

TJM Scotland/CORE Scotland draft submission on proposed revision of Local Authority Procurement Circular – LAPC (02) 2005 ¹

Introduction

1. At the launch of their joint bid to become Fair Trade Nations, the First Ministers of Scotland and Wales emphasised their commitment to fair trade as a means of lifting millions out of poverty. First Minister Jack McConnell was quoted as saying “...our commitment to fair trade is at the centre of our national effort to make poverty history”. If the Scottish Executive is to turn these fine words into reality, then that commitment to fair trade must be evident across all of its activities and undertakings.

2. This is particularly so in relation to the Executive’s approach to public procurement policy and practice. We warmly welcome the Executive’s decision to issue revised guidance to Scottish local authorities on fair and ethical trading. Local authority spending has the potential to support the growth of fairly traded and ethically sourced goods and services across Scotland. The Scottish Executive and Parliament are now well placed to provide leadership in a key area of public policy to the other nations of the UK and of Europe.

3. The European Commission’s Green Paper “Promoting a European Framework for corporate social responsibility” (2001) stressed the importance of social, ethical and environmental considerations in business and investment plans. The Green Paper was intended to launch a broad debate on how the European Union could promote social responsibility at both European and international level.

4. By linking the principles of fair and ethical trading to the process of local authority public procurement the Executive is placing Scotland at the forefront of this European wide debate on socially responsible spending. With sufficient courage and vision, it could also move the debate onto an entirely new level that would make a significant contribution to its stated aim of helping to make poverty history.

5. This document seeks to help in this task by exploring ways in which fair trade can be mainstreamed in Scottish Executive procurement. It does not claim to offer definitive answers or a professional legal opinion on the matter as ‘interpretation of Community Law is ultimately the role of the European Court of Justice.’ ² However this submission aims to show that EU procurement directives can be interpreted to enable fair trade

¹ For technical enquiries and further questions relating to the 2004 Directive, contact adymond@sciaf.org.uk. With thanks to Simon Clement of ICLEI Europe’s *Buy Fair* project. ICLEI Europe (www.iclei-europe.org/buyfair) is an international association of local governments dedicated to sustainable development; *Buy Fair* is one of several projects. It aims to provide clear and simple advice for European public authorities wishing to buy Fair Trade products <http://www.iclei-europe.org/index.php?id=2218>

² European Commission (2001) Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement p6 COM(2001) 566. Henceforth referred to as the interpretative communication.

procurement and to give concrete examples where such as interpretation has, in fact, resulted in contracting authorities procuring fair trade products. It is hoped that these points will be reflected in guidance given by the Executive to contracting authorities.

6. The focus is predominantly on the consolidated public procurement Directive published in 2004 ³(Directive 2004/18/EC of the European Parliament and of the Council) which focuses on procedures for the award of public works contracts, public supply contracts and public service contracts.

7. However, as this Directive applies only to contracts equal to, or in excess of, 211,000 euros (5,278,000 euros for work contracts), Member States are free within the limits of Community law, to decide whether public procurement contracts not covered by the directives may be used to pursue objectives other than the objective of “best value for money” pursued by the public procurement directives. In particular Member States are free to define and apply in their procurement procedures for such contracts, selection and award criteria of a social nature, provided that they comply with the general rules and principles of the EC treaty.

8. We would urge the Executive to draw this freedom to the attention of local authorities in the guidance, making it clear that they have the ability to include social labels like the Fairtrade mark in the selection and award criteria for these contracts.

9. It is also hoped that the following comments will be useful for contracting authorities awarding contracts not covered by the Directive, as they will show how best to mainstream fair trade within the more general constraints of EU procurement law and how best to demonstrate compliance with non-discriminatory principles.

