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Social Value Procurement Handbook

This handbook has been written to advise and support Sponsoring Managers and staff involved in the procurement process to ensure that "Social Value" elements are considered in all appropriate Procurement projects.

SOCIAL VALUE

What does the Act apply to?

The Public Services (Social Value) Act 2012 applies to public service contracts and those public services contracts with only an element of goods or works over the EU threshold. The Act does not require contracts for public works or public supply (goods), or contracts for services under the EU threshold, to consider social value. Whilst this means it will not be compulsory under the terms of this Act to apply social value below the threshold, or to goods and works contracts, this does not mean that commissioners cannot apply social value in these contracts.

Defining Social Value

Social value has been defined as "the additional benefit to the community from a commissioning/procurement process over and above the direct purchasing of goods, services and outcomes".

Whilst there are many examples of providers delivering social value available to illustrate this, there is no authoritative list of what these benefits may be. The reason for this flexible approach is that social value is best approached by considering what is most beneficial in the context of local needs or the particular strategic objectives of a public body. In one area, for example, youth unemployment might be a serious concern, whilst in another, health inequalities might be a more pressing need. In recognition of this, the Public Services (Social Value) Act does not take a prescriptive approach to social value. It simply says that a procuring authority must consider:

- How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area.
- How, in conducting the process of procurement, it might act with a view to securing that improvement.

In doing this, the Act aims to give commissioners and procurement officials the freedom to determine what kind of additional social or environmental value would best serve the needs of the local community as well as giving providers the opportunity to innovate.

There are examples to draw upon for guidance. A number of public bodies around the UK have pioneered social value led approaches to commissioning and procurement, as well as social enterprises that have been delivering added value across many public services markets for years.

What are the benefits?

There are a number of reasons why social value is being taken increasingly seriously by policy makers. Not only does this approach seek to create maximum benefit for the community and drive up service quality, but it can also lead to cross-departmental savings and support community organisations to enter the market.

Supporting the social economy

The Government has said it would like to see a much greater role for social enterprises and voluntary organisations in delivering public services, because it believes organisations rooted in the communities they're working with - and for - are often best placed to understand local needs, deliver personalised services and reach those most in need of support. However, the reality is that all too often public sector markets are created in such a way that only a small number of large providers are able to compete.

One of the obstacles social enterprises and other community organisations face is that commissioning and procurement activity often does not seek out the wider social, environmental and economic benefits that these providers bring to service delivery. This means they often miss out on contracts, even though they deliver a higher value return for communities. There is a very small pool of suppliers in many areas of public services such as waste and welfare, which inevitably limits competition, choice, innovation and value for money, making it difficult for commissioners to always best meet the needs of their communities. The Act aims to change this and encourage civil society organisations to enter public services markets. As well as helping to organisations to win contracts directly, this could also stimulate a role for social enterprises as part of a wider supply chain, fostering greater partnerships between private companies and social enterprises as contracts require providers to draw on their combined skills and resources.

The Procurement/Commissioning Process

Where award criteria are being used it may be beneficial for the council to undertake a pre-procurement market assessment to ensure that the market is capable of delivering the identified social benefits and in fact to develop which social benefits could be captured. The market place may include SMEs, the VCSE sector and micro enterprises. Where possible these providers should be invited to a bidder day to outline the service requirements.

An OJEU may be needed depending on the scope and value of the procurement. The threshold for health and social care procurements will rise significantly when the new EU directive is enacted into UK law. The council

however will consider the benefits of Social Value in commissioning on a case by case basis; a single approach would not work for any authority. Each contract should be considered on its own merits.

Where social benefits are not core requirements (i.e. included in the Award Criteria) the monitoring process and agreed key performance indicators (KPIs) are essential. The council will develop these with the market place (where relevant) to ensure that feasibility is considered. Preparation for market engagement is important, including the definition of potential social benefits.

Consider and reconsider what you are commissioning and procuring Our approach to commissioning and procurement

Through our Corporate Procurement Strategy and associated procedures, we refer to commissioning and procurement activity as forming part of a 'cycle'.

This cycle begins with the 'identification of a need' for a particular service or product and ends with 'lessons learnt' from each particular procurement process that is carried out.

