

# THE SOCIAL VALUE GUIDE

Implementing the Public Services (Social Value) Act



In association with

**Anthony Collins**  
solicitors

## Thank you to

The Parliamentarians who championed the Social Value Act: Chris White MP, Nick Hurd MP, Gareth Thomas MP, Hazel Blears MP, Lord Newby, and Baroness Thornton.

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## About this guide

**Social enterprises place social value at the heart of how they work, and believe that public services should be delivered in a way that provides maximum public benefit to the local community. Because of this, Social Enterprise UK has long campaigned for commissioning and procurement to take social value into account, to ensure that the full weight of the public sector's purchasing power is directed at achieving social and environmental benefits alongside financial efficiency.**

The Public Services (Social Value) Act is a giant leap towards making this happen. The Act, which was granted Royal Assent in March 2012 and will be implemented from January 2013, will for the first time require public bodies to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area.

The challenge now will be to make sure that commissioners, procurement officials and providers can access the support they need to implement the Act effectively. Recent research shows that there is a real appetite amongst public bodies for delivering increased social value, with 75% of survey respondents already engaging with suppliers to increase social value. However, the same research showed that 41% of authorities pointed to a lack of experience as a barrier to developing this approach further.

The purpose of this guide is to help meet that challenge. Aimed at commissioners and procurement officials, it both provides an overview of the Act itself and the policy drivers behind it, as well practical guidance on how social value can be embedded into the commissioning and procurement process. You'll find some tips and suggestions in the annexes to help you get started.

Social Enterprise UK will also be providing further information and tailored support packages that you'll find on our website at [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk).

We'd love to hear about the work that you're doing on social value to showcase and share with others. If you have a story to share, please get in touch with us by emailing [olof.jonsdottir@socialenterprise.org.uk](mailto:olof.jonsdottir@socialenterprise.org.uk).

<sup>1</sup> [http://static.bdo.uk.com/assets/documents/2012/07/4104\\_Social\\_Procurement\\_Brochure\\_v9.pdf](http://static.bdo.uk.com/assets/documents/2012/07/4104_Social_Procurement_Brochure_v9.pdf)

|   |           |
|---|-----------|
| <b>Part 1: The policy</b>   | <b>5</b>  |
| The Act   | 5         |
| What is the Public Services (Social Value) Act 2012?  | 5         |
| Who does the Act apply to?  | 5         |
| What does the Act apply to?   | 6         |
| How does this fit with other policies?  | 7         |
| <b>What is social value?</b>  | <b>11</b> |
| Defining social value   | 11        |
| What are the benefits?  | 12        |
| Supporting the social economy   | 13        |
| Efficiencies across departments and public bodies   | 14        |
| Local economic growth and well-being  | 15        |
| Aligning social value with local needs  | 16        |
| <b>Part 2: Putting the Act into practice</b>  | <b>18</b> |
| Embedding social value into commissioning and procurement practice  | 18        |
| Adopting a Social Value Policy  | 20        |
| The procurement process – what to do and when   | 22        |
| Pre-procurement – the wider commissioning cycle   | 22        |
| Initiating commissioning  | 22        |
| Conducting a needs analysis   | 23        |
| Stakeholder and marketplace consultation  | 24        |
| Deciding what to procure: getting the specification right   | 25        |
| Evaluating social value in a tender exercise  | 26        |
| Contract management   | 27        |
| Connected issues  | 27        |
| Measuring social value  | 27        |
| Approaches for contracts of different sizes   | 28        |
| What can social enterprises do to increase their supply chain opportunities in public procurement exercises as a consequence of the Social Value Act? | 28        |

## The Act

### What is the Public Services (Social Value) Act 2012?

Value for money is the over-riding factor that determines all public sector procurement decisions. In recent years, there has been a shift in understanding how value for money should be calculated, and growing support for the idea that it should include social and economic requirements. This has been reflected in a series of recent policy developments, including the Department for Communities and Local Government's revised Best Value Guidance as well as initiatives at the European level.

The Public Services (Social Value) Act is the most significant development in this trend towards embedding social value in procurement. Under this Act, for the first time, public bodies are required to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area.

