

Including Labour Standards in the Contract

This guidance note provides an overview of how to introduce appropriate labour standards into contract documents. It introduces the reader to the role of the contract and contract clauses, providing a comparison between the clauses of formal labour standards and those that have been specifically developed to improve the application of labour standards. Consideration is given to costing labour standards and associated benefits.

Further details can be found in *Implementing Labour Standards in Construction – A Sourcebook*. See the Reference section for details.

While responsibility for the contract clauses lies formally with the contractor, the *process* of developing them is best achieved through consultation and contributions from employers, contractors, community groups and labourers alike. Further details on ways to support the implementation and monitoring of labour standards are also included in the accompanying Guidance Note 2: Making Labour Standards Operational.

Conditions of Contract and labour standards

The construction sector is a highly competitive one. Contractors often look for short cuts – especially in areas of lowering labour costs, the employment of a casual labour force, or limited (if any) health and safety provision – to save costs. The Contractor's awareness of certain laws and the need to apply them, may also be limited. This is often exacerbated in situations



of informal contracting, where the responsibilities and liabilities of different parties to the contract are not clearly understood and agreed. The combined result in such cases is often minimal worker protection.

Wherever and in whatever way labour standards have an impact, the construction Contract can be used as a mechanism for establishing these standards. Conditions of Contract relating to the application of labour standards influence aspects of the construction work as it is planned and implemented.

Contractual clauses relating to labour standards are present in internationally recognised and widely applied Conditions of Contract. A principal source of relevant clauses for the construction sector is the Federation of Consulting Engineers (Federation Internationale des Ingénieurs-Conseils, or FIDIC) Conditions of Contract for Works of Civil Engineering Construction (4th Edition 1987, reprinted 1992 with amendments). These FIDIC conditions often provide the basis from which other standard conditions are developed.

There are also contractual clauses which are locally developed and based on national law. Examples reviewed in this work include Ghana's Ministry of Roads and Transport (for a Bridges for Feeder Roads Project) and India's Public Works Department (in the States of Kerala and Orissa). Typically, these add more detail to what is included in FIDIC clauses, so that they are more locally applicable.

Comparing international and national Contract Clauses

Wages

FIDIC Part II Clause 34(i) covers minimum rates of wages.

- Ghana Clause 34.5 covers the displaying of notices informing workers of their entitlements.
- India Clause M requires the Contractor to pay workers not less than that paid for similar work in the neighbourhood.

Sanitation facilities

FIDIC Part II Clause 34(iv) requires the Contractor to provide sanitation at the accommodation provided for labourers

- Ghana Clause 34.9 requires the Contractor to provide a specific type of latrine.
- India Clause N requires the Contractor to provide "sanitary arrangements" at their own cost.

The Contract document

Each form of contract brings specific considerations and challenges for addressing labour standards. Whichever form of contract is used, the Contract *itself* is instrumental in setting the basis from which labour standards can be implemented and upheld.

A formal Contract is made up of a number of relevant documents, each of which needs to be considered for the effective implementation of labour standards. In order of priority, these documents for a formal contract under FIDIC include:

- The Contract Agreement: the agreement between two parties based on a clear offer by one party and the acceptance of that offer by the other.
- The Letter of Acceptance: the letter by the employer of the tender, forming the contract between the employer and the contractor.

- The Tender: the contractor's priced-up offer for carrying out the works as specified, in accordance with contract provisions and the Letter of Acceptance.
- Part 1 General Conditions: these typically remain unaltered, but can be enhanced through the addition of clauses in Part 2.
- Part 2 Conditions of Particular Application (Special Conditions): clauses specifying conditions that are in addition to the General Conditions and take precedence over them.
- Any other documents forming part of the contract: these are an opportunity to provide more operational details. While contract clauses provide the *intention* of what is to be done in terms of implementing labour standards, additional documents and specifications can identify *how* this to be carried out in practice. Given sufficient information, actions to be taken can be realistically costed by all contractors bidding for the work and more effectively monitored for compliance.

Including labour standards in the contract

Within the contract documentation, existing labour standards can be strengthened as a way to both ensure implementation and demonstrate benefits for workers, contractors and employers alike. Stages to guide this process are:

1. Develop appropriate clauses to include in the Contract
2. Cost labour standards into the Bill of Quantities

1. Develop appropriate clauses

If *formal* contracts are being used, clauses associated with specific labour standards can be added to Part 2 Conditions of Particular Application (Special Conditions), with details of how these clauses are to be put into practice given in supporting documentation.

Clauses need to be appropriate to the context in which they are to be applied. Where relevant national clauses exist, these should be included appropriately. Where it is considered necessary to provide new clauses, it is advisable to take legal advice to ensure that there is no ambiguity between any new clauses and the General Conditions, or clauses already in the Special Conditions.

