



# Implementation example for the CFIT Commitment

## “We work with all value chain partners to drive due diligence”



Buy better

### Case study

## Promoting due diligence compliance in small ICT hardware tenders

Government of Flanders | Belgium

*Based on 2022 tender*

Impact categories:



Product categories:



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### This case illustrates elements of the following CFIT Commitment:

- We work with all value chain partners to drive due diligence with regards to human rights, decent work and occupational health and safety, as well as environmental risks

The purpose of this series of cases is to illustrate what the implementation of commitments of the CFIT framework for circular and fair procurement of ICT can look like. Please note that these case descriptions focus on one element of a tender or process which generally includes many more sustainability requirements

# Promoting due diligence compliance in small ICT hardware tenders

## Introduction

In 2016 the Government of Flanders adopted its strategic Plan for Public Procurement focusing on integrity, digitalisation, professionalization, SME-participation, sustainability and innovation. The plan included social and ethical responsibility as key elements of the government's procurement policy.

In 2022, the Central purchasing body within the Agency for Facility Operations of the Government of Flanders launched a call for tenders[1] to set up a framework agreement for the supply of small IT devices to the Government of Flanders and some public organisations in the region, including municipalities. Small IT hardware includes tablets, smartphones, monitors, and accessories. The total contract budget was 21.6 million euros for four years (a 2-year contract with the possibility of a 2-year extension).

In line with the Flemish Plan for Public Procurement and previous IT tenders from 2020, the Flanders Agency for Facility Operations introduced several environmental and social requirements in the tender documents for small IT hardware. This example focuses specifically on the contract clauses regarding due diligence mechanisms, which aim for socially responsible production conditions regarding the respect of labour norms, human rights, and the rights of children.

[1] See published notice in the EU Tenders Electronic Daily platform ([519473-2022](#)) and access the tender documents in the Belgian e-procurement platform ([2022/HFB/OP/93534](#)).

## What was implemented?

First of all, the Agency for Facility Operations defined the labour conditions and human rights to be respected by the contractor and his supply chain regarding safety and health, wages and benefits, working hours and conditions, forced and child labour, social security, diversity and discrimination, freedom of association and environmental protection. They were presented in section 2 of the tender.

The contractor is required to implement a due diligence process to manage risks related to labour conditions and human rights in the supply chain in line with the OECD Guidelines on Multinational Enterprises, the UN's Guiding Principles for Business and Human Rights (known as the Ruggie Principles) and the European procurement Directive 2014/24/EU. The Agency for Facility Operations formulated the following clauses based on the tools and model clauses of their partner Electronics Watch:

### Due diligence

*The contractor applies Due Diligence; an ongoing process that helps organisations identify risks of violations of labour and human rights in their own organisation and to map the corresponding production chain to subsequently prevent, reduce, remedy and/or compensate for these violations. The contractor identifies and reduces the risk of possible human or labour rights violations, corrects actual violations and prevents their recurrence during the production of the goods and the execution of the framework agreement ("Due Diligence").*

*To exercise Due Diligence, the contractor will at least:*

- use any bargaining power it has over a supplier, including contractual rights and commercially viable incentives, to acquire the goods in accordance with section 2 [the section specifying the labour and human rights conditions];*
- make every reasonable effort to include in contracts with supplier: i) a clause requiring the supplier to acquire the goods in accordance with section 2; and ii) clauses related to an escalation procedure equivalent to those set out under section 4 [see later on "Escalation procedure"] and applied where the supplier does not acquire or manufacture the goods in accordance with section 2;*
- appropriately inform its own employees to ensure compliance with section 2;*
- inform the contracting authority and/or Electronics Watch when it is notified or becomes aware of: a (possible) violation of section 2; or suspected (modern) slavery, forced labour and/or human trafficking related to the production process for the production of the goods.*

*make reasonable and proportionate efforts to ensure that suppliers cooperate with Electronics Watch and make efforts to remedy and prevent (the consequences of) infringements.*

In addition, the Agency for Facility Operations included clauses regarding the actions to be taken by the contractor in the event of an infringement of the socially responsible production conditions.

#### **Supplier commitments**

When evidence of a section 2 infringement is provided, the Contractor will cooperate with the contracting authority and Electronics Watch and take reasonable and proportionate measures to:

- a) Provide access to independent observers at the manufacturing facilities where the actual or potential infringement occurred to allow them to: visit all relevant workplaces, hotels and dormitories; question employees in the absence of superiors or management; analyse relevant factory data, including: collective labour agreements, personnel files, data on working hours and paid wages, data on social security contributions paid, pensions and public holidays, complaints procedures, disciplinary logs, health and safety procedures, other relevant factory data;
- b) Obtain and submit to Electronics Watch the written compliance findings and corrective actions associated with the actual or potential infringement;
- c) Obtain and submit to Electronics Watch the inventory of used and stored chemical components and the health, safety and environmental impact observation reports for any manufacturing facility in which there has been an actual or potential violation of health and safety standards; and
- d) The extent to which the trading conditions and those of the suppliers adversely affect section 2 compliance at the affected manufacturing facilities and/or report the infringement to the contracting authority and Electronics Watch.