Tabled as a Private Member's Bill by Chris White MP (Con), the Act received Government backing as well as cross-party support in both the Commons and the Lords. Not only did this enable the Act to pass through Parliament, but in a world where policy is fast-changing, the political consensus that exists on this approach to public spending, it is also a good sign of its likely continuity.

### Who does the Act apply to?

The Act's implementation date has been set as January 2013. Once the Act comes into effect, all English and some Welsh bodies (those not solely or mainly under the jurisdiction of the Welsh Assembly Government) will have to comply with the new law. This includes local authorities, government departments, NHS Trusts, PCTs, fire and rescue services, and housing associations.

## What does the Act apply to?

The Act applies to public service contracts and those public services contracts with only an element of goods or works over the EU threshold. This currently stands at £113,057 for central government and £173,934 for other public bodies. This includes all public service markets, from health and housing to transport and waste. Commissioners will be required to factor social value in at the pre-procurement phase, allowing them to embed social value in the design of the service from the outset.

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. In fact, there is widespread approval for public bodies to consider social value in all contracts including support from Nick Hurd, Minister for Civil Society<sup>2</sup>, and the government promotes the inclusion of social value in all contracts as best practice.

<sup>2</sup> See column 19 [www.publications.parliament.uk/pa/cm201011/cmpublic/publicservices/111019/am/111019s01.htm](http://www.publications.parliament.uk/pa/cm201011/cmpublic/publicservices/111019/am/111019s01.htm)

## How does this fit with other policies?

### Public service reforms

The Cabinet Office's Open Public Services agenda is driving reform across all public sector markets. The Open Public Services White Paper, published in 2012, acknowledges that "improving the accountability of policy and spending decisions in terms of the full social value they create will be increasingly important to improve the way in which public decisions are made". It also argues that "councils should have the flexibility and freedom to consider overall value rather than only cost in their spending decisions", factoring in the economy, efficiency and effectiveness.

The Open Public Services agenda also aims to ensure that a wide range of organisations, including social enterprises and voluntary organisations, are involved in delivering public services. In particular, the Government believes that public service mutuals are playing a vital role in reforming public services by empowering employees to redesign services around the needs of their users and communities, driving innovation and increasing productivity. To enable the growth of mutuals, Government is rolling out the Right to Provide to allow organisations to 'spin out' of the public sector and running a £10 million Mutual Support Programme that provides practical advice to these organisations, as well as a Mutuals Taskforce that is focussed on formulating policy recommendations to support the agenda.

All of these developments are of course taking place within the context of a period of economic austerity that continues to result in tightened budgets and a drive for greater spending efficiencies. To achieve savings, the Government aims to use its programme of public service reform to change the culture of government procurement and spending, including removing many central targets for front-line services, cutting red tape and centrally renegotiating major contracts.

## Procurement duties and directives

The Act complements other developments in procurement rules at the UK and European levels.

### UK

At the UK level, it sits alongside the Department for Communities and Local Government's statutory guidance on the Best Value Duty. Contrary to common perceptions, the Best Value Duty is not just about keeping costs down: rather, it requires best value authorities<sup>3</sup> to make "arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."

The Department for Communities and Local Government's new guidance is "more explicit about the scope for authorities to consider social value in their functions" and the Best Value package "supports [...] the Government-supported Private Members (Social Value) Bill"<sup>4</sup>. It states:

**"Under the Duty of Best Value [...] authorities should consider overall value, including economic, environmental and social value, when reviewing service provision. As a concept, social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves."**<sup>5</sup>

<sup>3</sup> A local authority; a National Parks authority; the Broads Authority; police and fires authorities, the London Fire and Emergency Planning Authority; a Waste Disposal Authority, Joint Waste Authority, an Integrated Transport Authority; Transport for London; the London Development Agency. See Section 1 of the Local Government Act 1999, economic prosperity boards established under section 88 and combined authorities

<sup>4</sup> Best value: new draft statutory guidance and other measures: Equalities impact assessment initial screening, Department for Communities and Local Government April 2011, page 4

<sup>5</sup> [www.communities.gov.uk/documents/localgovernment/pdf/1976926.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/1976926.pdf)

Procurement practice must also comply with the Public Sector Equality Duty (PSED) which was introduced within the Equality Act 2010 and took effect from April 2011. The aim of the Equality Duty is to embed equality considerations into the day-to-day work of public authorities, so that they tackle discrimination and inequality and contribute to making society fairer.

