

DÁIL QUESTION**NO**

To ask the Minister for Public Expenditure and Reform the extent to which building projects for the State or school building projects can have a provision for a percentage of local labour to be appointed.

- Robert Dowds.

* For WRITTEN answer on Tuesday, 25th March, 2014.

PQ Ref: 12857/14

REPLY**Minister for Public Expenditure and Reform (Mr Howlin) :**

Under EU law, public contracts above certain values must be advertised EU-wide and awarded to the most competitive tender in an open and objective process. The aim is to promote an open, competitive and non-discriminatory public procurement regime which delivers value for money. It would be a breach of the rules for a public body to favour or discriminate against particular candidates on grounds of location or nationality and there are legal remedies which may be used against any public body infringing these rules.

However, I understand that the European Commission issued guidance in 2010 that identified a range of social considerations that could be relevant for procurement including promoting employment opportunities for young unemployed or long-term unemployed and promoting compliance with core labour standards. This guidance stressed that when incorporating social considerations into the procurement process one of the key challenges is ensuring compliance with the EU Treaty Principles and the Procurement Directives. The EU procurement directives primarily envisage that social considerations may be included as contract performance conditions, provided they are not discriminatory and are included in the contract notice or in the contract documents and relate to the performance of the contract. For example, the EU Directives state that contract performance conditions may 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.

Therefore the use of social clauses in public procurement is limited to instances where they are targeted at factoring into the procurement process consideration of social issues such as employment opportunities, equal opportunities and social inclusion. In order to be compatible with EU law, they must be made known to all interested parties and must not restrict participation by contractors from other Member States.

Challenges arise from the need to ensure that: value for money is not adversely affected; additional costs are not placed on domestic suppliers relative to other potential suppliers; and

the targeted benefit is capable of being measured and monitored during execution of the contract.

The inclusion of social clauses in the procurement process would appear to be most suited to situations where the social benefit could be considered a core requirement and can be directly linked to the contracting authority's policy or strategic plan. Experience in other Member States, would also indicate that social clauses will tend to be used for services and works contracts rather than supply contracts. A further consideration is the ability of contracting authorities to effectively monitor compliance with the social clause; this may be more difficult where some of the work is to be performed in another Member State.

The use of a social clause requiring a contractor to recruit a certain percentage of those employed on a public works construction site from the ranks of the long term unemployed is being piloted on a limited number of schools projects under the Devolved Schools Build Programme Design and Build Framework, which is being administered by the National Development Finance Agency on behalf of the Department of Education and Skills. The Government Contracts Committee for Construction (GCCC) last year approved the pilot initiative to be included in the NDFA Devolved Schools Programme.

A framework of contractors has been set up for the Devolved Schools Programme, which consist of a mix of new builds, extensions and some remedial works to existing schools both at a primary and post primary level. Three contracts were awarded in February off the Devolved Schools Programme. The projects will be constructed using the public works contract for Building Works designed by the Contractor. A clause has been included in the contract which requires that 10% of the person weeks worked on the contract be undertaken by individuals recruited from the ranks of the long-term unemployed. There is also a requirement for 2.5% of the person weeks on the contract to be undertaken by apprentices.

It is important to note that such a provision must be managed carefully both to ensure that the requirements set can be met and monitored but also consideration must be given to their impact on a sector that has experienced decline in output since 2008 as it may result in significant displacement of those already in employment.

The contractor's compliance with this clause under the Devolved Schools Programme will be carefully monitored in accordance with the terms set out in the contract. Once initial evaluations on the performance of the clause have been undertaken any necessary amendments will be tabled at GCCC before they are incorporated into the PPP element of the Stimulus Programme.