#### **The contractor will:**

- a) Comply and take all reasonable and proportionate steps to ensure that the suppliers comply with all applicable whistle-blower laws and regulations in the jurisdiction where the goods are manufactured;
- b) Implement and maintain an appropriate whistle-blower policy that at least: i) encourages openness and supports whistle-blowers who express genuine concern, even when they are found to be wrong; ii) protects whistle-blowers from adverse treatment as a result of raising a genuine concern and appoints a specific whistle-blower responsible for investigating this treatment; and iii) establish disciplinary action against personnel who commit threats or retaliate against whistle-blowers;
- c) Take all reasonable and proportionate measures to ensure that its suppliers also do the same to ensure the protection and support of its personnel and/or the personnel of its suppliers. The contractor will inform the contracting authority and Electronics Watch of any actual or potential breach of these terms or any applicable laws or regulations; and
- d) Take reasonable and proportionate steps to ensure that whistle-blowers who are adversely treated as a result of raising a genuine concern receive adequate remedies; This is regardless of whether or not the contractor or a supplier (if applicable) has an adequate whistle-blower policy.

One of the necessary elements of an appropriate due diligence process is a transparent supply chain. Therefore, the tender included disclosure clauses regarding the production facilities as well as verification actions and results regarding compliance of the socially responsible production conditions.

#### **Disclosures and Verification**

The contractor will take every reasonable and proportionate measure to notify Electronics Watch and the contracting authority as soon as possible, free of charge, by way of a completed document of the following information:

- The identity of the supplier producing the goods and its registered office;
- The production facilities where the goods are produced (including the company name and full business address);
- The specific products or components produced in each manufacturing facility.

The contractor will notify Electronics Watch and the contracting authority as soon as possible of all changes, compared to the information initially provided, of which it becomes aware.

Contractor will make reasonable and proportionate efforts to disclose its compliance findings relating to the manufacturing facilities, or a summary of those findings (or if available for disclosure: investigation reports), to the extent that the Contractor can discover and obtain such findings itself through reasonable investigations.

The Contractor shall inquire every 6 months from each direct supplier if there is any further information available with regards to audits (or if available for disclosure: investigation reports), conducted for their production facilities.

Where information provided by the contractor is shared with third parties (e.g., independent observers or other contracting authorities to enable them to support the verification), these third parties undertake to refrain from further disclosures or alternative uses of the information unless they are legally obliged to do so.

Finally, the agency defined (in section 4) the procedure in case of infringement of the socially responsible production conditions and potential penalties in case of persistent non-conformity.

#### **Escalation procedure**

If the contractor or subcontractor identifies or commits a breach of section 2, or when the contracting authority has significant indications thereof, the contractor shall cooperate immediately with the contracting authority and Electronics Watch for the purpose of determining whether a breach has occurred and, if the case, how to remedy the breach without immediate application of special penalties.

The contracting authority may require the contractor to:

- make a written statement of its actual or potential failure to comply with its obligations. The statement must include measures and the timeframe within which such measures will be taken;
- provide for an appropriate senior representative of the contractor to attend a meeting with the contracting authority and Electronics Watch; and take any remedial action reasonably required by the contracting authority.

The Contractor shall carry out the actions above at its own risk and within a reasonable time in accordance with the provision of the Framework Agreement, and as (reasonably) determined by the Contracting Authority.

*If a breach of the Contractor's obligations under these conditions occurs repeatedly or if requests to act are persistently ignored, the contracting authority may give written notice of default to the Contractor in accordance with Article 44, §2 of the Execution RD [the Royal Decree on the execution of public procurement contracts]:*

*If the breach persists or recurs after notice of default and the contractor fails to make reasonable and proportionate efforts to remedy it, the contracting authority may impose a special penalty of EUR 10,000 or apply ex officio measures.*

## How was it put in place?

- In 2021, the Digital Flanders Agency of the Government of Flanders, in collaboration with the Agency for Facilities Operations, conducted a market consultation in preparation for the call for tenders. These consultations included questions regarding socially responsible working conditions.
- Being aware of the importance of due diligence processes to monitor labour and human rights conditions in the supply chain, but also realising its own limited resources and bargaining power to audit the contractor (and his supply chain) and ensure compliance, the Agency for Facility Operations decided to join [Electronics Watch](#). Electronics Watch is an independent monitoring organisation that brings together public sector and civil society organisations in electronics production regions, with experts in human rights and labour rights monitoring. They allow organisations to share monitoring costs and to coordinate their engagement with the industry. This decision was made after the favourable awareness of Electronics Watch by companies participating in the market consultations and the reasonable conditions for participation.
- In order to prepare the social clauses for both tenders, the agency used the [Electronics Watch's contract conditions template](#) as starting point, adapting them to match the legal context and procurement vocabulary applicable in Belgium.