Rationale for Inclusion of Fair Trade products: An Interpretation of the 2004 Directive

10. To start, then, it is important to note the objectives behind EU procurement policy. The Commission’s *Guide to the Community Rules on Public Supply Contracts* ⁴ (now outdated) states that the purpose of the legislation is ‘to make sure that public contracts throughout the Community were open to firms from all Member States on equal terms and to make procurement procedures more transparent so that compliance with the principles laid down in the Treaty could be enforced more effectively’. It explains that legislation is based around three key principles;

- ‘Community-wide advertising of contracts so that firms in all Member States have an opportunity of bidding for them
- The banning of technical specifications liable to discriminate against potential foreign bidders.

³ Henceforth referred to as the 2004 Directive. The accompanying Directive (2004/17/EC) on procurement of water, energy, transport and postal sectors is not covered as it is not immediately relevant to the focus of this paper.

⁴ European Commission *Public Procurement in the European Union: Guide to the Community Rules on Public Supply Contracts other than in the water, energy, transport and telecommunications sectors*. DIRECTIVE 93/36/EEC

- Application of objective criteria in tendering and award procedures’⁵.

11. Indeed, the 2004 Directive states that the ‘principle of awarding contracts...(is that) contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way’⁶. It further notes that the Directive uses Court of Justice case law to clarify ‘the possibilities for the contracting authorities to meet *the needs of the public concerned, including in the environmental and/or social area*, provided that such criteria are linked to the *subject matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles (of the Treaty)*’ (emphasis added)⁷.

12. So, provided that Fair Trade criteria are a) seen to fill a public need and b) included in a manner that complies with the above conditions, in theory nothing in the 2004 Directive should be seen as constituting a barrier to their effective implementation. Indeed, the text states that ‘nothing in this Directive should prevent the imposition of enforcement measures necessary to protect public morality...human or animal life...*in particular with a view to sustainable development* provided that these measures are in conformity with the Treaty’⁸.

13. In fact, several contracting authorities have already included a wide range of Fair Trade products in calls for tender for both supply contracts and service procurement, including:

- The local authorities of Utrecht and Zuid Holland, Holland
- The public authorities of Rome and Settimo Torinese, Italy
- The City of Madrid, Spain
- Lyon Public authority, France
- The Austrian government as part of its EU Presidency
- The European Commission itself.

(see appendix for more information, further case studies and for contact details of the authority in question).

14. So the question then becomes not whether to include fair trade products but how to operationalise them in order i) to comply with EU public procurement laws and ii) to be able to genuinely embed fair trade to the maximum extent possible. In particular, the challenge for Executive will be to overcome the ‘tendency’--noted by McClellan in a report commissioned by the Executive--‘to attribute to EU legislation the reasons for not being able to achieve best practice’⁹.

⁵ Ibid, section 2.1

⁶ 2004 Directive Article 2

⁷ ibid, Recital 1

⁸ Ibid, recital 6

⁹ McClellan, J. F. (2006) *Review of Public Procurement in Scotland: Review and Recommendations* p33. One of McClelland’s recommendations was a formal programme of workshops on EU legislation and it would seem appropriate that Fair Trade procurement is given a prominent position within this.

15. As such, the following sections provide recommendations on how to mainstream Fair Trade products most effectively, looking at key stages of the procurement process;

- Formation of subject matter
- Writing the technical specification
- Choosing criteria for awarding the contract
- Conditions for contract execution

Formation of the subject matter

16. According to the European Commission's own interpretative communication on integrating social considerations into public procurement, the stage at which authorities define the goods or services to be contracted offers greater scope for taking social considerations into account.

17. At this stage the contracting authority is free to define the goods, services or works it intends to buy in ways that correspond to its concerns as regards social and environmental policy. The only restriction placed upon it by EU procurement directives is that it cannot define the contract so as to reserve access to the contract for domestic companies to the detriment of tenderers from other Member States.

18. According to this logic, the contracting authority should be able to choose to procure fair trade products as long as, in so doing, they are not discriminating against bidders from other member states. If the contracting authority does wish to procure fair trade goods, it is crucially important that there is an explicit reference to Fair Trade in the subject matter of the contract, not only to ensure maximum transparency and clarity for bidders, but also to enable fair trade considerations to be brought in at later stages of the procurement process. This is relatively straightforward if it is a public supply contract, as it can be framed as 'purchase of (particular) fair trade product.' For example, the contracting authority for Madrid published a call for tender entitled 'Supply of Fair Trade T-shirts' in order to promote Madrid as the site of the Olympic Games.

