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Practical strategies to achieve social value in a
non-arbitrary Way

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Procurement Reform (Scotland) Act 2014 (2014 Act)	Public Contracts (Scotland) Regulations 2015
<p>Section 8 – general duties</p> <ul style="list-style-type: none"> - Equal treatment - Non-discrimination - Transparent and proportionate <p>Section 11 – supported businesses</p>	<p>Regulation 19 – general principles</p> <ul style="list-style-type: none"> - Equal treatment - Non-discrimination - Transparent and proportionate <p>Regulation 21 – reserved contracts</p> <p>Regulation 5(3) – “small lots”</p>
<p>Section 9 – sustainable procurement duty</p> <ul style="list-style-type: none"> - Social wellbeing of area - Facilitate SME/third sector/supported business - Relevant and proportionate <p>Section 15 – Procurement Strategy</p> <p>Section 24 – community benefit requirements</p> <ul style="list-style-type: none"> - Targeted recruitment and training - Sub-contracting opportunities - Other <p>Section 25 – community benefit requirement in major contracts</p> <ul style="list-style-type: none"> - £4m+ contract - Consider use of community benefit - Contract notice (including why not if not included) 	<p>Regulation 67 – award criteria</p> <ul style="list-style-type: none"> - linked to subject matter - includes social characteristics <p>Regulation 70 – contract performance conditions</p> <ul style="list-style-type: none"> - linked to subject matter - includes social considerations

- **Section 17 Local Government Act 1988**
- **Statutory Guidance (June 21 update)**
- **SPPN/10/20**
- **Practical Guidance and Toolkits on sustainable procurement duty**
- **SPPN/3/21, SPPN/4/21, SPPN/6/21**
- **Fair Work First Guidance**

- **Use of reserved contacts/supported business reservation**
- **Use of Small Lots exemption**
- **Contractual social requirements / community benefits (not evaluated)**
 - E.g. Targeted recruitment & training requirements
 - “to provide [x] places”
 - E.g. Supply chain requirements
 - “to advertise [y] subcontracts”
- **Contractual and evaluated**
 - Targeted recruitment & training
 - “to provide [x] places”
 - Supply chain requirements
 - “to advertise [y] subcontracts”
 - Community / Supply Chain Engagement
 - Other
 - Fair Work (per SPPNs)

Social Considerations can be taken into account where:

- they are **linked to the subject-matter of the contract**
- they **do not confer an unrestricted freedom of choice** on the authority
- they are **expressly mentioned in the contract documents /contract notices**
- they comply with all the **general principles, in particular the principle of non-discrimination**
- **(local authorities) comply with s17 LGA 1988**

Do	Do not
<ul style="list-style-type: none">• Ensure contract/specification requirements are reasonable and proportionate• Ensure contract/specification requirements are non-discriminatory• If evaluating, ensure the question is clear that bidder “offerings” in response must be linked to the bidder’s delivery of the contract• If evaluating, set out clearly what it is that will be evaluated and how	<ul style="list-style-type: none">• Include a discriminatory requirement/specification• mandate or evaluate a general policy (not related to the subject matter of the contract)• mandate a particular structure for delivery (discriminatory to others)• ask a question that will result in a response that cannot be objectively scored (or offerings not related to the subject matter of the contract)

Evaluated award criterion / contract requirement - Practical example 1 (used in several large infrastructure projects):

- Approach aligns with Procurement Strategy
- Clarity in Contract Notice/Procurement Documents
- Contracting Authority:
 - **Stipulates base social requirements for contract, e.g.**
 - number of training/employment places
 - supply chain initiatives
 - commitments to engage with community bodies
 - sets out objective scoring criteria
 - emphasises only matters relevant to delivery of contract can be taken into account
- Bidder provides methodology on how it will deliver and makes its commitments on deliverables
- Contracting Authority evaluates deliverables including robustness of proposals to delivery
- Bidder commitment and methodology inserted into contract

Good	Bad
<ul style="list-style-type: none">• Deliverables thought through by contracting authority (procurement strategy and then contract specific)• Approach is clear and understandable to bidders in terms of:<ul style="list-style-type: none">• Focus/limitations of response• Scoring• Fit with contract• Risk areas of discrimination / not being linked to contract are avoided	<ul style="list-style-type: none">• Not thought through• No clear social objective• Open ended questions – inviting vague / open-ended / arbitrary response• No clear and objective scoring mechanism• Introduces risk by going too far and actively discriminating• Introduces risk by inviting proposals not linked to the contract• Disproportionate to objective

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