The Act makes clear that public bodies can use procurement to drive equality, and may take 'non-commercial matters' into account in order to facilitate compliance with the PSED. For example, the Equality Act 2010 Explanatory notes say:

**"A local authority wants to contract with a private company. It will be able to take into account the ethnic make-up of the workforce of that company, the behaviour of that company during an industrial dispute, and any other issue which is defined as non-commercial, when deciding to award the contract, but only if it considers it is necessary to do so in order to meet the requirements of the public sector equality duty."**

The duty also requires equality issues to be taken into account in the specifications of a contract, including what services are to be supplied and how, and the outcomes that are sought.

### Europe

Procurement in the UK is governed by a number of European Union directives and regulations which are then implemented in national legislation. These rules aim to open up the public procurement market to ensure free movement of goods and services within the EU. At the EU level, work is underway to revise and reform procurement directives related to public service delivery.

# What is social value?

For example, launched in 2011, a revised procurement framework makes it clear that social requirements can be fully embraced in procurement practice, providing certain criteria are met, such as ensuring open competition<sup>6</sup>. The 2011 Green Paper on modernising EU procurement, Towards a more efficient European Market, states that “public authorities can make an important contribution to the Europe 2020 strategic goals by using their purchasing power to procure goods and services with higher societal value in terms of fostering innovation.”<sup>7</sup>

There has also been support for social value from the European Parliament, with a draft resolution responding to the public procurement Green Paper stating that:

**“In order to develop the full potential of public procurement, the criterion of lowest price should no longer be the determining one for the award of contracts, and that it should, in general, be replaced by the criterion of most economically advantageous tender, in terms of economic, social and environmental benefits – taking into account the entire life-cycle costs of the relevant goods, services or works”.**<sup>8</sup>

The new public procurement directive<sup>9</sup> underscores this commitment. It specifically extends the list of criteria to be taken into account (and linked to the subject-matter of the contract) to “environmental and social characteristics”. So in short, social factors can be taken into account in any public procurement exercise.

<sup>6</sup> These requirements are that social requirements should reflect policy adopted by the public body; should be capable of being measured in terms of performance; should be defined in ways that do not discriminate against any bidders across the European Union; and social requirements drafted in the specification become part of the contract.

<sup>7</sup> European Commission, Green Paper, ‘Towards a more efficient European Market’, p. 33

<sup>8</sup> [www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0326&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0326&language=EN)

<sup>9</sup> Latest version 2nd October 2012: Proposal for a Directive of the European Parliament and of the Council on public procurement (18966/11)

## 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 what 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.

And there are plenty of examples to draw upon for inspiration. A number of public bodies around the UK have pioneered social value led approaches to commissioning and procurement, including Durham, Camden and Wakefield Councils, and Torbay NHS Care Trust, as well as social enterprises that have been delivering added value across many public services markets for years.

## Examples of procuring deliberately for additional social value

- A community childcare organisation that invests in programmes to help local long-term unemployed people into childcare training, qualifications and employment.
- A transport company that tenders for a contract to run London bus routes and offers to provide added value through the additional delivery of a community dial-a-ride service.
- A housing management organisation that wins a contract to undertake property maintenance and repair work, and offers to provide social value by promoting careers in construction and trades to local schools, and committing to employing young people.
- A health contract which, based on consultation with service users, includes criteria such as investing in employees, the ability to evidence training, improved motivation and outcomes, and also the ability to meet the desires of the community.

## 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. It was an understanding of these benefits that resulted in Chris White MP tabling the Public Services (Social Value) Act.

## 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.

## Efficiencies across departments and public bodies

The second driver behind the Act is that it supports commissioners to combine their economic, social and environmental objectives and embed them across all the strategic procurement functions instead of approaching them in silos. The government is the largest purchaser of goods and services in the country spending more than £236 billion on procurement each year. In order to meet societal needs at a time of economic austerity, it is more important than ever that the full weight of this purchasing power is directed at achieving the maximum benefits and efficiencies.