Table 1. Specification clauses for putting labour standards into practice: examples from Ghana

The Ghana Bridges for Feeder Roads Programme developed Specification Clauses to indicate *how* labour standards were to be put into practice. Clauses covered a range of areas, including those summarized below.

General area	Specific area	Details provided in the Specification clause
Safety	Protective Clothing	A list of protective clothing to be provided per employee (including supervisors) Additional clothing and equipment required for specific tasks
	First Aid kit	A list of contents to be included in a standard first aid kit, with the need to replace items when they are exhausted, or out of date
	Safety Committee	Composition of the Safety Committee, frequency of meetings, standard meeting agenda and reporting procedures
	Emergency procedures for responding to accidents	How site evacuation will take place and contacts with local emergency services in the case of an accident
Record keeping	Use of records	Identify who will keep records, when recording starts, how frequently records are to be presented and inspected
	Employee particulars	Format for recording particulars of each employee, including name, age, sex, social security number, home address, date of employment, union membership, etc.
	Work records	Standard table format for recording the working hours of each employee, including overtime hours and reason for any absence
	Payment records	Standard table format for recording the pay received by each employee, including payments for social security, tax, etc. Each record to be signed by the employee concerned
	Accident records	Standard table format for recording all site accidents, including the accident type, nature of injuries, measures taken, etc.

Additional items were added to the **Bill of Quantities**, to cover the inclusion of such standards within the contract. These included:

- Provision and maintenance of protective clothing, safety equipment and first aid for the use of site employees (sum)
- Replacement of protective clothing, equipment and first aid kit items (provisional sum)
- Keeping employment records (sum)
- Provision of water storage tanks and safe drinking water for all site employees (sum)
- Provision of washing area for local inhabitants (provisional sum)



Table 2. Comparing specific Contract clauses

Labour Standard	Relevant FIDIC Clause	Relevant Clauses from other documents ¹
Working hours: Conditions of work	FIDIC Part I Cl 45.1 states that working at night or on recognized days of rest is not allowed. (This is primarily for the convenience of the supervising Engineer)	<ul style="list-style-type: none"> ■ <i>Ghana Cl 34.5</i> requires the Contractor to display notices informing employees about conditions of work. ■ <i>Ghana Cl 34.6</i> requires the Contractor to keep records of time worked, the class of work and wages paid. Records are to be made available for inspection on request. ■ <i>India Cl M</i> requires the Contractor to obtain written permission for work on Sundays and Public Holidays, and to grant a weekly paid holiday to labourers. ■ <i>DFID Cl K</i> provides for detailed records to include information on hours worked for monitoring purposes.
Health and safety: first aid	FIDIC Part II Cl 34(vi) requires the Contractor to provide first aid equipment	<ul style="list-style-type: none"> ■ <i>DFID Cl E</i> requires the Contractor to supply and maintain appropriate first aid facilities.
Health and safety: procedures	FIDIC Part II Cl 35 covers accident records and reports.	<ul style="list-style-type: none"> ■ <i>Ghana Cl 34.17</i> details the requirements in the event of an accident on site.
Social security regimes		<ul style="list-style-type: none"> ■ <i>India Cl W</i> states that 1% of the cost of construction is to be remitted to the construction workers' welfare fund.

¹ Full details of these clauses from Ghana, India and DFID are contained in Ladbury et al (2003), pages 63-85.

Table 2 provides a few examples of specific clauses used by: the Department of Feeder Roads, Ministry of Roads and Transport, Ghana; the Public Works Department, States of Kerala and Orissa, India; and DFID Interim Guidelines 1999. They are compared with the relevant FIDIC Clauses from Part 1 and Part 2 of the 4th Edition of FIDIC Conditions of Contract.

Community contracting agreements

In cases of *informal* contracting, there is no particular reference framework. Labour standards can therefore be addressed by adding conditions and supporting information into any agreements. A few underlying principles apply:

- Agreements should clearly set out contractual relationships and responsibilities. While labour standards can be incorporated as conditions in any type of agreement (including verbal agreements), written agreements are more practicable;
- Where contracts are already in place and being implemented, review the social clauses in them. If they are considered inadequate, a supporting agreement or variation should be negotiated;

- For existing works, labour standards can be more easily introduced during annual reviews, revisions to logframes, revisions to terms of reference and other such “entry points”; and
- In some situations, the best option may be to seek to influence government procedures such that they tackle labour standards. In others, developing voluntary agreement e.g. during a community meeting, will be the best way forward.

2. Costing labour standards

Implementing labour standards involves both direct and indirect financial costs. As far as possible, these should be identified (including costs for training, monitoring visits, etc.), with flexibility built into the budget to allow the contractor to respond to issues as they arise. Examples of direct and indirect costs associated with implementing labour standards are given in Table 3.