- Identifying Needs – E.g. what is the need, is it a new need for a service/product, is the current contract coming to an end and requires re procurement?
- Develop your Business Case – E.g. consider the brief, the overarching objectives of this piece of work, the requirements, political influences that may apply;
- Define your Procurement Approach – E.g. consider the route to market, new tender required, existing framework, what Social Value if any could be considered at this stage;
- Consider the Competition – E.g. consider how the procurement is going to be released to the market and what tender process has been decided E.g. open/restricted, other?
- Evaluate Tenders – E.g. what is the process, what requires consideration against specification;
- Contract Award and Implementation – consider approval procedures, cabinet reports and requirements and any additional procedures that need to be followed.
- Manage the Contract and Supplier Relationship – E.g. consider KPI's, communication, dispute processes, financial controls, reporting and contract exit strategy
- Closure and Lessons Learnt – E.g. review costs, performance, Social Benefits achieved.

To achieve real Social Value through our commissioning and procurement

of contracts, we must learn to think outside of the box on how such benefits can be realised. This includes ensuring that the full thought process has been undertaken where a new commissioning/procurement activity/need is identified. We must use the procurement cycle and accompanying guidance to ask ourselves, what do we want, what are we doing, are there any other ways we could do this better? This will help us to make more informed/better decisions on contracts, whether staying with an existing supplier or moving to a new one, or indeed deciding not to obtain the service.

Three areas commissioners must consider then re-consider include

- Why are we doing this?
- What can we achieve for all the stakeholders involved?
- Are there any other outcomes that can be achieved?

Steps in the commissioning and procurement process to achieving high-quality social benefits

Deciding on the appropriate procurement route

To ensure the success of delivering additional Social Value to a contract we must ensure that the requirements are embedded into the process. Dependent on the route to market chosen, whether Open, Restricted, or other, where increased Social Value can be delivered needs to be identified and be a key driver of the process where appropriate and proportionate to do so, as soon as possible throughout the document trail.

Practical considerations when applying Social Value:

As mentioned earlier, ensure that social value requirements, where applicable, are mentioned in every document and pervade the whole process e.g.

- Pre procurement: initial options appraisal; Committee reports; PIN notice etc.;
- Procurement documents: PQQ; ITT; Conditions of contract and,
- Evaluation criteria.

In some circumstances it is difficult to ascertain whether the social benefits required are linked to the subject matter of a contract. You must ensure that you are thorough about what it is you seek to commission and procure and can link the benefit to a core requirement of the contract.

How do you go about approaching this?

Defining the right approach will differ on a case by case basis. Each contract will need to be considered individually to take account of the related factors. This will include:

- The value of the contract and whether it is subject to the Public Contracts Regulations 2014 (at 1st January 2016: Supplies & Services: £164,176.00, Works : £4,104,394.00);
- The nature of the contract and whether it lends itself to a Social Benefit approach;
- Whether it is subject to the full application of the Public Services (Social Value) Act e.g. a service contract;
- The type of organisation that may bid for the work;
- Whether the Contract is a call-off under a framework agreement, e.g. the Framework itself should consider the Social Value Act but it does not apply when calling off contracts under a Framework;
- If there is an urgent need to arrange a procurement exercise, the requirement to consider consultation and the impact on Social Benefits can be disregarded if it is impractical to consider them. Urgency caused by undue delay by an authority however will not be a valid reason not to comply with the Act (Procurement Policy Note 2012).

Whether contracts do or don't fall under the Act, all commissioners and procurers as a matter of good practice should consider economic, social and environmental well-being as part of the procurement process in order to achieve maximum value for money. This may be particularly relevant to lower value contracts, where it is difficult to apply Social Value principles.

Choosing the Award Criteria Route: Market Testing/Supplier Engagement

If you are to consider Social Benefits being delivered in procurement, it is pivotal that market testing/ supplier engagement is carried out at the earliest opportunity in the process. This includes ensuring that you thoroughly research potential providers in the market (business intelligence) for each particular contract, and that you not only account for the large organisations but also SME's and Third Sector businesses too.

Once this process is complete and you have an idea of what the market looks like, this will provide the opportunity for further provider engagement, including well planned prospective bidder days, where the initial project plan; spend; specification; key legal conditions and other concerns can be discussed.