Commissioners and procurement officials often feel under considerable pressure to buy services at the lowest possible cost. By embedding social value in commissioning and procurement multiple benefits can be achieved, which in turn can give rise to cross-departmental or cross-organisational efficiencies. For example, in some areas of the UK where the public sector is by far the largest employer, spending cuts are inevitably impacting on unemployment. Ensuring that all spending decisions require contractors to support local employment opportunities can play a part in reducing the impact of this.

A broader evaluation of cost (across departments and objectives) which measures the price of social value against the cost of lost opportunities for the local community such as reduced unemployment, crime, ill health and business closures, can show how this approach gives rise to savings across departments and public bodies. Similarly, the innovation that is enabled through social value led commissioning and procurement may give rise to further efficiencies.

Evaluating this type of saving is challenging in an environment where budgets are operated in silos. Pilots which have begun to look at holistic, place-based solutions to local needs need to be further developed and rolled out in order to help facilitate this.

## Local economic growth and well-being

Public procurement decisions have the potential to significantly influence local economic growth and well-being by addressing local challenges. Over 40% of local authorities' expenditure is now on third party contracts<sup>10</sup> and this figure will increase if the current trend away from direct delivery in local government continues. As such, local bodies don't have the same control through direct delivery to achieve local strategic targets, but these objectives can be embedded within their supply chains through the use of social value.

For example, spending decisions that take into account local economic, social and environmental benefits can create and catalyse the following benefits:

- **Using a local supplier to provide services can create employment opportunities;**
- **Unemployment and worklessness are inextricably linked to deprivation, meaning that job creation through procurement processes can help tackle the cycle of deprivation and its cost to the public purse;**
- **Employees and suppliers of public service delivery organisations will spend money within local economies in shops and upon suppliers of their own;**
- **Using your purchasing power to make requirements of your contractees' supply chains can extend these benefits yet further, potentially supporting the creation of new businesses within communities<sup>11</sup>.**

<sup>10</sup> Current expenditure figures 2009/10 on 'Procurement' as a proportion of total expenditure, Local Government Financial Statistics England, No.21 2011

<sup>11</sup> Towards progressive procurement: the policy and practice of Manchester City Council, CLES

Buying services in this way has the potential to have a profound impact. For example, research carried out by the new economics foundation and Northumberland County Council on local multiplier effects found that spending on local suppliers had 400% more impact on the local economy than spending on suppliers outside of the area<sup>12</sup>. Similarly, the Centre for Local Economic Strategies (CLES) conducted research into the multiplier effect from Manchester City Council's (MCC) commissioning and procurement spending. MCC specified social value in all of their construction contracts and a number of other key areas, and the research found that the council's £184million of local spending was transformed into £687million through the multiplier effect of its local supply chains<sup>13</sup>.

## Aligning social value with local needs

Suppliers can have a substantial positive impact on local communities beyond the direct remit of their contract. And so by aligning social value commissioning with local strategic needs, public bodies can use their supply chains to help them achieve local targets. For example, social value requirements can be identified from the priorities listed in a local authority's Local Area Plan or Sustainable Community Strategy. These can be formed into a framework, determining what procurers should be looking for from their suppliers.

Public bodies may also choose to consult with the local community, including residents, elected officials, social enterprises and other local businesses, to enhance their understanding of what social value looks like in the local context.

Carrying out a consultation of this kind not only helps public bodies to gain a deeper appreciation for local needs from service users and providers, but it also creates an opportunity to engage senior officials and local politicians and seek their buy-in to the process. This support and commitment has been shown to be crucial in areas where social value already features in commissioning, and gives procurement staff the confidence to pursue this approach.

Ideally these elements will all be drawn together into a single framework or piece of guidance to help inform social value commissioning and procurement across the organisation. This could be part of an authority's procurement strategy or it could be developed as a separate piece, such as the Whole Life Value Programme developed by Durham County Council.

<sup>12</sup> [www.neweconomics.org/sites/neweconomics.org/files/Public\\_Spending\\_for\\_Public\\_Benefit.pdf](http://www.neweconomics.org/sites/neweconomics.org/files/Public_Spending_for_Public_Benefit.pdf)

<sup>13</sup> Towards progressive procurement: the policy and practice of Manchester City Council, CLES, p18

## Part 2: Putting the Act into practice

### Embedding social value into commissioning and procurement practice

Including social and economic requirements into procurement contracts is nothing new. For example, councils have become increasingly used to thinking in this way since the requirement to design sustainable community strategies came in under the Local Government Act 2000: this unlocked their use of the “well-being power” that in England is now replaced by “the general power of competence”. Many councils were also enthusiastic adopters of the recommendations of the Sustainable Procurement Task Force<sup>14</sup> and developed sustainable procurement strategies that are of a high quality.

