

Social value

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- How do you incorporate social value and climate metrics into tender documents that ensure fairness and equity across bidders, and how do you score them?

- Law and guidance
- Issues
- Challenges

Social value has long been recognised in procurements e.g.:

- Reg 57(8)(a) and Reg 56(2) – discretionary exclusion for violation of environmental, social and labour law obligations
- Reg 67 – MEAT can include environmental and/or social aspects (if linked to subject matter of contract)
- *Gebroeders Beentjes v Netherlands* (1990)
- *Concordia Bus Finland* (2003)
- *EVN* (2004)
- *Dutch Coffee Case* (2013)

Before starting procurements, a contracting authority must consider:

- (a) How what is proposed to be procured might improve the economic, social and environmental wellbeing of the area
- (b) How, in conducting the process of procurement, it might act with a view to securing that improvement – but must only consider matters relevant to what is to be procured and must consider the extent to which it is proportionate to take those matters into account
- Whether to undertake any consultation as to matters to be considered in (a) and (b)

- PPN 06/20 (Sept 2020) – Taking account of social value in the award of central government contracts
- Social Value Model
- Guide to using the Social Value Model

- From 1 Jan 2021
- Launched new model to deliver social value through HMG's commercial activities
- Applicable to above threshold PCR procurements of all central government departments, executive agencies and non departmental bodies

- SV should be explicitly evaluated - where requirements are related and proportionate to subject-matter of contract – rather than just “considered”
- Overarching objective for Government’s commercial activities will remain best commercial outcome but public sector must maximise SV effectively and comprehensively through its procurement
- Identifies themes, policy outcomes and commercial objectives
- Authorities to select objectives that are relevant and proportionate to the procurement – e.g. creating employment opportunities for those who face barriers

- Evaluation should be qualitative – quality not quantity
- Flexibility to decide which ‘outcomes’ should be applied
- Minimum weighting of 10% so that it is heavy enough to be a differentiating factor – can be higher if justified

- Themes and Outcomes (Annex A of PPN):
 - Covid 19 recovery
 - *Help local communities manage and recover*
 - Tackling economic inequality
 - *Create new businesses, new jobs and new skills*
 - *Increase supply chain resilience and capacity*
 - Fighting climate change
 - *Effective stewardship of the environment*

- Equal opportunity
 - *Reduce disability employment gap*
 - *Tackle workforce inequality*
- Wellbeing
 - *Improve health and wellbeing*
 - *Improve community integration*

- Stages at which it is applied:
 - from planning - awareness building, market assessment and engagement
 - to draft specification and tender documents
 - to evaluation and award
 - to contract management and reporting
 - 'a golden thread' of social value

- *“Simplicity and consistency are the basis of the Model”,*
- *“straightforward to use, and it fits seamlessly into the procurement lifecycle”*
- 5 themes, 8 policy outcomes, 28 delivery objectives, 10 step process

- Each policy outcome comes with a selection of tools:
 - Model award criteria and sub-criteria
 - Model evaluation questions
 - Model response guidance for tenderers
 - Reporting metrics - model KPIs

- Theme 3 – fighting climate change with a policy outcome of effective stewardship of the environment
 - MAC 4.1 – deliver additional environmental benefits in performance of contract including working towards net zero greenhouse gas emissions
 - MEQ – method statement, project plan and process describing commitment
 - MRG – award criteria and sub-criteria
 - SC – additional environmental benefits

Scoring:

- Minimum weighting of 10% of total score
 - Except where pre-market engagement indicates this would significantly reduce competition due to lack of market maturity in delivering social value, then can be 10% of quality score
 - Can be higher than 10% if market mature

- Score quality as for any other quality question
- Effective scoring system to suit procurement and allow clear differentiation between responses e.g.
 - 5 band scoring
 - Minimum standard e.g. score of 2 or average score across range of criteria
 - Pass/fail

- PPN 05/21 (June 21): See the NPPS!

- NPPS (June 21):
- Contracting authorities should have regard to the following national priorities in exercising their functions relating to procurement – including social value
- Social value: All contracting authorities should consider the following national priority outcomes alongside any local priorities in procurement activities:
 - Creating new businesses, new jobs and new skills
 - Tackling climate change and reducing waste
 - Improving supplier diversity, innovation and resilience

- Clear message: do not have to settle for lowest price; can and should take broad view of value [f]or money that includes improvement of social welfare or wellbeing (social value)
- Public procurement should be leveraged to support priority national and local outcomes for public benefit
- CAs should have regard to national priorities in NPPS where relevant to subject matter of the contract and proportionate to do so

- Detail on meaning of the 3 outcomes
- Taking additional social value benefits into account effectively is a balance with delivery of core purpose of contract
- Authorities should not gold plate contracts with additional requirements which could be met more easily and for better value outside contract compliance process (e.g. imposing EA requirements on private sector)

- Procurement Bill
 - Section 12 (and 13 – Wales)

- Minister may publish statement setting out Government's strategic priorities in relation to procurement

- A contracting authority must have regard to the NPPS

- Choosing criteria:
 - Decision on whether relevant and proportionate
 - Equal treatment and non-discrimination – difficulty of creating barriers to SMEs, start-ups, tenderers from other GPA countries or elsewhere in UK
- Copy MAC and SC
- Scoring
 - Quality not quantum
 - Follow your own scoring methodology!

- Compliance support
 - Cabinet Office Controls Team
 - Public Procurement Review Service

- Legal challenge:
 - JR by body with sufficient interest
 - PCR claim/JR by tenderer

- Salutory warning: *R (Good Law Project) v SSHSC (2021)*
 - *“Failure to follow published policy, absent good reason for departing from it, is an established ground for judicial review....”*
 - Breach of Government’s Transparency Policy (which advised that contracts be published within 20 days of contract award)
 - GLP had standing (not the MPs) and entitled to a declaration though not a mandatory order (as SoS *“moving close to complete compliance”*)