Supplier engagement events can deliver a host of benefits to the process including:

- The ability to access supplier knowledge and information we may not have, including Equality Impact Assessment and how individual procurements can affect the area;
- Create an awareness of the possible resources, technology, e-learning, e-

sourcing tools that may be required;

- Opportunity to provide information and awareness of tender submission requirements, if applicable;
- Create an awareness of and understanding of award criteria, confirming Social Value as a core requirement;
- The opportunity to discuss and encourage suppliers to advertise sub-contracting opportunities where appropriate;
- The opportunity to consider if the route to market chosen is the right one, or whether it would be appropriate to split works into lots, to ensure greater accessibility for SME's/Third Sector and micro organisations;
- Attract suppliers we weren't aware of;
- Obtain feedback that will assist with the technical specifications which align with the marketplace but also assist to achieve Social Benefits. Market engagement can potentially widen the participation from the marketplace and stakeholders, providing a wealth of useful knowledge whilst also providing prospective bidders with more confidence in our abilities to provide the right services at the right time. You must however be careful not to directly or indirectly show any favour towards potential bidders as this could very well lead to legal challenge.

OJEU

If a procurement exercise is over the EU threshold then a Notice must be published through the Official Journal of the European Union (OJEU). Within this notice, the use of intended Social Value criteria or Performance Aspirations must be clearly defined.

This is a legal requirement but also allows you to advise the market on whether we are seeking contractual or aspirational benefits.

Practical tips: Suggested wording for OJEU Notices when applying basic

Social Benefits

To support the Council with the practical implementation of the Social Value Act, the template below could be used for demonstrating we have taken the Act into account when placing an OJEU notice.

"Under the Public Services (Social Value) Act 2012 the contracting authority must consider: (a) How what is proposed to be procured might improve the economic, social and environmental well-being of the area where it exercises its functions, and (b) How, in conducting the process of procurement, it might act with a view to securing that improvement. Accordingly, the subject matter of the contract has also been scoped to take into account the priorities of the contracting authority relating to economic, social and environmental well-

being. These priorities are described in the invitation to tender/ negotiate/participate in dialogue and are reflected in environmental and social characteristics in the evaluation criteria for the award of the contract.”

What do the different questions offer at ITT stage (Looking forward)

Open Questions

Open questions are developed to give providers an understanding of what it is that we as a Council are trying to secure. This method is beneficial as it allows the supplier to demonstrate innovation and expertise into responses from the questions asked.

Such innovation may provide solutions or ways of working that the Council may not have considered, and in addition, provide wider diverse range of benefits.

Specific Set Questions

Specific set questions are developed in the set of a pro-forma where you will ask potential providers to outline how they will deliver the Social Benefits required for that particular contract. This method allows you as the buyer to provide a more structured approach that forces the bidder to consider all of the requirements and provide responses based on the scoring criteria. This provides consistency and can make the evaluation and transfer to contract process easier.

If the contract is under the threshold of the EU regulations then a notice should still be published nationally and additionally through OJEU depending on the type and value of the contract in question. The approach and wording used should reflect the wording as if it were advertised in the OJEU so that potential bidders are fully aware of our Social Value criteria or aspirations.

At Pre-qualification (PQQ) Stage

The PQQ stage and development of documents are key to defining the importance of Social Value to the Council. This stage in the process allows us to directly outline the Social Benefits we are seeking to achieve and allows us to work with the market to ensure there is a complete awareness of our expectations.

Project specific questions relating to Social Value may also be used including:

- Environmental
- Labour and Employment
- Social and Community

When looking to determine what a prospective bidder may offer in terms of Social Value and Benefit, there are two approaches to the questions you may wish to think about, including whether you will present the bidders with open

questions or specific set questions.

The Contract Management Phase

Measuring the success of implementing Social Value and achieving Social Benefits is determined by the processes and monitoring mechanisms that are put in place by the Council and contract management teams. Effective Contract Management is crucial to this happening. Social Benefits as with any other contractual obligations must be measurable and quantifiable, and if part of the award criteria they must be accompanied by a method statement that will be adopted as part of the contract. Robust KPI's must be drafted; they must be achievable and reflect the Social Benefits of the project as a whole. Regular reviews should be held to ensure compliance.

This can, in turn, result in fostering a stronger 'partnership' culture which can provide further benefit to the contract.

