Social procurement clauses
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Social procurement clauses
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Contact us
The Office of the Chief Advisor – Procurement is committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at: betterprocurement@hpw.qld.gov.au

Disclaimer
This document is intended as a guide only. It should be read in conjunction with the Queensland Procurement Policy, your agency’s procurement policies and procedures, and any other relevant documents.

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Whilst every effort has been made to ensure the information contained herein is accurate, this guide, and other items within the Social Procurement Toolkit, is not provided as ‘legal advice’. Users should seek legal advice specific to their circumstances.
Introduction

Social procurement is fundamental to delivering on government commitments within the Queensland Procurement Policy 2017 (QPP). Principle 2 of the QPP states:

“Advancement of economic, environmental and social objectives – to use our procurement to advance the government’s economic, environmental and social objectives and support the long-term wellbeing of our community.”

In addition, clause 2.2 of the QPP states:

“Agencies will use their best endeavours to do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard.”

By leveraging even a small slice of the government’s spend to add social value, communities and suppliers across the state can benefit enormously.

Why is this factsheet being provided?

This factsheet is provided to help government buyers deliver on the government’s commitment to consider social value in procurement. It is primarily concerned with process and practice associated with significant procurement and complements other resources supporting government objectives. These include:

- Putting Queenslanders first when securing value for money guide
- Queensland Indigenous Procurement Policy
- other social procurement toolkit resources, including:
  - Ending domestic and family violence guide
  - Social procurement guide
  - Frequently asked questions.

What is a social clause?

Social clauses can be used within tender documents or contracts to deliver social benefits to communities, alongside goods and services.

Social clauses must be drafted to take account of the context and circumstances of each procurement. They make it clear to tenderers and suppliers the importance government places on social benefits, such as creating employment opportunities for disadvantaged or vulnerable Queenslanders. Government buyers can include social clauses into tenders and contracts to influence supplier behaviour and help advance government objectives.

The wording of a social clause will depend on the benefit being sought and how it will be evaluated.

Social clauses need to be suitable for the communities affected by the procurement and proportional to the value, risk and objectives of the procurement. Requirements resulting from these processes are not aspirational goals, they need to be achievable and measurable, just like other deliverables within a contract.

Where appropriate, buyers should avoid being too specific about how social benefits are to be delivered, allowing for innovation from suppliers.
When should social clauses be used?
While not all procurement initiatives are suitable for including social clauses, many are. Under the QPP it is incumbent on buyers to identify opportunities to add social value, thereby advancing government objectives and achieving best overall value.

Thorough [analysis and planning](#) will enable a buyer to determine if the ‘core need’ of a procurement can be met, and the primary good or service delivered efficiently, while adding value by using social clauses.

Buyers should have a clear understanding of why a good or service is being procured, the context in which it is being procured and an understanding of communities affected by the procurement.

Clauses in tender documents
Social clauses in tender documents should include a clear statement about the intended social impact. Clarity allows tenderers to readily determine their capacity to deliver on the requirement. Social clauses can be either weighted or unweighted criteria.

**Weighted social clauses** - Weighted clauses are treated as part of the ‘substance’ of a procurement and the weighted evaluation criteria. This approach is particularly effective when the buyer is confident there are suppliers in the market capable of delivering on the social benefit requirement. Weighting a social clause sends a strong message to tenderers about the importance, or value, a buyer places on the social benefit and is often associated with having a greater impact in communities.

Opportunities to weight a social clause are identified through detailed analyses of community needs and the supply market while planning a procurement. Early engagement with industry can help inform this analysis.

**Unweighted social clauses** - Unweighted clauses enable evaluation of whether tenderers can deliver social impacts while not discouraging or disqualifying potential suppliers. This approach is suited to cases where the buyer is keen to consider social benefits but is less informed about the supply market and / or community needs. It encourages tenderers to research and understand the communities they would be working in and to describe how they would contribute to addressing social priorities within those communities.

