

PPN 05/21 Human Rights in Public Procurement

Northern Ireland Housing Executive Corporate Procurement Unit

Works Procurement

The Northern Ireland Housing Executive (NIHE) has always been conscious of its statutory obligations in relation to Human Rights and as a provider of Social Housing we take safe guarding of our tenants and supply chain partners extremely seriously.

Decisions made in public procurement processes can have consequences on the human rights of people employed to deliver goods and services through government contracts. Public Sector organisations have a duty to ensure human rights are respected when they enter commercial transactions with contractors. When entering into any commercial contracts, the level of risk involved in each contract needs to be assessed and produce a procurement/sourcing strategy that identifies potential human rights breaches and put measures in place to mitigate them. A human rights based approach to public procurement can be used to both prevent human rights violations and abuses and to take an active role in respecting, protecting, and fulfilling human rights.

NIHE Approach

NIHE has a risk based approach to delivering the requirements of the PPN 05/21 which requires that departments must, when entering into any commercial contract, assess the level of risk involved in each contract and produce a procurement/sourcing strategy that identifies potential human rights breaches and put measures in place to mitigate them.

As a minimum NIHE has updated its Standard Terms and Conditions to ensure compliance with all appropriate legislation in respect of human rights, i.e

- Human Rights Act 1998;
- Northern Ireland Act 1998,
- Modern Slavery Act 2015,

NIHE has conducted a gap analysis of contract documentation and process. This confirmed that the Housing Executive already had a great number of measures aimed at protecting Human Rights embedded within contracts. These were aimed primarily at protecting the end users of our service i.e our tenants, and included measures such as:

- All contractors staff with direct contact with tenants must have Basic Access NI Checks. This protects both tenants and ensures that contractors have to
- The Contractor is required to demonstrate, that they have put in place an appropriate safeguarding policy and have trained their operatives and Subcontractors in accordance with the policy. Safeguarding as an agenda item during monthly progress meetings.

A recent case study demonstrating compliance with the aforementioned measures is the Housing Executive's statutory response maintenance procurement projects. These projects adopt a cautious approach to managing the risk of policy compliance in recognition of the recent stand-down of 12 procurement projects in December 2022 and the importance of these contracts.

The Housing Executive has obligations under its Tenancy Agreement to keep in repair the structure and exterior of the tenant's dwelling, and maintain any item in the dwelling that is the responsibility of the Housing Executive. Repairs and maintenance are a fundamental element of ensuring the welfare and comfort of our tenants, in that it provides a safe, warm and dry environment. The repairs and maintenance work is also critical to enable to discharge its statutory housing duty under homeless by the provision of change of tenancy work to provide homeless applicants with permanent accommodation. Sustaining the delivery of response maintenance works is therefore a core part of the Housing Executive's business activity and is vital to protect the health, safety and wellbeing (*both mental and physically*) of our customers.

Accordingly, CPU undertook a qualitative analysis of the content of each Procurement Policy Note ("PPN"). Content analysis is a very common methodology for analyzing large unstructured qualitative data sets. The methodology employed included a process of reading and re-reading to familiarize oneself with the content. Next, the relevant points setting out a call to action were identified and appended into a spreadsheet. A project specific gap analysis then compared against the project so meaningful conclusions could be gained such as what (if any) actions needed to be taken in order to comply. A project specific human rights risk assessment, focusing on the factors and groups identified in the PPN, is undertaken and recorded in the procurement project risk register in conjunction with the above. The results of this assessment reveal there to be a low risk of human rights breaches associated with this type of work. Whilst the score is low the measures associated with the Medium risk rating are applied as an additional protective measure for the Housing Executive.

The outcome of the assessment is based on the range of qualifications required by key personnel (*which are unlikely possible to obtain for an individual facing human rights breaches*), engagement with the Housing Executive's Inclusion, Diversity, Equality & Safeguarding team (*which did not reveal any previously unknown safeguarding violations or necessary remedial action*) and express terms such as, but not necessarily limited to the following:

- Mandating for a safeguarding policy to be put in place by the start date of the contract (*or at least NIHE's policy must be adopted*) with key personnel trained accordingly.
- Basic AccessNI checks required for all staff used in the conduct of business; only staff with a valid AccessNI disclosure certificate can be used in the conduct of business in a person's home.
- Sign up to the client's Contractor Code of Conduct
- Inclusion of Safeguarding as an agenda item
- The living wage (*adjusted annually*) must be paid to Staff residing in the UK as set by the Living Wage Foundation to manage gender specific pay imbalances.
- Measures mitigating against the occurrence of human rights breaches such as the avoidance of forced labour, maintaining protection of human rights, including processes to prevent unequal treatment & harassment and respecting human rights throughout the supply chain.
- Compliance with specific legislation:
 - Human Rights Act 1998
 - Northern Ireland Act 1998
 - Modern Slavery Act 2015
 - Other Legislative standards
- Provision of a human rights policy agreed at board level, which must be published on their website with awareness of same disseminated throughout the supply chain. Subcontractors must also publish a human rights policy.
- Adhere to collective agreements and adoption of fair working practices for all workers engaged in the delivery of the contract.
- Poor working practices, use of zero hour contracts, unnecessary distancing of working relationships and the potential for exploitative practices etc. is managed by requiring the contract between the Contractor and any of their Subcontractor(s) to be on no less favorable terms than those included within the Contract existing between the Client and the Contractor. The signed contract must be provided to the Client upon request.
- develop, implement and maintain a fair work practices policy in relation to this contract which demonstrates the Contractors commitment to ensuring that workers employed on this contract are treated fairly, humanely and equitably and report at defined frequencies. The Housing Executive has the reserved right to survey workers on workforce matters such as access to terms and conditions, staff policies such as grievance procedures and how payment for services are managed.