Choosing the Performance Aspirations Route Market Engagement/Intelligence/ Supplier (Pre-procurement exercise)

If the chosen route entails Performance Aspirations as opposed to the Award Criteria approach then you have taken the approach that Social Benefits are a non-contractual requirement and that the post contract award approach of Performance Measurement (KPI's) is the best approach for this procurement activity. This will require effective early market engagement and communication with potential suppliers to consider the likelihood of achieving these aspirational benefits. Clearly, defined Social Benefits need to be incorporated into contracts wherever possible and appropriate

OJEU

As discussed earlier in the document as part of the award criteria route, when choosing either the award criteria or the performance aspiration route, where the Public Contracts Regs apply a Notice will still be required to be produced. It is as important in the performance route to ensure that bidders are made aware and are clear on the importance of Social Value as part of the procurement and contract. This will assist bidders to decide if they have the ability and capacity to deliver the Social Value elements required by the Council or whether to refrain from investing their time into the process.

Contract Management

It is important to note that performance aspirations are non-enforceable. Performance aspirations cannot form part of the award criteria or play any part in deciding the successful bidder. However bidders must accept the main terms and conditions of contract but are only required to implement performance aspirations wherever possible.

There are a wide range of possibilities when deciding which contractual clauses to use in terms of Social Value. The Commission of the European Communities have provided some examples of additional specific conditions an authority may consider including in a contract which are detailed

below:

- the obligation to recruit unemployed persons, and in particular long-term unemployed persons, or to set up training programmes for the unemployed or for young people during the performance of the contract;
- the obligation to implement, during the execution of the contract, measures that are designed to promote equality between men and women or ethnic or racial diversity;
- the obligation to comply with the substance of the provisions of the ILO core conventions during the execution of the contract, in so far as these provisions have not already been implemented in national law;
- the obligation to recruit, for the execution of the contract, a number of disabled persons over and above what is laid down by the national Legislation in the Member State where the contract is executed or in the Member State of the successful tenderer.

Good practice for Procurement

Identify what your organisation's social value priorities are

Organisational or local priorities provide a framework for considering social value. This ensures that social value is:

- *relevant* to the organisation or area's strategic objectives (important for reducing any threat of legal challenge - see below)
- *valuable* in terms of meeting specific needs that have been identified and supporting a wider strategy to meet these needs.

Local commissioners may consider their area's particular needs (for example high youth unemployment, bad congestion, or gang crime), whereas national commissioning bodies may focus on how social value can support a specific set of stakeholders across multiple areas (for example young ex-offenders). It is important for commissioners to publish their social value priorities so that bidders can think about how they could support these. This will also present an opportunity for providers to suggest innovative solutions that the commissioner may not have thought of.

Understand what is legally permissible

There is a perception that commissioning for social value is made difficult by EU Public Procurement Rules and a fear that attempting to do so increases the risk to commissioners of legal challenge. In fact, the Social Value Act adds a duty to what is already a power under EU legislation. The obligation to accept the "Most Economically Advantageous Tender" ("MEAT") expressly includes considerations of price, quality, and social value and the European Commission has emphasised the emissive nature of the rules and the appropriateness of their use for social policy objectives, particularly in and in relation to the 2014 Directive.

On a practical level, commissioners working within reasonable parameters do not meet legitimate challenge, and the threat of actual legal challenge is in any case low given the difficulties and risks in mounting a challenge. Social value is a progressive and permissive concept, which may develop through effective consultation, imaginative commissioning, and creative supplier service design, and preferably a combination of the three. To achieve the most beneficial results and to minimise any threat, commissioner should adopt the following good practice:

Writing social value outcomes into the service specification

The fundamental principle of the Public Procurement Rules is objectivity in *how* public authorities purchase services. The Rules are therefore not concerned with determining *what* a public authority seeks to purchase, but with the purchasing procedure. Where social value is being procured, it is therefore advisable to write it into the service specification, which describes '*what*' service is being procured.

Of course, in doing this, commissioners will not want to shut down innovation by predetermining what bidders are able to offer. Pre-market engagement can help commissioners understand the full range of possibilities available. Additionally, whilst commissioners may want to describe the outcomes they are seeking in the service specification, they might wish to leave the market to suggest ways that these outcomes can be delivered in their tenders.

Being relevant and proportionate

It is important to ask for social value outcomes that are relevant to the service being procured, and proportionate (i.e. that bidders could reasonably be expected to provide). Social value can perhaps be best described as procuring something that would benefit from being thought about in a wider way (as an element in the optimum design of a service), rather than buying something completely unrelated. Buying something completely unrelated would probably not be following the MEAT criteria, as the MEAT would be most likely to be provided by the bidder who had an interest in the area.