Clauses in contracts
When a supplier has been chosen, commitments made in their tender about social benefit impacts need to be incorporated into a contract and managed. The contract should clearly outline the proposed social benefit, the intended deliverables and reporting requirements used to track implementation. These processes should be obvious to suppliers so there is no doubt about expectations.

Contract clauses should include:
- a measurable performance indicator. For example, this might be the number of jobs a supplier will deliver for a target group of jobseekers. The contract should clearly state a timeframe for implementation
- information about reporting and monitoring. Ideally, buyers should be able to evaluate outcomes and social impact(s) based on reporting.
Success is contingent on effective contract management and this is much easier when contract clauses are achievable and measurable. As with other deliverables, unmeasurable outcomes within contracts significantly diminish the likelihood of success.

Get advice

Social clauses need to be reviewed as part of usual checks, including any legal reviews, prior to public release of tender or contract documentation to the market. Clauses must comply with the Queensland Procurement Policy and agency procurement procedures.

A key consideration when undertaking any social procurement activity is to ensure the procurement process respects probity principles.

Incorporating social clauses in procurement documents

The attached clauses are provided as examples only. Social clauses must be drafted to take account of procurement circumstances, context and planning. Careful planning will provide the buyer with a clear understanding of the goods and services being sought, the social impact opportunities, the supply market and its capability and capacity to deliver. As with all procurement, buyers must provide potential suppliers the same opportunities to understand and address requirements.

More information about social procurement planning, including a social procurement guide and a guide about addressing domestic and family violence through procurement, is available at: www.forgov.qld.gov.au/consider-social-procurement.

Step 1 – Declare your intent

It is recommended government buyers include a statement (for example, within tender specifications or objectives) expressing what the government is looking for from suppliers. For example:

The Queensland Government is committed to creating employment opportunities for disadvantaged and vulnerable Queenslanders [or name the jobseeker target group or disadvantaged jobseekers (for example: people with disability)].

Step 2 – Applying tender and contract clauses

There are different ways to draft social clauses:

- **prescriptive** – tender documents specify targets or specific outcomes. For example, a predetermined number, or percentage of, disadvantaged jobseekers to be employed when delivering on the contract. Or, that social enterprises must be engaged as part of the total solution offered by the tenderer

- **non-prescriptive** - procurement documents ask tenderers to describe the nature and / or extent of social benefits to be delivered and how these will be achieved

- **mixed** - it is possible to mix these approaches, for example, a buyer might prescribe a particular social benefit appropriate to the procurement, such as employment opportunities for people with disability, then ask tenderers to describe how they will deliver on these requirements.
Using the Attachment

Column one of the Attachment lists example clauses for tender documents. The type of tender clause used depends on factors including the capability and maturity of tenderers and the social impact being sought.

Column two provides guidance about how to assess supplier responses against tender clauses.

Column three provides example contract clauses. Contract clauses must be monitored for supplier compliance, for example, by applying key performance indicators and active contract management. If a supplier fails to comply, consideration may be given to possible suspension or termination actions as contained with the contract’s terms and condition.
# Attachment – Example clauses

## Prescriptive clauses

These clauses are used by buyers who are confident about the social impact they are seeking and, where appropriate, how they want it delivered. They are designed to solicit detailed responses from tenderers. They will often lead to a stronger commitment from suppliers.

**When would these provisions be suitable?**

- When the buyer is confident the supply market has capacity to deliver the intended social impact.
- When suppliers are being asked to address specific requirements based on known community needs.
- Where there is an applicable Queensland Government or agency priority identified.
- Where ‘set aside’* procurement processes are applicable.

* A set aside process is a practice whereby a specific procurement initiative, or portion of a procurement spend, is quarantined from a normal procurement process and is offered, in the first instance, to a particular grouping or type of business (e.g. Aboriginal and Torres Strait Islander businesses or social enterprises).

### Jobs for vulnerable Queenslanders

Please indicate how many full-time equivalent (FTE) positions your organisation will support directly, or indirectly via supply chains, for [name the jobseeker target group or disadvantaged jobseekers] when delivering on this contract.