To hedge against the risk of any change in the risk rating or to manage any occurrence of human rights breaches during the contract, clause facilitating additional measures are included such as:

- Additional human rights risk assessments and provision of evidence demonstrating compliance.
- Independent monitoring of premises regardless of announced, semi-announced or unannounced.
- The reserved right to apply more stringent measures such as site inspection and regular audits of sites through the supply chain and/or appointment of an accredited 3rd party organisation(s) to monitor and protect the rights of workers in the supply chain.
- Indemnification to the client against all losses, costs, proceeds or damages arising from the contractor's breach (including members of their supply chain).
- Cooperations between parties in the investigation of a suspected or actual breach.
- Right of termination in consequence for contractor's breach oh clause 25.20 and need to replace a subcontractor in breach within 30 days.

The outcome of the human rights risk assessment also considered in the Northern Ireland context that it has lower risk profile of human rights inequalities iof a result of:

- the lower level of migrant workers in NI compared with GB,
- the smaller scale of projects delivered here and the greater visibility
- lower anonymity given our smaller geography and population
- Construction supply chains here are familiar and longstanding which again reduces the likelihood of new persons going unnoticed

Economic Operator are required to complete a series of eligibility questions prior to submitting their tender on eTendersNI. These questions include:

- If the Economic Operator's organization is subject to any ongoing investigations or charges in relation to modern slavery and/or human rights abuses.
- If the Economic Operator is aware of any ongoing investigations or charges within their supply chain in relation to modern slavery and/or human rights abuses.
- If the Economic Operator is aware of potential human rights issues and has policies in place to address them.

The award evaluation includes a qualitative assessment of the bidder's proposals for, inter alia; engaging with customers with communication barriers, how the safeguarding policy and AccessNI requirement will be achieved, the measures intended for use to address human rights risks when discharging their duties under the contract and processes to ensure subcontractors have and maintain the necessary technical and professional ability & experience and how the back to back contracting will be achieved.

The commercial evaluation will, where appropriate, utilize the 2 stage process (explanation and assessment) set out in Sourcing Toolkit Section 3 – Selection and Award for managing any potentially abnormally low tenders shall be followed.

The procurement strategy therefore brings human rights to the forefront of the procurement project sustains focus on this important topic throughout all stages of the evaluation and into the contract management stage. If, in the unfortunate event, a human rights violation is detected then the mechanisms of the contract can be applied to collaborate with the contractor to investigate and resolve the matter with engagement with NIHE's internal teams and legal consultants and other 3rd parties (such as social services or the PSNI etc) where necessary.

Management of human rights is a collaborative effort between the Contractor and Housing Executive. The former is bound by the contract to ensure the risk of incurring a human rights violation(s) is managed as effectively as possible and that their supply chains are and remain free from human rights abuses. The latter engages in contract management activities to monitor the contractor's compliance with their contract terms and can utilize other proactive tools during the contract period should the need arise.

NIHE recognizes that its customer base comprises persons covering a broad demographic range, some of whom may be vulnerable and may not be aware of their human rights nor be able to know if those rights are being violated or are at risk. Accordingly, NIHE uses a 'Do not visit alone' policy where, if a customer is known to the Client of being at a potential risk or where there is information in relation to particular needs of the Customer, the Client will advise the Contractor of any special considerations that should be taken in carrying out the task orders.

NIHE has various communication channels to allow its customers to raise concerns if they feel there has been a violation or abuse of their human rights. The primary channel is that Customer and Emergency Services Unit (this was the channel used in the reporting of a historic violation). NIHE staff or their agents, such as patch managers or contractors present an opportunity for our customers to flag safeguarding or human rights violations. The phone number of local offices of the NIHE are publically available and the website includes an option for customers to make a complaint which may be in the context of human rights / safeguarding

Contract Award

Contractors successful in obtaining an award of a Works Contract are required to confirm via their monthly Contractors Sustainability Report return to the Contract Manager confirmation that they are complying with and promoting equality & Human Rights requirements, protection of personal data, reporting health & safety factors such as training HSENI inspections, Accidents/ill health , encourage prompt payment and fair dealing and are required to provide within 30 days of contract award a copy of relevant policies and processes.