



Steel procurement in major projects:

Guidance on the application of social issues

Purpose

1. This is a practical guide on how to incorporate social issues in major projects with a significant steel component. It supports Procurement Policy Note (PPN) 16/15.

Introduction

2. The Government is committed to implementing measures that address the barriers that prevent UK suppliers of steel from competing effectively for public sector contracts.
3. Recognising the new flexibilities available in the Public Contracts Regulations 2015, PPN 16/15 (published on 30 October 2015) set out a broad range of requirements on how to take account of steel through the procurement process and maintain best value for money.
4. Building on the PPN, this guidance provides further information and guidance on how to address social issues at the key stages of the procurement life-cycle (including pre-procurement, requirements specifications, use of labels and standards, selection of suppliers, award of contracts, contract conditions and contract management).
5. Government intends to complement this guidance through the development of a "Balanced Scorecard" to support economic growth through government procurement. This will describe an evaluation approach where established criteria such as price are balanced against more complex issues such as social and environmental considerations.

Value for Money

6. It is essential that in consideration of social issues in steel procurement, contracting authorities take full account of the Government's overarching value for money policy for all procurement projects. Procurement decisions should always be made on a quality/cost/risk basis.
7. The assessment of value for money for the project in the Business Case should be in respect of the whole life of the project; for example, quality costs/benefits of products, energy and water management, the full costs associated with transport and delivery, lead times, insurance, maintenance, after sales support, rework, disposal, waste, re-use etc. Contracting authorities should also take into account costs and benefits to society as a whole (for example any additional economic benefit that may result from the project) when developing the Business Case, not simply those directly relevant to the contracting authority.

8. HM Treasury's Green Book "Appraisal and Evaluation in Central Government" describes how the economic, financial, social and environmental aspects of a policy programme and project should be combined.

Scope and use

9. This guidance applies to all Central Government Departments, their Executive Agencies and Non Departmental Public Bodies. It applies to any major procurement project with a significant steel component, where the overall project requirement has a capital value of £10 Million or above. The key principles of the guidance are, however, relevant to any major procurement project involving materials.
10. It primarily places obligations on contracting authorities relating to social issues in respect of their contractual agreements with Tier 1 suppliers. However, where the steel component is being sourced at a level deep into the supply chain, authorities are required, where appropriate, to ensure that Tier 1 suppliers have a credible supply chain plan, and flow down the relevant requirements through contract conditions, so that the responsibilities of each contracting party are transparent and can be managed in an effective way.
11. All public procurement procedures must comply with the EU Treaty, the Treaty principles, the EU procurement directive and the requirements of the Public Contracts Regulations 2015 (PCR 2015), which set out detailed rules on social considerations in public procurement.

Summary of key outcomes

12. When considering social objectives relevant to projects where steel is a key element, contracting authorities should aim to achieve a number of key outcomes, including:
 - Ensuring that the costs and benefits assessment in the Business Case fully addresses any wider economic issues arising from the project.
 - Ensuring that the steel is being produced in a responsible and sustainable way.
 - Ensuring that there is strong supply chain management capability at Tier 1 level. Where there are key subcontractors providing key components of the project, the contracting authority should require good, secure supply chains and performance management throughout the life of the project.
 - Ensuring that government only contracts with those suppliers that comply with relevant social and labour laws, and health and safety legislation, as appropriate. In relation to steel, the relevant legislation is likely to be the law of the country where the manufacturing/fabrication of the steel is taking place or the country where the employees are working.

There is a broad list of social issues, and many may be relevant to a particular project. A case by case consideration is required taking into account the objectives of the project, the subject matter of the contract, risks, affordability and value for money. Refer to Annex A for more details.

Where to apply social issues

13. There is considerable flexibility for government to include social issues at all stages of the procurement process for major projects involving steel. This includes before a procurement begins, developing specifications, inclusion of labels and standards, selecting suppliers, awarding contracts and in contract conditions. Any criteria included must be linked to the subject matter of the contract and proportionate.
14. Contracting authorities should, from the outset, develop a procurement strategy that ensures that relevant social issues are considered, and takes into account broader government-wide and departmental objectives such as economic growth and encouragement of a more diverse supplier base (e.g. through small providers).
15. Examples of social issues or objectives that may be relevant to major projects with a significant steel component include:
 - sustainable sourcing
 - supply chain management
 - skills and training development
 - long term unemployed
 - health and safety
 - diversity of supplier base
16. Annex A provides examples of these issues and where they may be applied in the procurement process.