**TIP** This type of clause can be effective in influencing the behaviour of mainstream suppliers.

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<tr>
<th>Response question</th>
<th>How would this be evaluated?</th>
<th>Clauses for a resulting contract (subject to proposals described in tender)</th>
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<tbody>
<tr>
<td></td>
<td>These requirements should be weighted where possible. Things to look for in relation to employment include:</td>
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<td></td>
<td>number of people from the target group engaged over the life of the project and (where possible) beyond.</td>
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<td></td>
<td>a history of delivering employment and training opportunities for the target group.</td>
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<td>supporting information including fact sheets, equal opportunity strategies, evidence of collaborations with third party providers such as social enterprises, other social benefit providers or Disability Employment Services.</td>
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</table>

The supplier agrees to support [number] FTE employment opportunities for [name the jobseeker target group or disadvantaged jobseekers] in connection with the [project]. The customer will be notified within ten (10) business days of any significant issues associated with achieving or maintaining this target.

Reviews of progress, FTE positions or any issues associated with the employment commitment will form part of scheduled contract management meetings.

**OR**

The supplier will provide [name the reporting timeframe] reports regarding status of these employment requirements.

**TIPS**

- Contract clauses depend on commitments made in tender documentation.
- Contract clauses may link payments to employment milestones.
### Social procurement clauses

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<tbody>
<tr>
<td><strong>Social benefit suppliers as subcontractors or providers to lead suppliers.</strong></td>
<td><strong>As above.</strong></td>
<td><strong>The supplier will engage [social benefit provider] as a subcontractor / provider, thereby supporting [number] FTE positions for [name the jobseeker target group or disadvantaged jobseekers].</strong> The customer will be notified within ten (10) business days of a change to the social benefit provider, or of any significant issues associated with achieving or maintaining the FTE positions target.</td>
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<tr>
<td>Describe how you will engage social benefit provider when delivering the project, thereby supporting employment and training opportunities for [name the jobseeker target group or disadvantaged jobseekers].</td>
<td><strong>This could include using social benefit providers in supply chains, for example as a labour hire partner. Or, engaging them on an ongoing basis as providers, for example, as cleaners.</strong></td>
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</tr>
<tr>
<td>How many FTE positions do you expect to support over the life of the project and (where possible) beyond?</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Directly engaging social benefit providers</strong></td>
<td><strong>This question requires a yes or no response.</strong> Where asked, tenderers should provide evidence of social benefits delivered previously and describe proposed benefits and how they would be delivered.</td>
<td><strong>The customer will be notified within ten (10) business days if the status of the supplier changes and it is no longer a social benefit provider.</strong></td>
</tr>
<tr>
<td>Do you identify as a social benefit provider?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes - Provide a brief description of your organisational structure and social benefits demonstrating your organisation has a social purpose(s).</td>
<td></td>
<td></td>
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<tr>
<td><strong>Engaging not for profit organisations</strong></td>
<td><strong>This question requires a yes or no response.</strong></td>
<td><strong>The customer will be notified within ten (10) business days if the not for profit status of the supplier changes.</strong></td>
</tr>
<tr>
<td>Are you registered as a not for profit organisation with the Australian Taxation Office?</td>
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<td></td>
</tr>
<tr>
<td><strong>Set aside arrangements</strong></td>
<td><strong>These questions require a yes or no response.</strong> Any claims of registration or membership with peak bodies or accreditations should be accompanied by evidence which can be verified by evaluators. Where asked, tenderers should provide evidence of social benefits delivered previously and describe proposed benefits and how they would be delivered.</td>
<td><strong>Contract clauses for set aside arrangements will vary depending on commitments made in tender documents.</strong> They must include achievable, measurable performance indicators and reporting requirements.</td>
</tr>
<tr>
<td>Is your business registered with, or a member of a peak body or other organisation representing social benefit businesses, such as social enterprises?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes - Provide a brief description of your organisational structure and social benefits demonstrating your organisation has a social purpose(s).</td>
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**Tip:** For clarity, buyers should consider including in tender documents a description of the enterprises they are seeking to engage. The [Social procurement guide](#) includes descriptions for social benefit providers, including social enterprises.
Non-prescriptive clauses

These clauses are higher-level and broader in nature. They give tenderers the opportunity to respond more generally.

