

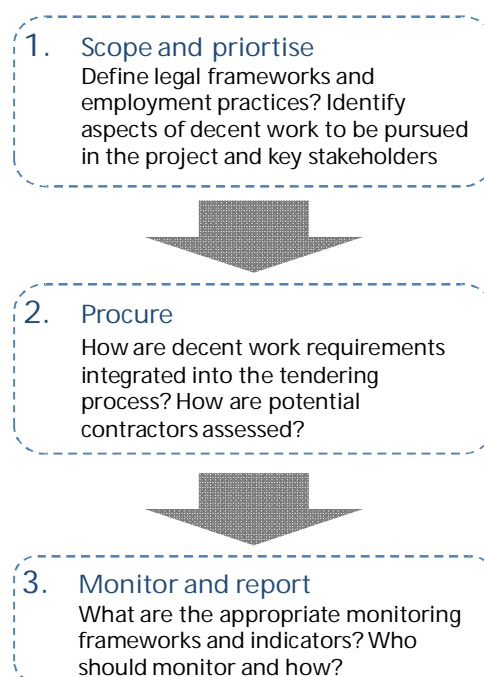
Addressing labour standards and working conditions in infrastructure

The presence of a commitment to labour standards in a policy framework does not mean that those standards will be respected and implemented in practice.

The underlying problem is often the lack of effective mechanisms to ensure that labour laws are enforced and monitored. This is particularly the case with infrastructure and construction programmes, where activity takes place on many widely scattered sites. The resources available to labour (and health and safety) inspectorates are generally insufficient to enable them to visit all sites on a regular basis and many will evade inspection altogether.

In infrastructure and construction programmes, an important means of operationalising labour standards is to ensure their inclusion as a condition within contractual documentation, with monitoring for contract compliance from within the project team. For larger-scale procurement of works, contract conditions are relatively well-established (eg FIDIC Harmonised Conditions 2010¹). Indeed, it should be noted that the EDF General Conditions² contain clauses on compliance with ILO core labour standards (para.12.9) and national labour law (para.14.2). But where consultants and contractors are not familiar with either ILO or national laws, the relevant requirements have to be explained in detail in the specification of works. Monitoring and enforcement then becomes critical.

This tool sets out the preliminary steps needed to determine the aspects of decent work to be prioritised in the project. It then provides specific examples of procurement mechanisms that can be employed to promote compliance and finally considers the question of monitoring the effective implementation of decent work through contracting and procurement.



¹ See www1.fidic.org/resources/contracts/mdb

² General Conditions For Works Contracts Financed by the European Development Fund (EDF) or the European Union

1. Scope and prioritise

Define legal frameworks and employment practices? Identify aspects of decent work to be pursued in the project and key stakeholders

A. DEFINE FRAMEWORK & DECENT WORK CONCERNS

In order to prepare for the practical integration of labour standards in infrastructure contracting, it is often useful to identify gaps in labour standards implementation by assessing:

- National laws (including ratified ILO conventions), collective agreements, standard contracts
- Common employment practice in construction in the locality, by assessing site practice
- Areas of sub-optimal labour practices and risks of labour standards violations

- For a more significant project in a high labour risk environment, consider commissioning a labour standards baseline survey.
- Contact national ILO office or national contact point; Labour Ministry and/or inspectorate; relevant sectoral trade union confederation.

In particular, it is important to decide which aspects of Decent Work are to be pursued in the project and make sure that those involved in the demand and supply side are fully aware. For instance, in the case of small-scale employment-intensive projects a number of specific considerations must be addressed with workers, contractors and supervisors – see box below.

PRACTICAL CONSIDERATIONS FOR EMPLOYMENT-INTENSIVE (“HIMO”) PROJECTS

- I. The main concern of workers is that they are paid regularly, on time and in full. Other priorities are that the tasks set are manageable in the time allowed.
- II. In countries where government has set minimum wages these should be adhered to, but this may be difficult when the minimum wage is seriously out of line with the market rate in the vicinity of the project and when work is implemented by the private sector.
- III. When implementing employment-intensive projects through contractors, it is important to monitor that workers actually receive the wages and other entitlements due to them. This may be a task assigned to a supervisor or delegated to a committee or association of local users and beneficiaries where such exists.
- IV. The workers themselves are the best monitors of wages, provision of water, toilets etc. so long as they are aware of their rights and entitlements. Awareness can be facilitated by notices posted on site, through user committees or other local dissemination channels.
- V. Caution should be used if introducing voluntary labour into projects as this can lead to abuse, particularly of the most vulnerable, and may even degenerate into forced labour.
- VI. No child under the age of 14 (or under the legal minimum age, whichever is lower) should be employed or allowed to assist on site.
- VII. Attaining a diversified workforce might be difficult. However, several steps can be taken to include groups with special needs (ex-combatants, returnees and displaced populations) and minorities, and to address gender concerns. See DEVCO E3/E7 Tool: ‘Designing for employment: incorporating employment and decent work concerns into infrastructure project identification and design’

B. IDENTIFY STAKEHOLDERS

Stakeholder engagement is very important. Try to define the way ahead by identifying stakeholders, agreeing roles and capacity-building needs, including those of state actors (labour inspectorate) and social partners (employers and trade unions).

