

PROCURING SOCIAL VALUE

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THE QUESTION

Social value

Supported by legally robust examples that work, how do you attribute cost to social value objectives such as climate change, population health and wellbeing?

WHAT WE WILL COVER TODAY

- The meaning of social value
- The applicable legal rules
- The practical difficulties in including social value in the “quality” criteria (the usual approach)
- An alternative approach: life-cycle costing
- Top tips for giving weight to social value
- Back to the question

THE MEANING OF SOCIAL VALUE

The wider financial and non-financial impacts of projects and programmes including the wellbeing of individuals and communities, social capital and the environment

CABINET OFFICE 2019

APPLICABLE LEGAL RULES

- The Public Contracts Regulations 2015 explicitly permit social and environmental award criteria, technical specifications and contract performance conditions
- Utilities rules are the same and concessions rule similarly flexible (while not expressed in the same way)
- Public Services (Social Value Act) 2012 imposes obligation to consider economic, social and environmental well-being
- Use of qualitative award criteria (“quality” rather than “price”) is most common procurement route

DIFFICULTIES WITH AWARD CRITERIA

- The need for a link to the subject-matter of the contract
- Transparency: defining social value
- Equal treatment: risk of favouring domestic and/or established market players
- Cannot reserve unrestricted freedom of choice
- Need to be capable of objective and uniform application to all bidders including being objectively quantifiable and verifiable

ONE CASE LAW EXAMPLE OF ALL OF THAT

EVN (Case C-448/01)

- 45% of marks for energy produced from renewable sources
- Estimated annual consumption of authority was 22.5 GWh
- Only the amount of renewable energy in excess of 22.5 GWh counted in scoring
- Renewable energy criterion and high weighting both fine
- But not related to subject-matter of contract as concerned only energy supply to other customers
- Also unjustifiably discriminatory
- And not verifiable

ONE PRACTICAL EXAMPLE OF ALL OF THAT

The “living wage”

- Socially beneficial but voluntary scheme: many local authorities committed to it
- Not “law” (or a “universally applicable” collective agreement)
- Similar issues considered in EU cases: *RegioPost* (C-115/14); *Stadt Dortmund* (C-549/13); *Rüffert* (C-346/06)
- Limited circumstances in which wage levels can be imposed on bidders: law / collective agreement plus not cross-border
- Imposition of “living wage” through award criteria discriminatory
- Same applies to contract performance criteria

ANOTHER APPROACH: LIFE-CYCLE COSTING

- Permitted by procurement rules as an award criterion
- Involves assessing costs over life-cycle: consumption, maintenance, end of life, environmental factors
- Method for assessing environmental costs must be
 - ✓ Based on non-discriminatory and objectively verifiable criteria
 - ✓ Accessible to all interested persons
 - ✓ Based on data that can be provided with reasonable effort by normally diligent economic operators

ONE EXAMPLE OF LIFE-CYCLE COSTING

- Have to follow methods made mandatory by EU
- The Cleaner Road Transport Vehicles Regulations 2011
- Underlying EU Directive 2009/33/EC being amended
- Obligation to take into account the operational lifetime energy consumption and environmental impacts: in specification, award criteria or cost assessment
- Costs model set out: energy content of various fuels, cost per emissions (e.g. 0.087 EUR/g) and lifetime mileage
- Blue-print for similar models?

TOP TIPS FOR SOCIAL VALUE

- 1. Focus on the award criteria not selection stage**
- 2. Life-cycle costing is hard and £s mean points**
- 3. Define social value and relevance at the outset**
- 4. Make it part of the subject matter**
- 5. Avoid inflammatory topics if you can**

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