Identifying need and pre procurement market engagement

17. The early stage of identifying the procurement need and developing the Business Case is a key point at which social issues must be considered. The outcome of these considerations, including costs and benefits, should be incorporated into the procurement strategy and business case to enable a robust assessment of their impact. It is important to assess whether these issues make effective use of financial resources and that the project represents value for money whilst being affordable. The procurement strategy should set out mitigating actions for any risks identified which may impact on the delivery of any social considerations.
18. During pre-procurement market engagement, it is good practice to consider highlighting the importance of certain issues, policies and legislation (e.g. training and skills opportunities for employees or ensuring subcontracts are advertised etc).

Technical specifications

19. Where there are standards that incorporate the social aspects of a user requirement, these can be specified; for example in a construction project a requirement that the building is constructed to a particular standard with disabled access.

20. It is necessary to ensure that the Tier 1 contractor will flow down any important requirements relevant to the technical specifications, which define the characteristics required of the material, product or supply of the steel, through specifications and contract conditions where appropriate. For example, where there is an issue of the safety in the production process or quality assurance of the steel being produced, contracting authorities may wish to specify minimum standards to ensure conformity to those requirements. Contractual mechanisms which manage and incentivise safe production and delivery of the steel can also be considered.
21. Characteristics in technical specifications may refer to a specific process or method of production or a specific process for another stage of its life cycle even where those factors are not part of the characteristics of the material substance so long as they are linked to the subject matter of the contract and proportionate to its value and objectives.
22. If a standard is specified, the contracting authority must also refer to and accept 'equivalents'. Technical specifications must allow equal access of suppliers to the procurement. Technical specifications that restrict competition and cannot be justified, must be avoided. It is also important to ensure that any standard specified does not have a disproportionate burden on the ability of smaller firms to compete effectively.

Labels

23. In the PCR 2015, where contracting authorities intend to procure works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics subject to certain conditions.
24. Those conditions are that labels must be:
 - linked to the subject matter of the contract;
 - appropriate to define characteristics of the works, supplies or services that are the subject matter of the contract;
 - based on objective and non-discriminatory criteria;
 - accessible to all interested parties;
 - set by a third party over which the supplier applying for the label cannot exercise decisive influence.
25. If a label is specified, the contracting authority must also refer to and accept 'equivalents'. Contracting authorities should also indicate which label requirements are required, if not all are required. Where a label is included, contracting authorities should consider whether it is supported by a robust accreditation or verification system.
26. Examples of labels that may be relevant to steel are:
 - CE labels in relation to technical specifications; and,
 - parts of BES 6001 relevant to responsible sourcing of steel.
27. The CE label is a legal requirement of the EU Construction Products Regulation (2013) for certain types of steel such as steel plate. A CE marking is a

declaration by the manufacturer of a product that it meets all of the legal requirements for CE marking and can be legally sold across the EU and EEA. A CE marking must therefore only apply to products subject to specific EU harmonisation legislation that requires its use such as the Construction Products Regulation (CPR). In the specific case of the CPR it indicates that a product is consistent with the Declaration of Performance as made by the manufacturer of a construction product. A DoP can be provided on a website and helps provides traceability of the steel.

28. BES 6001 is an example of a responsible sourcing standard. Aspects of BES 6001 may be specified at the appropriate stage of the procurement process where relevant. BES 6001 addresses responsible sourcing of construction products and covers organisational management, supply chain management, and environmental and social issues. It therefore provides a holistic approach to managing a product from the point at which component materials are mined or harvested, through to manufacture and processing. Suppliers that have the full BES 6001 accreditation may therefore demonstrate they fulfil certain specifications, criteria or contract conditions required at different stages of the procurement process.
29. Examples of steel products which may be relevant when specifying aspects of BES 6001 are contained at Annex C.