Relevant and proportionate social value can be achieved by asking for outcomes that support a wider organisational strategy, and by conducting pre-market engagement to find out what it is possible for the local market to provide.

Complying with other EU rules

The MEAT criteria require the selection of the service provider offering the optimum balance of price, quality, and social value. Commissioners must comply with the EU Treaty principles of non-discrimination, equal treatment, transparency and proportionality and the prescriptive rules ensuring objective process. Engaging with social value, following those principles and rules, raises no greater prospect of legal challenge, and

indeed the Social Value Act makes such engagement an express duty for services above the OJEU threshold.

Sound procurement practice

The higher the standard of commissioning and procurement processes within which social value is applied, the less chance there is of legal challenge. Commissioning and procurement processes are of a higher standard when they are: part of a coherent strategy; integrated between and in themselves; informed by meaningful consultation; and when the *purpose* of a required service remains the primary consideration and is served by rather than led by formal procedure.

Identify what kinds of outcomes are important for a specific contract

The Act encourages commissioners to speak to their local market/community to find out what they need from specific services. This helps to ensure that the service is fit-for purpose and helps commissioners to understand the full range of innovation that providers could bring to the service (i.e. which they may not have thought of themselves).

Social value outcomes should be linked to the organisation's overall social value priorities and should support the organisation's wider strategy for meeting specific needs.

Identify how you can secure value for money through this contract

Social value can help commissioners to get more value back from the money they spend on services, which ultimately stretches this money further. This can be in the form of straightforward cost savings, but can also be in the form of achieving more outcomes from a single £1 spent, or thinking of innovative ways to reduce waste.

Find out what the market could feasibly provide

Speaking to the local provider market before procurement starts will help commissioners to ensure they are only asking for things that are relevant and proportionate - that is, asking for things that bidders could realistically provide. Often, providers will also have innovative ideas about social value outcomes that commissioners might not have thought of. The review found that providers across the spectrum of small businesses, large businesses, and voluntary organisations were keen to come in and talk to commissioners about the design of services.

Clearly, the approach to this pre-market engagement should be proportionate and, to facilitate the process, should fit into a wider context of good working relationships between commissioners and the local market.

Think about whether the procurement process excludes certain providers

The procurement process can unintentionally exclude the types of provider who would be best placed to provide the kinds of benefits the commissioner wants. For example, thinking about whether the procurement process excludes smaller organisations (for example through excessive documentation, high financial thresholds, or large contract sizes) can make a big difference to the kinds of benefits it is possible to secure.

Writing social value outcomes into the service specification - balancing a clear requirement with encouraging innovation

Writing social value outcomes into a service specification will help to reduce the threat of legal challenge as it allows procurement officers to assess bids against a standard criterion, rather than trying to compare very different social value offers, which naturally increases the level of subjectivity in decision making.

However, the commissioner and procurement officer need to seek a balance between being clear about the social value requirement and allowing room for innovation. To achieve this, the commissioner might describe the kinds of outcomes they are looking for in the service specification, but leave bidders to suggest specific ways of achieving these outcomes in their individual tenders. Good pre-market engagement should give bidders an opportunity to share innovation with commissioners.

The challenge of balancing innovation and a clear requirement within commissioning is not specific to social value, and is something that all commissioners must grapple with.

For contracts above the OJEU threshold, it is important to make reference to social value in the contract notice if it is going to be included in the specification.

Clearly communicate to bidders how you want to see their social value offers articulated

The review found a degree of frustration from providers who want commissioners to give more guidance on presentation of social value offers, including how they would like to see these measured. This is particularly important for smaller bidders who may only be able to invest time in measuring their social impact once and will therefore want to make sure that the measurement approach they have chosen is accepted.

Select a successful bidder through the procurement process

Some organisations have reported asking a social value question in their Pre- Qualification Questionnaire (PQQ). In 2015 PQQs were abolished below the OJEU threshold and standardised above the OJEU threshold, so

this will no longer be possible. Instead, where social value is being sought it should be included at the Invitation to Tender stage:

1. The social value outcomes being sought should be described in the service specification.
2. In the ITT evaluation criteria, social value should form part of the quality weighting. The amount of weighting specifically given to social value, within the overall quality evaluation, should be made clear.