Building on these initiatives, social value has experienced a recent boost thanks to increased clarity about EU procurement rules and a relaxation of UK legislation regarding non-commercial requirements applying to councils, as well as of course the Public Services (Social Value) Act 2012.

As a starting point, for contracting authorities that are bound by the EU rules and will soon be required to comply with the Public Services (Social Value) Act 2012, social value can best be delivered in the following ways:

- Prepare and adopt a policy that sets out your organisation’s priorities for the well-being of the area(s) that you serve – this could be done annually or on a three year cycle;
- In relation to any services that you are responsible for, consider how you should commission them, considering your social value policies;

- If you decide to commission those services by procuring them from a third party, consider how your priorities can be reflected in the procurement:

- 1. In the specification for those services;**
- 2. By asking about the bidders’ track record in delivering the services; and**
- 3. By determining the criteria to be adopted for determining the winning tender.**

- Before launching the procurement exercise, engage with the market about how to realise the whole service package including those aspects that can increase the social value in the project. Within this encourage the market to engage with organisations that can help realise the social value aspects of the services: many social enterprises are in a strong position to assist with this;
- Adopt mechanisms for measuring the performance of the services including social value requirements that are linked to the way that services are paid for under the relevant contract;
- Learn from the performance of the contract about how best to develop social value requirements through a progressive change control mechanism in the contract and also to assist practice in subsequent procurement exercises.

<sup>14</sup> <http://www.defra.gov.uk/publications/2011/03/28/pb11710-procuring-the-future/>

## Adopting a social value policy

Beyond the above suggestions, what should a social value policy cover in concrete terms? Rather than adopt a set of loose commitments, a social value policy can and should be defined in terms of the benefits that it promotes, such as:

- Promoting training and employment opportunities, often for under-represented groups, for example for youth employment, women's employment, the long-term unemployed and people with physical or learning disabilities
- Promoting compliance with social and labour law, including related national and international policy commitments/agendas
- Promoting SMEs and civil society organisations through an observance of existing duties of equal treatment, proportionality and transparency and by making subcontracting opportunities more visible
- Stimulating socially conscious markets
- Demonstrating socially responsive governance
- Promoting fair and ethical trading
- Ensuring more effective and efficient public expenditure
- Contributing to health improvement priorities
- Stimulating social integration
- Stimulating demand for environmentally-friendly goods, services and works
- Contributing to climate change mitigation targets and to energy efficiency

If every contracting authority adopts a policy, the scope for reflecting social value in procurement will be greatly enhanced. It does not have to be a long document – just one that demonstrates commitment to unlocking real value for money in public services.

Ideally, a social value policy should cover:

- A description of the purpose and remit of the relevant contracting authority
- A list of areas in which your organisation will pursue social value within its core purpose (considering the benefits set out above)
- The other organisations in the public sector that your organisation works with to achieve these ends
- How your organisation will reflect these commitments in its procurement processes
- Some targets that your organisation will adopt as desirable outcomes
- How your organisation will enable SMEs and social enterprises to participate in its public service commissioning requirements
- How your organisation will report on its social value every year

Under EU law, a policy of this kind will legitimise the environmental and social characteristics that are reflected in a contract and the evaluation criteria adopted to determine the service provider chosen at the end of the procurement process<sup>15</sup>.

<sup>15</sup> Concordia Bus Finland Oy Ab (formerly Stagecoach Finland Oy Ab) v (1) Helsingin Kaupunki (2) HKL– Bussiliikenne (2002) (C-513/99)

## The procurement process – what to do and when

### Pre-procurement – the wider commissioning cycle

The Social Value Act obliges contracting authorities to consider social value at the pre-procurement stage. This is of course good practice – the best results will be achieved when a contracting authority considers what to buy as well as how to buy it, and at the earliest possible stage. Social value can and should be built into the commissioning cycle when:

- Initiating commissioning;
- Conducting a needs analysis;
- Consulting shareholders and/or the marketplace;
- Designing the services to be procured; and
- Setting the objectives for any contract to be procured.

