompanied by CPCs. The shift has spurred more investment in social value¹ and a review of related processes. There is a desire to manage social requirements more proactively. The challenge is how best to monitor and measure compliance and progress, given the wide range of models and indicator schemes (e.g., TOMS, Thrive).

- Another reseller reflected that, despite the diversity of models and indicator schemes, they had never seen a public tender dictate values based on a specific system or tool. Sometimes simpler forms of monitoring, like a spreadsheet, can be sufficient.
- A public buyer suggested that a common issue with measurement is the tendency to be overly focused on the indicators, which contributes to losing sight of the reason for the requirement. This organisation prefers to focus on relationship building with suppliers (post-award) to support mutual compliance monitoring, rather than asking them to achieve a numeric target.

For public buyers: How evenly are personnel and other resources allocated between tender preparation and evaluation, on the one hand, and contract management, on the other?

Experiences shared were mixed. In general, more resources seem to be allocated to tender preparation and evaluation.

- One public buyer noted that, for major frameworks, there are more people working on tender preparation than contract management. However, the sustainable development function provides support and acts as an extra resource to contract management teams on issues concerning HRDD and ethical trade. This helps to address the imbalance.
- Another said that, at their organisation, the resources allocated are focused almost exclusively on the tender phase. The body that tenders for the frameworks and establishes the requirements is not involved in contract management unless a really major issue arises. The effect is that contract management of social requirements is reactive, where it happens at all.
- A third public buyer indicated that they have been struggling with how to balance resources allocated to tender preparation and contract management. To try to address this, their organisation is restructuring the contract management process with the aim of integrating more environmental and social questions into the standard follow-up.

For resellers: How evenly are resources allocated between those involved in preparing bids, on the one hand, and, on the other, implementing and providing evidence of compliance with the requirements post-award?

Resellers had fairly consistent responses in terms of the balance of resources and when the role of the sustainability function in supplementing expertise and capacity in bid and contract teams.

- One reseller noted that resources were fairly evenly allocated today, but that achieving that balance is the result of a long-term effort. The contract and bid teams are focused on their respective areas of responsibility and the sustainability team serves as an extra resource to both, getting involved in bid preparation and contract performance as necessary depending on the specific requirements.
- Another reseller noted that the maturity of the bid and contract teams varies by geographic market and by individual. There is an effort to increase the base level of knowledge and capacity but, in the interim, the need for support from the sustainability team in bid preparation or implementing and demonstrating compliance varies

¹ "Social value" is a term used to frame a wide range of social issues in public procurement within the United Kingdom. It was originally used and defined in the 2013 Public Services (Social Value) Act.

For public buyers: When developing social criteria and tender questions and related contract performance clauses, it is important to consider how the process of fulfilling or complying with them might differ between resellers and brands and large and small companies. How does your organisation take these differences into account?

Public buyers' practices varied widely in this area. Responses to this question suggest that it may also depend on whether a mix of resellers and brands, or just one or the other, generally bid on the the same tenders.

- One indicated that they sometimes consult resellers about potential future requirements to see how those might need to be adjusted to be applicable to resellers and brands. Social requirements are included in both tender criteria and the CPCs and those included depend on the human rights risks of the individual procurement.
- Another public buyer indicated that they tend to calibrate social requirements to the least common denominator to accommodate differences in capacity and leverage between resellers and brands, and large and small companies. The downside of this approach is that they are using much weaker standards than they would otherwise like to promote in the market. The most stringent requirements tend to be in the tender itself since this organisation has limited capacity to follow-up during the performance of the contract and is not organised to do so.
- Another public buyer reported that they require brand certificates when resellers bid for contracts with requirements that would oblige brand cooperation. The certificates oblige the brands whose products are procured by the reseller to affirm their willingness to comply with the tender requirements. This buyer noted, however, that sometimes they need to scale back the requirements to ensure competition between companies with very different capacities and leverage. Social requirements are only included in the CPCs, not in the tender criteria. This provides an opportunity for suppliers to improve over time and reduces the capacity needed to evaluate tender responses.

For resellers: To what extent does your company consult with the brands whose products you sell in the tender and contract execution processes? How do the requirements themselves influence the level of brand consultation and/or investment in developing HRDD capacity within your company?

All of the resellers who shared their experiences reported consulting with brands, but when and how they do so differed. Their responses demonstrate that the requirements themselves may play a significant role in the consultation process and efforts to build internal capacity.

- One reseller explained that they involve the brands but only as much is necessary to determine whether and how they will comply with the requirements. Otherwise, it is primarily the in-house functions (i.e., sales, product management, sustainability) that are involved.
- Another reseller said that most consultation with brands happens during contract execution in order to collect the evidence needed for monitoring and follow-ups. This company noted that customers in a particular country have more stringent requirements and do more follow-up, both asking questions about the HRDD process in general and conducting own audits, than customers in other markets. The company has invested in developing the capacity to match customer expectations in that country.
- Another reseller noted that they have seen an increase in tender requirements about transparency which requires proactive outreach to brands. This reseller advocates for using standard requirements as much as possible. Standardisation increases efficiencies by allowing the reseller to consult with brands across contracts and reduces the burden on reseller of doing so.
- A fourth reseller noted that, in their market, customers seldom put social requirements in the CPCs. So the need to consult brands primarily occurs during the preparation of bids to comply with tender criteria. Because of the limited time available, this can be rather stressful. The

reseller can speak to its own capacities and commitments, but it cannot represent those of the brands whose products it sells. This reseller noted that it would be less stressful for requirements obliging brand consultation, like transparency, to be included in the CPCs rather than the tender. This would give the reseller more time, support capacity development and enable all parties to measure improvements over time.

For public buyers and resellers: The next meeting in the series will build on the discussions captured above and focus on how to improve the process of monitoring and verifying compliance with social requirements during the performance of the contract. Participants will co-develop a set of key performance indicators (KPIs) and a set of best practices. Preliminarily, what are you most interested in discussing?

- How public buyers that do not have direct contracts with the brand companies can drive HRDD improvements in their supply chains, including through collaboration with their resellers.
- In addition to KPIs, it would be useful to consider best practices that can be scaled up or replicated and how to overcome broader issues with verification schemes, like the fact that many social issues aren't fully captured or well measured by common certification schemes.
- Developing requirements that could be presented to the brands jointly. As a starting point, this might include a higher level of transparency around supply chains and audit findings. For members, there is a lot of scope for data sharing within the the Responsible Business Alliance (RBA). But we don't take full advantage of that and detailed information is seldom shared outside of specific requests.
- Focus the discussion on known gaps, for instance, in the amount and quality of data that can be obtained through audits, certification schemes and analytics platforms. This could help to narrow the focus of the discussion in relation to the roles of brands, resellers and public buyers in implementing HRDD.
- Concrete ways of engaging suppliers, including brands and resellers, in meaningful stakeholder engagement. We would need to start by defining establishing what evidence of meaningful stakeholder engagement is at difference stages of the HRDD process.
- An agreed list of KPIs that public buyers could integrate into their contract management processes would go a long way in supporting effective follow up of social requirements.