When would these provisions be suitable?

- A procurement for goods or services within multiple communities or regions.
- Setting up common-use supply arrangements, including standing offer arrangements.
- Where the buyer wants to better understand the corporate social responsibility (CSR) commitments of suppliers.

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</table>
| **Corporate social responsibility** Describe any programs or initiatives your organisation has in place directed towards meeting social and ethical responsibilities and objectives, such as:  
  - engaging with social benefit suppliers, such as social enterprises, or with Aboriginal or Torres Strait Islander owned businesses.  
  - having a Reconciliation Action Plan in place and evidence of its implementation.  
  - creating employment opportunities for: disadvantaged or vulnerable jobseekers such as long-term unemployed people, people with disabilities, people with a lived experience of mental health conditions, people from culturally and linguistically diverse backgrounds, ex-offenders or parolees.  
Preference may be given to bidders who are able to deliver relevant social benefits alongside the goods or services which are the core subject of this contract.  
  | The information provided should be evaluated but it can be more difficult to assign a weighting to a non-prescriptive clause.  
Depending on the circumstances, responses might be considered in terms of differentiating offers when all other factors are equal.  
Things to look for include:  
  - evidence of established and ongoing collaborations with not-for-profit organisations or social benefit providers or Aboriginal or Torres Strait Islander owned businesses.  
  - a plausible commitment to, and plan for, working with social benefit providers or target groups.  
This could include using social benefit providers in supply chains or engaging them on an ongoing basis as providers, for example, as cleaners or caterers.  
Evidence of delivering on corporate social responsibility commitments, including reporting or testimonials from independent organisations  
  | Contract clauses will vary but must align with commitments made within the tenders, including achievable, measurable performance indicators and reporting requirements.  
For example:  
The supplier will engage [type of social benefit provider] as a subcontractor, thereby supporting employment opportunities for [jobseeker target group or disadvantaged jobseekers].  
OR ___________________________________  
The supplier shall maintain [insert name of corporate social responsibility initiative] for the term of this contract. The supplier is to notify the customer, in writing, within ten (10) business days if this initiative is discontinued or if the agreed social benefit is not being delivered.  
  |
Mixed clauses

These clauses prescribe the nature of social impacts being sought (for example, employment for people with disability) while encouraging innovative solutions as to how outcomes are to be delivered.

When would these provisions be suitable?

- Procurement initiatives where government buyers understand the social outcomes needed in a community, but don’t understand the best way to achieve them.

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| **Supporting specified target groups**  
In delivering on this program of work, how will your organisation:  
- improve the participation of *[name the target group]* in the workforce and community; and/or  
- engage with *[name the target group]* owned businesses. | These requirements should be weighted where possible. Things to look for include:  
- evidence of social benefits delivered previously and details about proposed benefits and how they would be delivered.  
- evidence of innovative programs benefiting the target group(s).  
- evidence of policies or practices which ensure opportunities, such as training, are accessible and inclusive. | The supplier shall maintain its *[insert name of strategy]* for the term of this contract. The supplier is to notify the customer, in writing, within ten (10) business days should it cease this strategy.  
The customer may, at its discretion, request the supplier to provide a copy of this strategy and progress against it at any time during the term of this contract. |

| **Training for target groups**  
Please provide detail about how your organisation will provide training opportunities for *[name the jobseeker target group or disadvantaged jobseekers]*.  
Where possible include evidence of past experience in delivering training programs to promote progression within the workforce and economic and social participation for *[name the jobseeker target group or disadvantaged jobseekers]*. | Supporting information including fact sheets, evidence of collaborations with third party providers such as registered training organisations, or target group owned businesses.  
Look for innovation and strategic collaborations in delivering jobs and training for the target group. | The contractor will offer accessible and inclusive opportunities to develop essential skills to all employees associated with the contract.  
The contractor will submit a training plan to the customer within *[number]* weeks of the contract start date.  
The contractor will provide evidence, satisfactory to the customer, of the offer, and take-up by the target group. |