



Social value in procurement

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David Hansom, Partner



The question

What are the new themes of social value, in particular to address climate change?

How might the law change in any new UK-centric procurement legislation?

What are the practical strategies to demonstrate and evidence social value in a non-arbitrary way, and how can these be evaluated fairly and defensibly?

Coverage

- Emerging trends in social value – Levelling Up, Net Zero and ‘Building Back Better’
- The current law
- What might change in a new UK procurement regime?
- Practical tips to score social value

Emerging trends in social value

- Social value no longer just a 'nice to have'
- Procurement generates wider benefits to society
 - Looking beyond just economic cost
 - Policy response to COVID-19
 - Climate change and Net Zero – Chancery Lane Project
 - Supply chain management and modern slavery
 - Promoting SMEs and local delivery
 - Wellbeing and equal opportunities

Current law

- **Public Contracts Regulations 2015 (plus utilities and concessions)**
- Social and environmental criteria can be included (reg 67 PCR)
- Must be relevant (linked to subject matter) and proportionate to contract
- **Public Services (Social Value Act 2012)**
- Must consider—
- how the procurement might improve the economic, social and environmental well-being of the relevant area, and
- how these improvements can be secured through the procurement

Current law

- **PPN 06/20**
 - Goes further and obliges central government to build social value in
 - Minimum 10% weighting
 - Social Value Model
- **National Procurement Policy Statement**
- **PPN 06/21 Carbon Reduction Plans**
 - Mandatory in central government contracts

How to score

- Quality criteria vs price criteria
- Financial proxies e.g Social Value Index?
- Life cycle costing
- Cannot have unrestricted freedom of choice
- Cannot favour local suppliers
- All bidders must be able to bid and be scored
- Can go wrong and lots of caselaw (e.g C448/01 *EVN* and C-115/14 *RegioPost*)

What might change?

- Green Paper ‘Transforming Public Procurement’
- Seeks a ‘value for money link’ for the first time
- Must have regard to Government priorities and NPS
- New ‘flexible procedure’
- Most Advantageous Tender – a broader view of value
- Specific cases where criteria not linked to subject matter
- Likely spike in procurement challenges from start?

Practical strategies

- Market testing – can suppliers do what you need?
- Can you afford it?
- Equal treatment
- Be very clear on how SV is scored (RWIND tenderer)
- Ensure relevance to subject matter
- Build into contract
- Think about consequences of non-compliance

The answer

- Post Brexit UK looking to innovate in social value
- Lots of competing policy objectives - not all will be relevant to you
- Current law already gives considerable flexibility
- New rules likely to go further still
- Scoring of SV (quality or financial proxy) needs careful modelling
- Supply chain due diligence an emerging area of risk

Your next steps

- Start with new SV criteria each time
- Consult with stakeholders on what good looks like
- Continuously develop your approach to SV
- Start work now on Net Zero / supply chain mapping

Q&A

440

Partners

1,800

Lawyers

4,000

Total staff

2,500

Legal professionals

50+

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