Supplier Selection

30. The pre-qualification/supplier selection stage of the procurement process is designed to establish the capability and suitability of a supplier to perform the contract. It is best practice to have good transparency of the key activities of the full supply chain (e.g. in terms of social laws, health and safety approach) up to and including the contractor responsible for manufacturing the steel. This stage provides a good opportunity to assess contractors who may have a poor track record on, for example, supply chain management. In addition, in certain circumstances, contracting authorities can exclude Tier 1 contractors or sub-contractors who may have breached applicable health and safety or employment legislation. The points below should be applied to all known sub-contractors at the time of selection to ensure proportionate and equal treatment.
31. Where sub-contractors are being used for the manufacture of steel and are known at the time of selection, the Pre-Qualification Questionnaire or selection stage should be used to ensure:
 - that the sub-contractor responsible for steel manufacturing has not been convicted of any criminal offences, as set out in the mandatory grounds for exclusion in the PCR 2015 (regulations 57(1) & (2)) or breached its obligations in relation to the payment of taxes and social security as established by a judicial or administrative decision having a final and binding effect (regulation 57(3)).
 - that none of the discretionary grounds for exclusion (regulation 57(8)) referred to in the PCR 2015 apply to the sub-contractor responsible for steel manufacturing. This includes violations of any national and EU labour, environmental and social laws, conflicts of interest that distorted competition and significant or persistent deficiencies in contract performance.

- that where the sub-contractor responsible for steel manufacturing is a principal subcontractor, they can provide evidence of their experience by examples of previous contracts in relation to such areas as health and safety, equality and environmental management.
32. Where the supplier indicates they are using a sub-contractor for steel manufacturing, contracting authorities are able to exclude those sub-contractors where the grounds for exclusion apply to them. This must be made clear in the procurement documents and the process must be fair and transparent.
 33. Where the grounds for mandatory exclusion apply, the contracting authority must require the replacement of the sub-contractor, including if this applies to the sub-contractor responsible for steel manufacturing. Where the grounds for discretionary exclusion apply, the contracting authority may require the replacement of the sub-contractor.
 34. It is important to note that if certain grounds apply, the sub-contractor is given the opportunity to provide sufficient evidence that provides a summary of the circumstances and any remedial action that has taken place subsequently, so that they can effectively self-clean the situation referred to. Legal advice should be sought if such a situation arises.
 35. Relevant labour and social laws are those that apply at national and EU level (these include obligations relating to international obligations such as International Labour Organisation (ILO) labour conventions). In relation to steel, it is likely to be the law of the country where the manufacturing/fabrication of the steel is taking place that is relevant. Therefore you can exclude a supplier or sub-contractor for breach of labour laws relevant to the country where the employees are working. Annex B provides a sample contract condition.

Award stage

36. Regulation 67(2) in the PCR 2015 states that the tender shall be awarded on the basis of price or cost using a cost-effective approach such as the best price-quality ratio assessed on the basis of criteria such as quality, environmental and/or social aspects linked to the subject matter of the contract (most economically advantageous tender).
37. Social criteria applied at this stage could include taking into account the benefits of employment and supply chain activity, including the protection of the health and safety of staff involved in the production process, the social integration of disadvantaged workers such as the long-term unemployed, or training in the skills needed to perform the contract. A robust supply chain plan would provide contracting authorities with some assurance that these issues will be addressed effectively. This is not an exhaustive list and further examples are provided at Annex A.
38. An example of a cost-effective approach is life-cycle costing, which is detailed in the PCR 2015, and looks at the associated costs of consumption of energy/water and other resources required by the production process, and costs associated with environmental impacts, including the cost of emissions at the production plant and during transport, may also be included.
39. In respect of the quality aspects of the steel product, consider the costs/benefits of specialised niche solutions – (e.g. design, weight, durability, adaptability for

next use) and speed of response, service and responsiveness to changes, at all points in the life cycle of the product.