The kinds of stakeholder engagement that can be used include the following:

- Meetings with trade unions and employer groups to clarify national laws and identify the gaps with common practice
- Workshops for potential contractors to build their understanding of labour standards, national labour laws and health and safety issues
- Workshops with trade unions to clarify and improve their role in monitoring the implementation of labour clauses in contracts

2. Procure

How are decent work requirements integrated into the tendering process? How are potential contractors assessed?

Incorporating decent work requirements into the procurement documentation and process is best done in accordance with the following phased approach:

A. MAKE OBJECTIVES CLEAR

In order to raise the profile of the Decent Work related elements of a project, one approach is to put any Decent Work-related objective into the project title (eg 'construction of health centre/school/office with special regard to health and safety') as this publicises the objectives and may help overcome any objections from procurement officials to including occupational health and safety in evaluation criteria. An overarching example of this approach is the EC Project – Support to the Sector Plan "Productive development with decent work" (DCI-ALA/2009/019-774) in Bolivia – see below. The project includes a specific component to improve the labour conditions of informal workers and miners and livelihoods of indigenous people in the Poopó river basin.

BOLIVIA - SUPPORT TO PRODUCTIVE DEVELOPMENT WITH DECENT WORK

This project seeks to improve the productivity and quality of employment of small business in prioritised sectors. One component of the project aims to support improvements in working conditions and employment generation in the mining areas of Bolivia, including the following objectives:

- Establish initiatives to improve working conditions, competitiveness and environmental compliance in the small-scale mining sector and to generate employment in other alternative sectors
- Strengthen capacity of state and private institutions in mining sector to enable decentralised management, human resources development, and prevention and resolution of conflicts and supervision of labour laws

B. INVITATION TO TENDER

The introduction or preface to the invitation to tender can include reference to EC policy on decent work and labour standards. This reference could state that ‘as part of its commitment to sustainable development, the EC promotes the application of best practice regarding environmental and social matters, including labour and working conditions, as stipulated in the EC Regulation No. 1905/2006 – on establishing a financing instrument for development cooperation – which calls for the promotion of the Decent Work Agenda as a universal objective, to be achieved, through global and other multilateral initiatives to implement the ILO Core Labour Standards’.

C. TENDERING PROCEDURES

Instructions to tenderers and evaluation of tenders

The client may consider stating in the invitation to tender that demonstrable competence to comply with the EDF General Conditions, including clauses on compliance with ILO core labour standards (para. 12.9) and national labour law (para. 14.2) – or equivalent national procedures – forms part of the criteria used to assess the competence of the contractor to perform the contract satisfactorily.

The specified criteria used in the evaluation of tenders could then include:

- objective and verifiable indicators to assess the record of the contractor in observing local labour laws and health and safety regulations, such as (i) penalties imposed by labour inspectorates / courts including fines and warnings, as a factor of historical contract non-performance, as well as (ii) cases outstanding with local labour courts
- Other evaluation criteria related to labour practices, such as:
 - a. The minimum percentage of the contract sum that will be used to pay wages
 - b. The maximum percentage of the contract sum that might be executed by sub-contractors
 - c. Whether the company has a credible policy for health and safety including induction for new workers
 - d. Whether the company has a credible policy on subcontracting to ensure that labour standards and health and safety requirements are implemented, monitored and reported on by subcontractors

Schedules of Prices / Bill of Quantities

In pricing the work to be done, contractors can be requested to disaggregate unit costs into labour, material and equipment costs in order to ascertain the realism of the tender vis-à-vis payment of statutory or agreed minimum wage levels. The quoted prices for labour must be consistent with the treatment of workers in accordance with national law and other applicable standards (such as statutory minima or agreed overtime premia). Items that are necessary to meet the client's requirements (eg requirements for health and safety) and which can be separately priced should be listed as prime cost items in the Bill of Quantities or whatever other pricing mechanism is used.