Once the general provisions have been agreed, details of *how* they will be put into operation need to be determined through agreement between the employer and contractor.

Table 3. Costs associated with implementing labour standards

Direct cost	Indirect cost
<ul style="list-style-type: none"> ■ Protective measures, e.g. clothing, first aid ■ Providing basic services, such as a water supply and sanitation ■ Social security ■ Insurance costs 	<ul style="list-style-type: none"> ■ Capacity building, consultation, facilitation and promotion costs ■ Equality opportunity costs ■ Transactional costs, including dialogue and monitoring

- For example, if the standard *Health and Safety to be assured* is agreed in principle, details are required to identify what clothing is to be provided, who will be responsible for purchasing and paying for that clothing, who will be responsible for storing, issuing and replacing lost or worn-out clothing.²

For both formal and informal arrangements, it is essential that agreement is reached on the cost of implementing the relevant standards and who is going to pay.

- The increased costs in *formal contracting* will typically be paid for by the employer through higher bid prices. In due course, contractors familiar with the implications will be more efficient in the application of labour standards and can improve their competitiveness in bidding.
- For *community contracting and voluntary schemes*, costs are typically included in the agreed price to be paid by government (or donors) for the work to be done.

Pricing the inclusion of labour standards in competitive bids must be realistic and clearly identified. Employers and contractors with limited experience should call on technical support to ensure that prices will be adequate to meet the needs.

The inclusion of provisional sums into a contract enables standards to be costed in the Bill of Quantities (BOQ). They are then not subject to competition. This provides a level playing field as Contractors bid for the work.

Pricing mechanisms must be discussed at pre-bid meetings, where potential bidders are informed that inclusion of labour standards will be taken into account as bids are appraised.

Additional issues when pricing community contracts and voluntary work

It is quite common for small-scale infrastructure works to be entrusted to a community group, without a bidding process. Support should be given in such cases to the budgeting and cost control process, so that the employer and community contractor include the necessary costs to cover the labour standards that have been prioritised.³ This also applies to unwaged voluntary work.

In general:

- Implementing labour standards should be included in the construction project plan budget, as part of the criteria for project approval;
- If the project is already underway without provision for such costs in the budget, it is unlikely that any action will be taken. It may be possible to introduce simple interim measures, such as making small additional funds available to purchase protective clothing/first aid kits, or insurance;
- Investing in an insurance policy may be the only way to protect casual workers in the event of death, physical disablement or expensive medical treatment; and
- If an insurance scheme is required, it may be cost effective to negotiate at a provincial or State level, otherwise the premium will be too high to insure a small number of workers.

How far can you estimate the costs?

The following table is an example of how the costs of introducing labour standards were estimated in a study in Ghana. Some cost items can be estimated, but flexibility needs to be built into the labour standards budget so that there is provision to respond to issues as they arise.

² A checklist of specific items likely to be associated with different labour standards, plus a table showing the nature of costs associated with each labour standard in a formal contracting context (based on experience from a pilot study in Ghana), is provided in Ladbury et al (2003), pages 86-88 and pages 48-50 respectively.

³ See also point 3, *Deciding which standards to focus on*, in Guidance Note 2: Making labour standards operational.

Estimating costs: an example from Ghana

1. *Health and safety items.* It is possible to estimate the cost of (a) building latrines and (b) protective clothing. In Ghana, on bridges sites of between 15-20 operatives, the cost of providing general protective clothing (boots, overalls, helmets and gloves) and clothing for specific tasks (raincoat, rubber boots, dust mask, safety goggles and ear defenders) was between 2-3% of project costs.
2. *Stakeholder Workshops:* Also possible to estimate. In Ghana, five residential 2-3 day workshops were held over 3 years, with approximately 30 participants each time. Each workshop cost approximately US \$4,000
3. *Development of briefing/training materials* for: (a) engineers, (b) contractors (c) the monitors. Costs will depend on who develops these materials. In Ghana the NGO that helped with implementation and monitoring was commissioned to prepare these materials in collaboration with the relevant government department. The trade union was funded to provide guidelines on international labour standards and rights of workers under Ghana national law.
4. *Training sessions on labour standards for engineers.* Costs depend on the numbers of engineers involved.
5. *Briefing sessions for contractors* at pre-bid meetings and at award. Costs depend on the number of contracts to be let.
6. *Monitoring visits to sites.* Costs include fee days, transport and accommodation costs for members of the monitoring team who would not otherwise make these visits.
7. *Awareness raising for communities.* Costs depend on the geographical spread of the physical works, the number of visits it is decided to make, and the accessibility of communities who will be providing labour.
8. *Impact evaluation study* to assess the impact on livelihoods of workers before completion of the programme. Costs depend on the scope of the study.