40. Where bidders have already built in certain elements of cost into the price (e.g. transport) it is important to avoid any double counting in cost assessments; seeking a full cost make up in the tender documentation from Tier 1 bidders (and ensuring that this is flowed down the supply chain) will provide the required transparency.
41. In developing the evaluation methodology, appropriate weighting should be given to the quality or social aspects of the project. It may be relevant to apportion a proportion of the quality criteria award marks to supply chain management obligations in respect of materials sourcing (i.e. how the Tier 1 is going to ensure effective supply chain activities throughout the supply chain) where, for example, a safe and sustainable supply of steel is a key priority to the contracting authority. The quantity of marks allocated needs to be proportionate, in terms of the overall project, to avoid adverse outcomes.
42. The contracting authority should require the tenderer to explain the price or costs proposed in the tender where tenders appear abnormally low in relation to the works, supplies or services. The contracting authority should indicate in the procurement documents if this just relates to the overall price or cost or also includes constituent parts of the price or cost, which may include steel production or supply if it has been specified as a separate price or cost element.
43. The contracting authority must reject the tender where it has established that the tender is abnormally low because it does not comply with applicable obligations in relation to social and labour laws on an EU or national level.

Contract Performance Conditions

44. Contract performance conditions can reinforce award criteria in relation to social issues, or alternatively where the social issues are not to be evaluated, contract conditions can be used as a means of agreeing the obligations with the Tier 1 supplier (as long as they are linked to the subject matter of the contract and indicated in the call for competition or procurement documents).
45. Contract conditions with specific obligations in relation to social objectives relevant to steel may include (more examples are also provided at Annex A):
 - implementation of measures for the promotion of a diverse supplier base;
 - a requirement to comply in substance with fundamental International Labour Organisation Conventions;
 - a requirement to recruit long term unemployed persons;
 - a requirement to comply with relevant labels or standards.

Managing the contract and evaluating performance

46. The contract with the Tier 1 contractor needs to be managed proactively and there should be regular reviews of performance and contractual risks. When assessing delivery against key performance indicators and service levels, the contracting authority should consider the Tier 1 contractor's performance, which will include performance of key suppliers in the supply chain. Robust contract conditions should be in place with the Tier 1 contractor so that it is obliged to

cascade actively managed performance management reviews down the steel supply chain. More information and examples is at Annex A,

47. This includes, for example, on-going verification that contractors and key subcontractors are complying with relevant social and labour laws as previously mentioned. Where proportionate and cost effective, site visits may also be needed to obtain this assurance.
48. The social sustainability requirements will need to be specified as a key element of the performance measurement and quality attributes of the contract. Contract conditions should place obligations on suppliers to provide data or monitor and evaluate performance in relation to social issues – these requirements may need to flow down from Tier 1 to the relevant part of the supply chain.

Monitoring compliance and feedback

49. The Government intends to closely monitor the impact and use of this guidance and in scope organisations may therefore be asked to provide reports on how it has been adopted. We would also welcome feedback on the guidance (see contact details below).

Contact

50. Enquiries should be directed to the Crown Commercial Service Helpdesk (telephone 0345 410 2222, email info@crowncommercial.gov.uk)

Further advice

51. UK Steel and the British Constructional Steel Association Ltd (BSCA) are examples of trade associations which can offer further industry advice.

Annex A

Examples of social issues/criteria/objectives that may be relevant for major projects where steel is a significant component.

Note, this is not an exhaustive list and there may be other relevant examples.

Issue	Situations where this may be useful	Which stage of the process	Potential impacts for steel	Examples of how implemented or measured
<p>Sustainable sourcing and production</p> <p>Specifying a label or technical specification or relevant parts of the label or technical specification including the requirement to refer to “equivalents”. (BES 6001 is a good example of a responsible sourcing standard, when used appropriately and where the aspects of the standard specified are relevant.)</p>	<p>To guarantee requirements in the goods, supplies or materials. Useful where labels or technical specifications are required for the project or particular processes of production.</p> <p>Also important where provision of goods, supplies or materials is further down the supply chain and the contracting authority can specify requirements that must be maintained by the Tier 1 contractor.</p>	<p>Technical specifications, labels and contract performance conditions</p>	<p>Will provide assurance that the steel is being produced in a sustainable or technically specific way.</p>	<p>Contract performance conditions flowed down from Tier 1 level.</p> <p>This could be complemented by measurable KPIs, specific attestations or inspection provision to satisfy the contracting authority that the contract conditions are being met.</p>
<p>Tier 1 contractor’s capability in relation</p>	<p>The contracting authority will require the Tier 1</p>	<p>Selection stage</p>	<p>Assess capabilities in relation to the supply</p>	<p>Suppliers who do not meet minimum capability</p>