D. REQUIREMENTS

Specifications

The specifications can set out in detail what is required of the contractor, including their role in ensuring compliance on the part of their sub-contractors. The specifications should explain in simple

language the obligations of the contractor to the workforce according to national labour laws, health and safety laws and any additional requirements of the contractor. Of particular importance is the requirement to keep a register of workers on the site at all times, as well as a register of accidents. These are issues that are often overlooked but essential for credible monitoring.

Specific requirements should also be explained verbally at pre-tender meetings.

E. CONDITIONS OF CONTRACT

Particular / specific conditions of contract

The performance conditions can specify the contractor's labour obligations in as much detail as possible. For instance, an EC study on employment-intensive methods in infrastructure³ has found the following examples of additional specific clauses relating to labour standards:

KENYA – FED/2006/018-582: NORTHERN CORRIDOR REHABILITATION PROGRAMME PHASE III

TAPs state that 'the conditions of contract require that the Contractor must honour workers rights to belong to trade unions and is required to fully comply with Kenya Association of Building and Civil Engineering Contractors collective bargaining agreement regarding wages and general terms of employment [...] Observance of fair wages and labour laws are well covered under the EDF standard works contract conditions art. 14.2 (rates of remuneration and general working conditions as laid down by the laws of the state of contracting authority) and 16.3 (insurance for industrial accidents and civil liabilities for staff). In addition Kenya has a strong labour union movement and well established collective bargaining practices covering all key sectors including the construction industry. The existing labour laws require that as far as practicable, unskilled labour should be recruited through the nearest labour office in order to ensure direct employment creation from the immediate neighbourhood of construction sites.'

UGANDA – FED/2006/018-457: BACKLOG ROADS MAINTENANCE PROGRAMME (BRMP)

'General specifications oblige the contractor/s to comply with the Public Health Act, the Factories Act, the Worker's Compensation Act, the Trade Union Decree, the Employment Decree and other statutory regulations, rules and bylaws that may be enacted from time to time in respect of OHS. As such the contractor is supposed to ensure so far as reasonably practicable, the health, safety and welfare at work of his/her employees and of other persons on site.'

The specific conditions can set out additional requirements for the Works stipulated in any legal agreements with the EC. This is particularly important where the contractor's compliance with applicable laws and/or legal agreements with the EC is dependent upon the performance of third parties and, in particular, the Contractor and its sub-contractors. In particular, the specific conditions could state:

³ 'Study on Employment-Intensive Methods in Infrastructure and other Non-Social Sector Programmes', 2009/220452/1, Final Report, October 2010 – commissioned by DEVCO E3/ESIP.

'The appointed party shall be required to ensure the implementation and monitoring of EC requirements on labour standards. All workers employed on the site – whether direct employees of the Contractor or employees of subcontractors and labour-only contractors – shall be employed in accordance with national labour legislation and any additional requirements notified to the party by the EC/NAO. The appointed party will be required to report regularly on its implementation and monitoring of the EC's requirements relating to labour standards.'

3. Monitor and report

What are the appropriate monitoring frameworks and indicators? Who should monitor and how?

The DEVCO study found that labour standards are seldom addressed in EC project monitoring. Where they are, monitoring of such provisions typically falls under the responsibilities of an appointed supervisor.

PRINCIPLES OF LABOUR STANDARDS MONITORING

- Monitoring to ensure compliance with the requirements of the contract should be carried out within the project team
- The reporting chains should be from subcontractor (if any) to main contractor to supervising engineer to client to funder
- A useful contribution to monitoring can be expected from the workforce, so long as they are made aware of their rights and benefits (eg by notices posted in local language) and there is a channel for complaints if these are not respected. Trade unions can play an important role in this process as are properly conceived and understood grievance mechanisms.
- The technical audit is an appropriate place to report on labour standards during construction while the financial audit should report on expenditure on wages, benefits, health & safety

Of course, the strength of a contract may be diluted when sub-(and sub-sub) contractors are appointed to provide services or materials for a construction project. The most vulnerable workers are often the least visible. In all situations, therefore, and especially at community level, an active and ongoing programme of awareness-raising and training is required. This can be assisted by working with trade unions or community-based organisations to provide for a channel for complaints outside the formal direct employment relationship.

RESOURCES

'Implementing Labour Standards in Construction – a Sourcebook', Water, Engineering & Development Centre (WEDC), Loughborough University, 2003

'Employment-Intensive Infrastructure Programs: Labor Policies and Practices', ILO Geneva, 1998:
www.ilo.org/public/english/employment/recon/eiip/download/blue_guide.pdf