### Initiating commissioning

A contracting authority is likely to initiate commissioning while an existing contract is still in place, unless the contract satisfies a completely new need. This means that a contracting authority can take the time to consider the possible social value to be achieved through a new contract and use the opportunity to:

- **Examine the existing contract**

What social value is already being achieved? Even if this is not being monitored or measured, the existing contractor or service provider may already state what ‘added value’ the contract offers. By investigating the existing activities, your organisation can take the opportunity to turn ‘added value’ into measurable results. The contractor may already be recruiting from school leavers, offering training to new staff, or seeking to ensure a service is provided with the minimum impact on the environment.

- **Consider the ‘fit’ between the contract and the contracting authority’s policy goals**

Are there particular existing policy goals that could be met through the new contract? Is there a need for more specific policies to be drawn up while there is time? See ‘social value policy above.

- **Consider what other action should or could be taken before a new procurement exercise is commenced**

If new social value goals are being incorporated, a new contract may need to be drafted, or amendments/additions made to the existing contract to incorporate the necessary specification and contract conditions. This will ensure that a new service provider is bound into seeking to achieve the social value.

- **Conduct stakeholder and/or service user consultation**

This can help identify which of your organisation’s goals are most relevant to stakeholders and service users, and which should therefore be reflected in an expanded specification.

### Conducting a needs analysis

In addition to reviewing the existing contractual arrangements, the contracting authority should consider conducting a needs analysis. This will help to ensure that the new contract is not limited or constricted in any way by the scope of a previous contract. If service provision has previously occurred in house, this ‘contract’ may have been in place for some time, and it is easy in such circumstances not to have updated the service to reflect current needs.

A new procurement is the opportunity to ask questions such as:

- Have service users’ needs changed?
- Has the wider community’s needs changed? Are there different social issues to tackle now?
- Are there new ways of resourcing the requirement - e.g. other sources of public funding or through collaborative resourcing?

## Stakeholder and marketplace consultation

The Social Value Act says that public bodies must consider whether to undertake any consultation. This is a real opportunity to seek the views of the community (in its widest sense) over what social, economic or environmental “need” there is, and how this could best be delivered.

The pre-procurement stage provides an excellent opportunity to engage broadly with both stakeholders and potential service providers. Contracting authorities can find they learn a great deal about the capabilities and willingness of possible service providers. It is also a good way of identifying how social value can be monitored and measured – service providers may have evidence of what they already achieve, and stakeholders may have views on how data should be reported back to them and/or the public. The contracting authority could even let potential service providers have sight of its intended contractual requirements (and how they will be measured and monitored) beforehand.

In an EU procurement process (where there will in due course be a call for tender), it is a good idea to publish a prior information notice (PIN) alerting the market to the consultation exercise, inviting organisations that might be interested to a market briefing event. This enables a contracting authority to capture views and opinions through the use of soft market-testing questionnaires or conversations at these events. Such briefing events are useful in creating a market and also in enabling possible suppliers (especially where the services are multifaceted) to meet each other and consider forming consortia to provide services.

These events can also provide social enterprises and community organisations with the opportunity to meet other providers and work out how they could collaborate in the future. These events can be advertised through local publications and/or web portals.

## Deciding what to procure: getting the specification right

The decision over what to procure should flow naturally from your needs analysis and market/stakeholder engagement, and what is procured can include the social value element. However, the consideration for social value will depend upon whether it forms part of the contract’s subject matter - and this depends on the extent to which social, economic and environmental requirements are reflected in the service specification.

Where social value does form part of the subject matter, it can be taken into account when evaluating a bidder’s suitability to provide a service and therefore should be reflected at all stages of the procurement process.

In order for a social/economic/environmental requirement to be included in the specification, the contracting authority should specify ways in which service performance of those requirements can be verified: unverifiable requirements are unlawful, as well as being ineffective!<sup>16</sup>.