19. It is more complicated if the contract in question is for a public service contract, as it could be argued that products are not normally used to directly define a service and are thus not relevant. Nevertheless, products provided as part the service clearly have some relation to the service ultimately provided--even if only an indirect one--and, as outlined above, it is up to the contracting authority to define exactly what services it wants to procure. We return to this discussion in the next section; for the time being, it is enough to note that the Commission itself has procured fair trade products as part of a larger catering service.

20. This casts new light on the Scottish Executive's advice ¹⁰ that 'advertisements and invitation to tender documents can make it clear that fair trade options *can be* included in products provided to meet the organisation's catering requirements...and contract documents can make it clear that, *where the winning tenderer is able to provide fair trade options*, such products should be made available'. In fact, it appears that local authorities

¹⁰ LAPC (02) 2005, p2

have more leeway than this; not only can they emphasize that bidders can provide fair trade products, they can make provision of such products obligatory.

Writing the Technical specification

21. One of the most effective ways of mainstreaming Fair Trade within the Scottish Executive's public procurement policy is to include Fair Trade requirements in the technical specification. Indeed, the Commission has noted that 'public procurement directives offer various possibilities for taking into account social considerations ...especially when drawing up technical specifications or selection criteria.'¹¹

22. This notwithstanding, there are two main points of debate here; a fundamental question as to the legitimacy of Fair Trade requirements in technical specifications and, if Fair Trade requirements are considered legitimate, a more technical question of how to frame them.

23. In the former instance, it has been argued that Fair Trade criteria have no place in a technical specification as they are related to a method of production that does not materially affect the characteristics of the end product. The Scottish Procurement Directorate has previously argued that 'specifications...cannot be framed in terms of fair or ethically traded requirements, as such 'social labels' do not define the end product in terms of characteristics or performance as required by the EC rules.'¹²

24. However, in *Going Green*, the Commission stated that requirements specifying production methods which do not impact on the characteristics of the end product are permissible if 'the nature and value of the end product has been modified by the process and production method used' and gives the example of 'green' as opposed to conventionally produced electricity. In theory, there is no reason why this principle should not equally apply to Fair Trade methods and this seems to have been accepted in practice by the Commission.

25. The situation is perhaps more complicated when it comes to specifying Fair Trade products to be used as part of a wider service provision as the products used do not normally define the service provided. However, this problem could be overcome by specifying Fair Trade in the subject matter (heading of the service to be provided). Moreover, the Commission has stated that it is legitimate for a contracting authority to require that 'a service contract for a canteen provides a certain percentage of organic food or that certain foodstuffs would be organically produced'¹³. There is no reason to think Fair Trade products would be any different--especially as the Commission's call for tenders for cafeteria services and drinks for meetings stated in the technical specification that the coffee should be Fair Trade.

¹¹ Interpretative Communication, p3

¹² LAPC (02) 2005

¹³ European Commission *Buying Green! - A Handbook on Environmental Public Procurement*. Quoted in EFTA (2006) *Fair Procurement: Making Public Authorities and Institutional Buyers Local Actors of Sustainable Development*, from which much of the information in this report is based.

26. Similarly, the Austrian government's call for tender of catering services during its Presidency of the EU stated that 'every user has the opportunity to demand that...catering for journalists use the Fair Trade option, meaning that drinks are available on the Fair Trade market are being offered. For those products lump sums and flat prices have been fixed as well'. Moreover, the aforementioned EFTA study notes that Lyon public authorities included respect for fair trade principles in the technical specification of catering services for receptions, kindergartens and schools (see appendix for more details of case studies). Thus it appears that there would be no theoretical reason why Fair Trade criteria could not be used in a technical specification. The question is then not 'if' but 'how.'