## Who was involved?

- The [Agency for Facility Operations](#) of the Government of Flanders is responsible for the whole procurement process: from needs identification to market consultation, tender drafting, call for tenders management and evaluation and contract management).
- The [Agency of Environment](#) of the Government of Flanders provided support and comments during the tender documents' development process with a focus on environmental aspects and the verification on the demands for TCO Certified.
- An IT category specialist from the municipality of Bruges also contributed to the development of the tendering documents by providing inputs and comments.
- About ten companies (mostly distributors and some brand owners) participated during the market consultation phase.
- The independent monitoring organisation [Electronics Watch](#) is involved during contract deployment by providing information to the agency (or receiving it) in case of actual or potential infringement of the socially responsible production conditions. They work with suppliers to investigate and address those infringements.

# What were the outcomes and lessons learned?

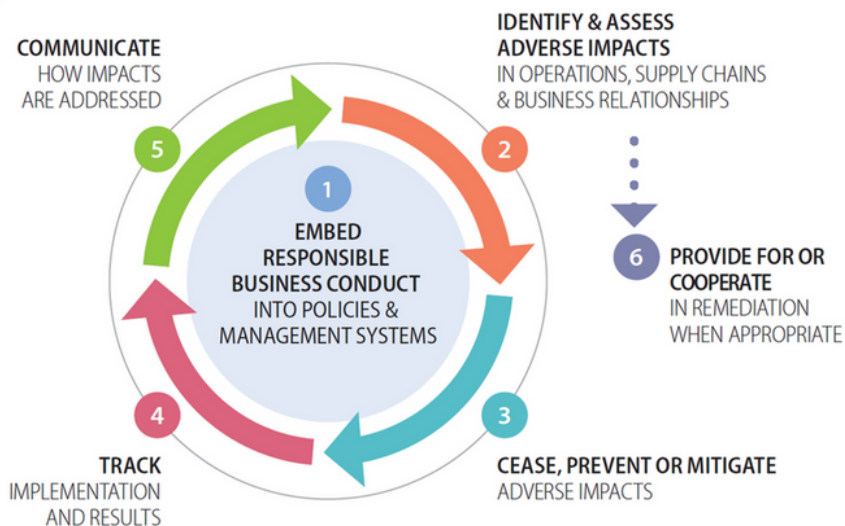
## Outcomes

- Three companies submitted an offer, a similar number as in previous calls, so the strict sustainability criteria did not affect market participation. However, the sustainability criteria did influence the way companies submitted their offer. One of the companies paid more attention to socially responsibly produced products.
- On a different note, the lessons learned from the IT tenders and social clauses will be taken into account for a pilot project of the Agency for Facility Operations on due diligence in the electric vehicles sector, also in collaboration with Electronics Watch.

## Lessons

- When presenting the due diligence requirements, it's important to convey that this process aims at working together to find solutions for the benefit of all, not to shame or punish the contractor. This helps companies to engage, be more transparent and benefit of the work of Electronics Watch to improve social responsibility in the whole value chain. In general, companies are aware of the need to improve supply chain management and did welcome the opportunity to further work on these topics. In comparison to other industries, the IT sector is more open to due diligence clauses and monitoring.

- Communications to public buyers who use the framework agreement should also make clear what the social requirements will mean to them in terms of the amount of effort required. The coordination of the framework agreement is done centrally by the Agency for Facility Operations and monitoring of the social labour and human rights conditions is also conducted centrally in collaboration with the contractor and Electronics Watch, so the social clauses don't represent any additional work for them.
- Collaborating with organisations like Electronics Watch helps pool resources for monitoring compliance and increase the bargaining power for better working conditions. The supply chain is large, and changes are difficult. Therefore, having more visibility with the transparency, due diligence requirements and information from Electronics Watch helps producers implement changes as well.
- The process reminded everyone involved how social and ecological criteria are always linked and how focusing only on one dimension becomes challenging, especially in global sectors such as IT.
- Criteria have to be challenging enough without dissuading companies from engaging in the process and bringing solutions. Therefore, a market consultation before starting the procedure is critical. It allows the organisation to see how high the bar for sustainability in a certain industry can be set. Thus, even though due diligence and social criteria had not been introduced in this way before, the market consultation allowed the Agency for Facility Operations to identify which criteria potential suppliers were already familiar with (from other contracting authorities) and prepare the tendering documents accordingly.
- The due diligence clauses come into play in the execution phase of the framework agreement and do not hinder competition. Their goal is to realise smaller changes and capitalise on improvements to make change happen.



### Disclaimer:

This case has been described to provide inspiration. If, after careful reflection, this example offers added value to your procurement practises, adapt it to fit your organisation and make sure it is compliant with the applicable rules and regulations for procurement.