<p>to supply chain management</p> <p>Addressing supply chain capability/track record.</p>	<p>contractor to successfully manage the project, to deliver on time and on budget.</p> <p>Where the Tier 1 contractor relies on sub-contractors for all or part of the project, it will be necessary to test the Tier 1 contractor's supply chain management capabilities e.g. through examples of past performance.</p>		<p>chain management of sub-contractors responsible steel production or supply.</p>	<p>requirements could be excluded at selection stage.</p>
<p>Supply chain management in relation to delivery of the project</p> <p>Requiring good, secure supply chains and management performance where relevant and important to delivery of the contract.</p>	<p>Where a supply chain is intrinsic to the delivery of the project, and there is a need to evaluate the Tier 1 supplier on their ability to manage/ deliver the project. This will help protect against failure in delivery due to supply chain issues such as key subcontractors' failure to deliver on time or at the quantities required.</p>	<p>Award criteria and/ or contract performance conditions.</p>	<p>Good supply chain management will reduce the risk of supply chain failure at steel production or supply level.</p>	<p>At the award stage, contracting authorities may require Tier 1 bidders to provide details on the systems and procedures they will use for the project including approving key subcontractors down the supply chain, managing compliance with the specification and managing the continuing fulfilment of contract performance requirements along with methods of reducing risk of supply chain failure.</p> <p>Ensure there is a specific set of marks, with sufficient weighting in the evaluation methodology</p>

				for “security of supply” which assesses the Tier 1 contractor’s plan to seek assurance that there is stability and risk management of the chain.
<p>Greater diversity of supplier base</p> <p>Encouraging more diverse supplier base by requiring the Tier 1 contractor to open up subcontracting opportunities.</p>	Where there is a need to attract a more diverse supplier base to address supply chain issues including security of supply.	Contract conditions	<p>Could allow wider market opportunities, e.g. encouraging smaller firms and start ups. This helps to provide a more diverse and sustainable supplier base.</p> <p>Providing greater opportunities to bid for work by encouraging diversity of supply on Tier 1 contractor.</p>	Contract conditions, which require Tier 1 contractors to advertise subcontracts on a transparent portal and by holding industry days at regular intervals during the life of the project.
<p>Skills and training</p> <p>Delivery of strategic labour needs, developing skills and training of the workforce engaged</p>	To ensure a more skilled and productive workforce is delivering the project through continued ‘on the job’ training and up-skilling of new workers.	Selection stage, award stage and contract conditions, as appropriate	In addition to direct benefits to the contract being delivered, this may also help to support growth in particular	Examples are provided in PPN 14/15 – Supporting Apprenticeships and Skills Through Public Procurement

on the contract.			industries, including steel, by providing a more sustainable workforce with relevant skills and training.	
Targeting appropriate new employment opportunities at the long term unemployed	This is particularly relevant to contracts where there are appropriate opportunities to employ the long term unemployed in order to deliver the project.	Award criteria and contract conditions	Helps to support growth through offering appropriate opportunities to the long term unemployed and the further development of skills and training.	Award criteria evaluated on the basis of training new workers for delivery of the contract. Contract clause that requires the contractor to advertise new employment, as appropriate.
Health and Safety capability and compliance e.g. policies / qualifications/ training and adherence to legislation	To assess the Tier 1 contractor in its delivery of comparable projects in relation to compliance with health and safety requirements	Selection stage	Assesses the Tier 1 contractor in relation to projects delivered, including any members of its supply chain, which can include those engaged in steel production or supply. Requires demonstration of minimum standards in relation to health and safety.	At selection stage, ask in the PQQ about previous breaches of health and safety in relation to comparable projects.