27. To ensure that Fair Trade criteria are not interpreted as a barrier to trade, the criteria contained within the technical specification should be linked to the subject matter of the contract--hence the importance of mainstreaming Fair Trade from the very beginning of the process.

28. Article 23, sub-clause 3a) of the Directive provides further guidance for drawing up technical specifications, stating that they can be formulated with reference to 'national standards transposing European standards, European technical approvals, common technical specifications, *international standards, other technical reference systems established by European standardisation bodies...national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of products*. Each reference shall be accompanied by the words 'or equivalent.'" The Directive also states that, 'to demonstrate equivalence, tenderers should be permitted to use any form of evidence'.

29. In the absence of 'national standards transposing European standards' or 'European technical approvals,' contracting authorities have tended to refer to the 1998 European Parliament Resolution on Fair Trade (OJ C226/73) and the Commission Communication to the Council on Fair Trade (29/11/99-COM 1999/619). For example, these were the documents cited by the contracting authorities in Rome and Settimo Torinese in defining Fair Trade products supplied in canteen services (see appendix). However, in July of this year, the European Parliament adopted a resolution¹⁴ which, among other things, calls for a clear policy as regards Fair Trade and sets out common criteria that Fair Trade products need to meet. It is thus possible that this resolution, and the definition contained within it, could provide a useful basis for the technical specification.

30. Thus, if necessary, it would be possible to draw up a technical specification for fair trade products without mentioning any recognised fair trade standards, awarding bodies or brands, be they national or international. However, it appears that it is legal to make reference to international Fair Trade standards (i.e. criteria for labels granted by the FLO or by IFAT) or to national technical specifications (I.e to refer to the Fairtrade

¹⁴ European Parliament resolution on Fair Trade and development (2005/2245(INI)). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2006-0320&language=EN>

Foundation, the UK branch of the FLO) but not to exclusively insist on them; equivalent standards must be permitted.

31. The Scottish Executive has previously advised to the contrary; namely, that ‘specifications cannot be framed in terms of fair trade requirements, as such social labels are not permitted under the EC rules’ and that ‘in referring to the possible inclusion of fair trade options, specific marks or trade names should be avoided.’¹⁵ This is, presumably, on the bases of Article 23, sub-clause 8 which states that ‘unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production *with the effect of favouring or eliminating certain undertakings or certain products*. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter... is not possible; such reference shall be accompanied by the words "or equivalent"’.

32. However, the caveat at the beginning of the clause--*unless justified by the subject-matter of the contract*--is crucial, as fair trade would ideally be included in the subject matter and would thus potentially provide means of justification for including ‘a particular process...origin or production’. It is also debateable whether reference to, for example, the FLO mark, may also be legal as long as it did not presume to favour its accredited organisations over other providers, as implied by the clause highlighted here in italics.

33. Moreover, in authorising references to an ‘international standard’ or to a ‘national technical approval...or national technical specification’, paragraph 23, 3a) seems to imply that it is possible to refer to a Fair Trade label in the technical specification (FLO or IFAT as an example of the former, Fairtrade Foundation as an example of the latter).

34. Indeed, Commissioner Bolkestein has stated that ‘a contracting authority wishing to procure Fair Trade products needs to define the technical specifications of the product in relation to the social or environmental performance underlying the label. Products which have obtained the specific label *which was used as a basis* may then be deemed to comply with the technical specification. However, other economic operators must be allowed to prove their compliance with the technical specifications by any other appropriate means. Which Fair Trade standard is appropriate for the respective tender needs to be established on a case by case basis’ (emphasis stated)¹⁶.

35. Thus it appears as if it is legal to refer to a specific label and to use a particular Fair Trade label as a basis for drawing up criteria--that is, as long as this is not exclusive, is accompanied by the words ‘or equivalent’ and adheres to the basic principles of EU law. This need not be problematic; when the contracting authorities in Utrecht and Zuid-Holland published a call for tender in hot beverages, they referred to Fairtrade labels awarded by Max Havelaar (the Dutch branch of the FLO). However, they stated that ‘if

¹⁵ LAPC (02)2005 pt 8

¹⁶ Written question by Baroness Sarah Ludford to the Commission (17th November 2003). Answered by Commissioner Bolkestein on 8th January 2005. Quoted in EFTA op cite

you or the products do not use these labels and you are of the opinion that the offered ingredients...fall under a similar arrangement, you should demonstrate this, as well as how this is and will be guaranteed.'