Benefits from applying labour standards

Benefits associated with implementing labour standards are potentially available to workers and employers.

Improvements in working conditions support the livelihoods of the workers directly, reducing their vulnerability to various 'shocks' such as unexpected illness, injury or redundancy.

Benefits to workers affect poverty levels and security of livelihoods. These are particularly influenced by application of the substantive labour standards. For example:

- Adequate health and safety measures can protect labourers from time – and therefore wages – lost through injury.
- An end to repeated casualization helps to ensure that wages and legal benefits are met.
- An end to discrimination ensures that skills and capabilities – particularly those of women – are not wasted.

Direct costs to the contractor from incorporating labour standards into the Bill of Quantities (BOQ) can bring savings. For example, the BOQ may specify a sum for the contractor to employ a part-time record keeper

on site. This not only assists with monitoring the application of labour standards, but also aids the contractor in managing the workforce, and budgets, more effectively. It may be that an investment in one area brings financial savings to other areas.

Impacts of applying labour standards

In the broader context, the application of labour standards ensures decent working conditions that can increase productivity. Improved conditions and worker health in turn results in a lower turnover of staff, promoting greater cooperation and motivation within the workforce. Such conditions contribute to overall construction productivity, providing the opportunity for a win-win situation for the employer. If done gradually and correctly, application of labour standards improves the lives of employees, so providing benefits to the employer through enhanced prospects for success in well completed work and hence future contract opportunities (Ladbury, 2001).

All this can, in turn, foster the social justice and political stability necessary to promote economic growth and greater private and public investment in the sector.

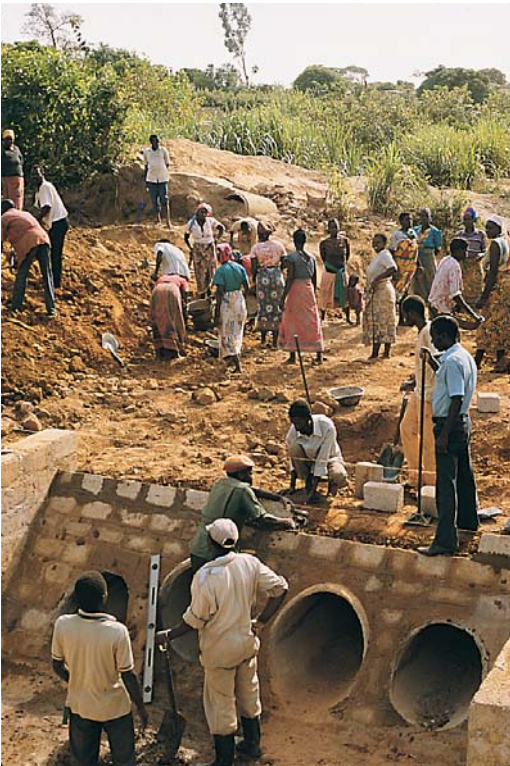
Information sources

FIDIC (1992), Conditions of Contract; for Works of Civil Engineering Construction (4th Edition 1987, reprinted 1992 with amendments), Geneva, Switzerland

Ladbury, S., Cotton, A. and Jennings, M. (2003), *Implementing Labour Standards in Construction – A sourcebook*, WEDC, Loughborough University

Available to download from:

<http://wedc.Lboro.ac.uk/publications/index.htm>



About this Guidance Note

This note provides guidance of how to include labour standards in construction contracts.

It forms part of a series of publications on Implementing Labour Standards in Construction:

A Sourcebook

Briefing Note : *Lessons from Pilot Studies*

Guidance Note 1 : *The International Context and National Implications*

Guidance Note 2 : *Making Labour Standards Operational*

Guidance Note 3 : *Including Labour Standards in the Contract*

These are all based on a review of international literature together with lessons learned from pilot studies carried out in Ghana, India and Zambia during a DFID-funded research project.

The project was undertaken by WEDC, Loughborough University, in association with the ILO and DFID

ILO

The International Labour Organization (ILO) is a key organization in “promoting decent work for all”, setting standards and creating consensus to sign conventions relating to Labour Standards.

<http://www.ilo.org/>

DFID

The Department for International Development (DFID) issues paper “Labour standards and poverty reduction” published in May 2004, identifies the contribution that well designed and implemented labour standards can make to poverty reduction.

<http://www.dfid.gov.uk/>

Website

Further details of the research project, including the Sourcebook, briefing note, guidance notes, papers and powerpoint presentation are available to view and download on the WEDC website: http://wedc.Lboro.ac.uk/projects/new_projects3.php?id=55

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