<p>Health and Safety Management</p> <p>To evaluate the Tier 1 contractors in relation to proposals for the delivery of the project and demonstration of how to maintain standards of health and safety.</p> <p>To flow those requirements and standards down the supply chain.</p>	<p>To evaluate the standards of health and safety expected to be delivered on the project. This will help guarantee quality of the delivery along with risk assessment and management of the supply chain.</p>	<p>Award criteria and contract conditions</p>	<p>Expecting the same standards of health and safety from the supply chain, including steel production and supply, as of the Tier 1 contractor.</p> <p>Will provide supply chain security and be of benefit to the workforce engaged on the contract.</p>	<p>Agreeing contract conditions that require specified standards of health and safety for the project, which is cascaded down the supply chain. This could include reporting on incidents and following up with further training requirements, as appropriate.</p>
<p>Other community benefits</p> <p>To deliver benefits to the community affected or engaged with the project.</p>	<p>This is particularly relevant to contracts where there are opportunities to engage with the community during the delivery/ management of the project.</p>	<p>Contract conditions</p>	<p>Encouraging community engagement through sharing of skills, knowledge and opportunities.</p>	<p>Contract conditions that agree to offer work experience opportunities or training days to those in the community affected or engaged with the project.</p>

Note: all stages of the procurement process must comply with the EU Treaty, including principles of equal treatment, proportionality and non-discrimination, the EU procurement directive and the PCR 2015

Annex B

Sample contract condition

Clause giving the Authority the right to terminate if the Contractor fails to comply with social, or labour law obligations.

Option 1 (free-standing)

The Authority may terminate this Agreement [with x months' notice] if the Contractor fails to comply in the performance of the Services with legal obligations in the fields of social or labour law.

Option 2 (where there is a defined Supplier Termination Event giving the Authority the right to terminate)

Add to definition of Supplier Termination Event -

(..) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of social or labour law.

NOTE: in either case the consequences of termination must be considered in the light of the other provisions in the contract.

Clause giving the Contractor (and Sub-contractors) the right to terminate a Sub-contract for the same reasons.

The Contractor shall include in every Sub-contract -

- a. a right for the Contractor to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of social or labour law; and*
- b. a requirement that the Sub-contractor includes a provision having the same effect as (a) above in any Sub-contract which it awards.*

In this clause, 'Sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

ANNEX C

Indicative list of steel products that may be relevant to aspects of BES6001

Note, this is an illustrative list and is subject to change

Reinforcing Bar	Steel reinforcing bars for the reinforcement of concrete	produced to BS 4449:2005
Reinforcing Coil	Steel reinforcing bar in coil for the reinforcement of concrete	produced to BS 4449:2005
Wire Rod for Mesh	Feedstock coil for the production of steel mesh for the reinforcement of concrete	produced to BS 4482:2005 & BS 4449:2005
Plain Round Steel Bar	Plain round steel bars for various construction and other applications	produced to BS EN 10025:2004
Steel Flat Bars	Steel flat bars for various construction and other applications	produced to BS EN 10025:2004
Structural Steel Beams	Steel Beams for various construction and other applications	produced to BS EN 10025-2:2004, -4:2004, BS EN 10225:2009
Structural Steel Columns	Steel Columns for various construction and other applications	produced to BS EN 10025-2:2004, -4:2004, BS EN 10225:2009
Structural Steel Angles	Steel Angles for various construction and other applications	produced to BS EN 10025-2:2004, -4:2004, BS EN 10225:2009
Structural Steel Channels	Steel Channels for various construction and other applications	produced to BS EN 10025-2:2004, -4:2004, BS EN 10225:2009
Structural Steel Plate	Steel Plate for various construction and other applications	produced to BS EN 10025-2:2004, -3:2004, -4:2004, -5:2004 and -6:2004, BS EN 10225:2009
Hot Finished Structural Hollow Sections	Hot finished structural hollow sections for various construction and other applications	produced to BS EN 10210-1:2006 & BS EN 10210-2:2006
Cold Formed Structural Hollow Sections	Cold formed welded structural hollow sections for various construction and other applications	produced to BE EN 10219-1:2006 & BS EN 10219-2:2006
Rail	Rail products for use in Railway and other applications.	produced to BS EN 13674-1 2011, BS500:2000, BS11:2015, & BS 7865:1997
Pre-Finished Steel	Pre-finished steel products (continuously organic coated /coil coated) steel flat products for various construction and other applications	produced to BS EN 10169:2010
Metallic Coated Strip	Continuously hot-dip coated strip and sheet of structural steels for various construction and other applications	produced to BS EN 10346:2015 & BS EN 10143:2006