36. Thus, as these legal texts and aforementioned examples show, if these principles are adhered to, it appears as if Fair Trade criteria can be included in technical specifications. It is also possible to include Fair Trade products through authorising providers to provide Fair Trade variants--something that the British Office of Commerce has made explicit--but this is not as effective as the former option.

Criteria for awarding the contract

37. The criteria used for awarding the contract are also important in mainstreaming Fair Trade products. The EU Directive states that the contracting authority has to publish the criteria to be used for awarding the contract, which will be either the lowest price or 'the most economically advantageous tender.'¹⁷ Choosing the first option does not preclude using Fair Trade products as it merely means that the contract will be awarded to the product/service provider that can fulfil the technical specification at the lowest cost.

38. The second option is more complex; if chosen, it is crucial that the criteria are 'linked to the subject-matter of the contractor or the manner in which it is performed'¹⁸ and that the criteria--and their relative weighting--are explicitly stated. However, it may allow for additional Fair Trade criteria to be introduced in two ways.

39. First, European Court of Justice Case Law (specifically *Commission vs. French Republic* and *Concordia Bus Finland*) shows that criteria which i) are in keeping with EU procurement principles; ii) are explicitly mentioned in the contract notice--including in the subject-matter--and iii) 'do not confer an unrestricted freedom of choice on the authority' can be used as additional non-determining criteria. That is to say that, under some circumstances, if two tenders are of equal economic advantage, extra points could be awarded for tenders that include Fair Trade products¹⁹.

40. Second, if Fair Trade is seen to constitute an economic advantage, and if the relevant provisions governing the use of economically advantageous criteria are observed, Fair Trade provisions could be specified as one of several relevant criteria used to determine how the contract is awarded. Although one of the aims of the Directive is to 'avoid the risk...(that contracting authorities) may choose to be guided by considerations that are not economic in nature'²⁰, the Commission has confirmed that there may be some additional leeway in this process, as '*it is not necessary for each individual award criterion to give an economic advantage to the contracting authority, but that taken together (i.e. economic and environmental) the award criteria must allow for determining*

¹⁷ 2004 Directive, recital 46.

¹⁸ Interpretative Communication p13

¹⁹ EFTA (2006) op cite

²⁰ Interpretative Communication

the best value for money’²¹.

41. Thus it is not the case that, as the Executive has formerly stated, ‘contracts for catering services and supplies should be awarded on the basis of the best value for money bid...regardless of whether fair trade options have been included...a bid cannot be rejected or considered non-compliant simply because it does not include any desired fair trade options.’²² In fact, as long as fair trade is mentioned in the subject matter and in the technical specification, it is necessary by definition to reject a bid not offering fair trade products!

Execution of a Contract

Including Fair Trade

42. Although contract conditions and clauses must comply with Community Law, the execution phase of public procurement contracts is not currently regulated by the 2004 Directive. Indeed, the European Commission’s interpretative communication indicates that contracting authorities can include a condition relating to “social considerations”²³ when setting conditions for the execution of a contract.

43. So it may be possible to include use of Fair Trade products as a contract condition, provided that:

- It is interpreted as a ‘social consideration’ (for example, because it can be seen to ‘ensure compliance with fundamental rights’)
- It complies with Community Law
- It complies with procedural laws—i.e. contract conditions are mentioned in the contract notice
- It does not act as a disguised technical specification

44. The revised guidance should therefore draw to local authorities’ attention, and encourage them to use their ability to set conditions for the execution of contracts that require the successful tenderer to source goods carrying the Fairtrade mark or other recognised “social label” where possible. Fairtrade and ethical criteria in the sourcing of the goods and services to be supplied are designed to ensure compliance with the kind of rights specified in the Commission’s definition of “social considerations”.

45. However, if this is done, it should ideally be in addition to, and not a substitute for, including Fair Trade at other stages of the public procurement process, specifically:

²¹ Points raised in EFTA (2006) op cite

²² LAPC (02)2005

²³ According to the Commission “social considerations” includes measures to ensure compliance with fundamental rights, with the principle of equality of treatment and non-discrimination (e.g. between men and women) and with Community directives on working conditions and the application of employment law. It further notes that ‘contracting authorities have a wide range of possibilities for determining the contractual clauses on social considerations.’

- When choosing the subject-matter (i.e. having it in the subject heading)
- When writing the technical specification
- When allocating the award criteria (i.e. specifying Fair Trade provisions as one of several ‘economically advantageous criteria’ where possible)

Including International Labour Organisation Standards

46. Moreover, The Commission’s interpretative communication makes clear that all Community, international and national regulations, rules and provisions, which are applicable in the social field, shall apply fully during the performance of a public procurement contract following the award of the contract.

47. In particular, it draws attention to the International Labour Organisation’s core labour standards being recognised at international level and applying in their entirety to the Member States. The interpretative communication explicitly states:

48. “Bids from tenderers who have not taken account of obligations on employment protection provisions and working conditions identified by the contracting authority in the contract documents cannot be considered as complying with the contract documents. Moreover, where tenderers have not taken sufficient account of these obligations in their tenders, their tenders might be considered as abnormally low and, in some cases, might be rejected for this reason.”

49. While the freedom to provide services is a fundamental principle of the EC Treaty, the European Court of Justice has already accepted that worker protection is an imperative reason in the general interest to limit or restrict this freedom by rule.

50. The revised guidance should therefore advise authorities that compliance with ILO core labour standards in the provision of goods and services should be included in contract documents and should be made a condition for the execution of contracts. Sourcing goods and products from global supply chains in which these core ILO standards are not certifiably adhered to, would therefore exclude a tenderer from applying for a contract or would be grounds for removing a tenderer in the execution phase of a contract.

Conclusion

51. The European Commission has made it clear that the policy on the Internal Market can be pursued while at the same time integrating the pursuit of other objectives, including social policy objectives. It has also noted that, while current public procurement directives contain no specific provision on the pursuit of social policy goals, it considers it possible under existing rules to attain desired social objectives.

52. Moreover, the European Court of Justice has confirmed that the aim of public procurement directives is to avoid the risk of preference being given to national tenderers over tenderers from other Member States. The aim was never to prevent social considerations, including those involved in FAIRTRADE mark and other social labels,

from being applied to the procurement of public goods and services.

53. The European Parliament has also passed a resolution in July noting that the European Union is committed to support Fair Trade and arguing that, with a coherent EU-wide policy framework allied to sufficient support to Fair Trade, consumer awareness and demand for Fair Trade could be boosted, particularly in those EU countries where it is not yet well established. The momentum in Europe is unquestionably towards support for Fair Trade.

54. Social policy has been central to the development of the European Union. Economic progress, social cohesion and a high level of protection and improvement of the quality of the environment are complementary pillars of the EU's model for sustainable development and are at the heart of the process of European integration. The Charter of Fundamental Rights of the European Union, proclaimed at the Nice European Council, restates the Union's aim of fully integrating fundamental rights in all its policies and actions.

55. Putting fair trade and ethical standards at the heart of common procurement policies is therefore wholly in step with the direction and purpose of current European policy and practice. It is the search through existing procurement directives for grounds on which to exclude fair trade or ethical requirements that is out of step with the direction and purpose of European policy.

56. We therefore recommend that the Executive's revised guidance reflect the points raised in this document and that it be framed positively to encourage local authorities to give maximum support in their procurement policies to fairly and ethically traded goods and services. In doing so, the Executive will send a powerful signal to a watching world that Scotland is serious about its status as a Fair Trade nation and determined to put fair trade at the heart of its national effort to help make poverty history.

Appendix:

Public Supply Case Studies

Case Study 1

Contracting Authority: City of Madrid.

Details of Fair Trade procurement and methods used: Publication of a call for tender entitled 'Supply of Fair Trade T-Shirts' in support of their bid for the Olympic Games. Thus Fair Trade included in the subject matter of the contract.

Source/Further information: European Fair Trade Association (2006) *Fair Procura: Making Public Authorities and Institutional Buyers Local Actors of Sustainable Development* Study Financed by the European Commission. Author's personal copy; available on request from adymond@sciaf.org.uk

Contact Details of relevant official: N/A

Case Study 2

Contracting Authority: City of Bonn.

Details of Fair Trade procurement and methods used: Supply contract for Fair Trade coffee worth 1850 euros per year (132 kg of coffee purchased). Compliance with Fair Trade principles was used as an award criteria, and FLO standards and principles were referred to.

Source: CARPE Cities as Responsible Purchasers in Europe: Networking for Sustainable Public Procurement. Case Example: City of Bonn. Available at: www.eurocities.org/carpe-net/site/article.php?id_article=43

Contact details: Maria Honn-Berghorn. Director, International Affairs and Protocol. International@bonn.de

Case Study 3

Contracting Authority: City of Bilbao.

Details of Fair Trade procurement and methods used: small-scale; technical specification refers to FLO standards and requires that certain products in Christmas hampers are fair trade.

Source: CARPE Cities as Responsible Purchasers in Europe: Networking for Sustainable

Public Procurement. Case Example: Bilbao Fair Products. Available at:
www.eurocities.org/carpe-net/site/article.php?id_article=43

Contact details: Miguel Perez, Officer Area de Muyer y Cooperacion al Desarrollo.
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Case Study 4

Contracting authority: City of Lyon

Details of Fair Trade procurement and methods used: Supply contract for nurseries and schools included fair trade products such as; coffee, olive oil, rice, bananas, juice, chocolate, sugar. Compliance with Fair Trade principles was mentioned as a factor in the award criteria.

Fair Trade products were also included in service contracts; e.g. catering services for schools, kindergartens and canteens. Fair trade principles were included in the technical specification.

The contract clauses were developed on the basis of national and international standards; FLO/Max Havelaar (the national equivalent of the UK's Fairtrade Foundation) 'or equivalent' were referred to.

Source: CARPE Cities as Responsible Purchasers in Europe: Networking for Sustainable Public Procurement. Case Example: Lyon Catalogue of Fair Trade products. Available at: www.eurocities.org/carpe-net/site/article.php?id_article=43

Contact details: Raymond Kaiser, Director Adjoint des Achats.
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Case Study 5

Contracting authority: Joint procurement between the provinces of Utrecht and Zuid-Holland, the Netherlands.

Details of Fair Trade procurement and methods used: Fair Trade tea, coffee and cocoa (hot chocolate) were procured, including in vending machines. The technical specification stated that 'you must demonstrate that your products are allowed to use both labels (Max Havelaar, which is the Dutch member of FLO, the equivalent to the UK's Fairtrade Foundation, and the Dutch environmental label EKO-Keurmerk) or describe the extent to which you fulfil this. If you or the products do not use these labels, and if you are of the opinion that the offered ingredients are at least comparable, or fall under a similar arrangement, you should demonstrate this as well as how this is and will be guaranteed.'

Fair trade products were further mainstreamed by use of the most economically advantageous option for award criteria. Within this, it is notable that 'sustainable procurement and labour conditions' was listed as more important than was price. Another encouraging feature was the effect that this call for tender had on the hot beverages market, leading to a collaboration between vending machine suppliers Maas and coffee roasters Peeze.

Source: ICLEI (2006) *Buy Fair: European Public Procurement guidelines for Fair Trade. Case Study: Joint European Procurement of hot beverages. Provinces of Utrecht and Zuid-Holland, the Netherlands.*

Contact details:

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- ICLEI Europe; first point of contact Simon Clement simon.clement@iclei-europe.org or www.iclei-europe.org/buyfair

Case study 6:

Contracting authority: Autonomous University of Barcelona

Details of Fair Trade procurement and methods used: the call to tender for service contract for vending machines stated in the technical specification that 'hot beverage machines must use so-called Fair trade coffee. In order to guarantee the authenticity of this coffee the bidders will have to support by documents the origin of the coffee by means of a certificate issued by an NGO or import company of this sort of coffee. The origin of the coffee has to be clearly displayed on the vending machine, highlighting the Fair Trade label... as soon as technical, logistic and economic conditions allow it, the AUB will ask the suppliers of vending machines to expand their range of products in this field...to other hot drinks (tea and chocolate), food and cold drinks.'

Source: ICLEI (2006) *Buy Fair: European Public Procurement guidelines for Fair Trade. Case Study: Fair Trade Coffee in Vending Machines. Autonomous University of Barcelona, Spain.*

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Public Service Contract Case Studies

Case Study 7

Contracting authority: Austrian government (Procurement Office of Austria; Federal Ministry of Agriculture, Forestry, Environment and Water Management)

Details of Fair Trade procurement and methods used: the technical specification for the tender for catering services for Austria's EU Presidency stated that 'every user has the opportunity to demand that:

- a) coffee breaks
- b) session catering
- c) various drinks
- d) catering for journalists

Use the Fair Trade option, meaning that drinks available on the Fair Trade market are being offered. For these products lump sums and prices have been fixed.' Fair trade products included are; coffee, chocolate, tea, orange juice.

It is notable that use of Fair Trade products was not originally foreseen when the call for tender was published, but that they were later included as an option.

Source: ICLEI (2006) *Buy Fair: European Public Procurement guidelines for Fair Trade. Case Study: Fair Trade option for Catering services for the European Presidency.*

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Case Study 8:

Contracting Authority: European Commission

Details of Fair Trade procurement and methods used: The Commission's call for tender for cafeteria services and beverages at meetings included fair trade coffee in the technical specification.

Source: EFTA.

Contact Details: Original contract notice published in Official Journal n2 S 65 of 03.04.02, from which contact details may be available.

Case Study 9

Contracting Authority: Municipality of Rome, Italy.

Details of Fair Trade procurement and methods used: the call for tender for canteen services for schools in Rome included a section in the technical specification stating that every pupil had to have one fair trade banana a week. The call for tender stated that ‘all Fair Trade operators that have the characteristics of the Parliament resolution on Fair Trade (OJ C226/73) are considered to be eligible, even if they are not linked to IFAT.’

Furthermore, the tender was awarded to the bidder that could offer the most economically advantageous option. Within this, 2 points out of 100 were awarded if the products were offered by Fair Trade suppliers, whilst 8 points were awarded for bidders who could ‘increase training courses and communication and information campaigns.’

As a result of this, more than 140 000 students receive fair trade bananas, with over 200 000 kilograms of fair trade bananas purchased per annum.

Source: ICLEI (2006) *Buy Fair: European Public Procurement guidelines for Fair Trade. Case Study: Municipalities of Rome and Settimo Torinese, Italy.*

Contact details:

- Cristisno Calvi, CTM Altromercato/Canteen Services. Ristorazione@altromercato.it
- Communi di Roma www.comune.roma.it/dipsquaola
- ICLEI Europe as above

Case Study 10

Contracting Authority: Municipality of Settimo Torinese

Details of Fair Trade procurement and methods used: fair trade considerations were included in the call for tender for canteen services to kindergartens and elementary schools, supply of food products and food packing for orphanages. Similarly, this was included in the award criteria, with 10 out of 100 points allocated to service providers who could ‘supply...products from fair trade operators/(conduct) awareness raising campaigns.’

They adopted the same definition of ‘fair trade operators’ as did the City of Rome (see above).

Source: ICLEI, ibid

Contact details: Cristisno Calvi, as above, and Comune di Settimo Torinese, www.comune.settimo-torinese.to.it