<sup>16</sup> (1) EVN AG (2) Wienstrom GMBH v Republic of Austria (2003) (C-448/01)

## Evaluating social value in a tender exercise

The broad principle is that social value requirements should be evaluated in the same way as any other elements in a procurement exercise. Bear the following in mind:

- Once adopted at the outset of a procurement exercise, the evaluation criteria cannot be changed through the procurement process at any stage: this includes sub-criteria and weightings.
- Social and environmental characteristics will be most relevant to the “quality” aspect of the evaluation criteria: language should be used that reflects the specification of what the contracting authority is wanting to buy.
- Non-“local” language should be used: all bidders from anywhere in Europe should be able to comply with the requirements. Local benefit is achieved by ensuring that the “supply side” is equipped to participate fully - an example is a local authority establishing arrangements whereby unemployed people can be identified in order to ensure that a contractor can deliver on the contract and social value be created.
- The weighting allocated to social characteristics must relate to their importance to the contracting authority (typically these might be up to 10%), but if adopted the contracting authority must explain why it is adopting the particular weightings it has chosen, especially where these are not what the relevant service industry is not used to<sup>17</sup>.

<sup>17</sup> Traffic Signs and Equipment Limited -v- Department for Regional Growth and Department for Finance and Personnel [2011] NIQB 25 (4 February 2011) - to use environmental sustainability criteria over and above industry quality assurance standards requires specific justification in the tender documentation

## Contract management

Once a contract is in place and the performance measures are clear between a contracting authority and service provider, there are two things that really should be done for the contract to be a success:

- The commissioning authority must deploy enough resource to monitor the contract effectively and review with the service provider its performance of the full specification (including any social value aspects) - otherwise value for money will not have been tracked; and
- The parties must work together to work out how service delivery can be enhanced in collaboration with each other as well as service users and other stakeholders including local civil society organisations. The contract should be the beginning not the end point for unleashing greater social impact and value for money.

## Connected issues

### Measuring social value

A considerable amount of expertise has been developed to measure the social value of an organisation, particularly where it operates in the public services arena. This work is complementary to the procurement of social, economic and environmental requirements in a procurement exercise and a number of useful tools have been developed to show benefits to the public purse arising from an organisation’s activities.

In a procurement exercise, however, it’s key to be clear about the subject matter of the contract and what aspects of social value are to be delivered within that subject matter. Clarity of purpose and the embracing of wide social responsibilities by the public sector are the key to this. This is precisely what the Act is intended to trigger.

## Approaches for contracts of different sizes

For larger contracts the main approach should be to achieve societal benefits through stretching the specification of what can be commissioned. In the case of smaller contracts, social or community benefit might be achieved through procurement that maximises the chances for civil society organisations to win such contracts.

In keeping with this Government's drive to make public procurement accessible to social enterprises, charities and SMEs, this means simplifying procurement processes, adopting short-listing criteria that do not favour only the large suppliers (e.g. unnecessarily high thresholds for financial standing) and building the capacity of local suppliers to bid.

Local authorities have a particular ability to engage with local suppliers and to assist them to bid for all public contracts in their area (irrespective of which public body procures them). There are a number of councils that do this well.

## What can social enterprises do to increase their supply chain opportunities as a consequence of the Social Value Act?

Social enterprises should engage with local public bodies either directly or through their networks/support organisations well before the procurement cycle starts. They can start this by championing the adoption of social value policies by all the public bodies that they encounter in their activities.

Other steps that can be taken include:

- **Think about your own success measures and social value. You may already measure the social value you create. If not you should think about doing this. There are resources, organisations and independent consultants out there to help you do it.**
- **Get in touch. Contact the public bodies you want to work with, telling them you've heard about the Act and you'd like to discuss social value in your community. Offer your help in working up priorities and criteria. This will help you better understand their needs and priorities and how you might help deliver these. Offer to help them review their existing strategies and encourage them to adopt a social value policy.**
- **Plan! Be able to articulate why you should deliver any particular contract and what added social value you offer.**
- **Don't forget the rest. Each tender will still be assessed against, strategy, financial management, cost, quality, risk management. The added social value you create is just one part of the assessment - be sure to make the most of it but not at the risk of other elements.**

## Annexe 1

### Practical tips: Suggested wording for OJEU Notice

To support contracting authorities with the practical implementation of the Social Value Act, here is a template that could be used for demonstrating you 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 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.”

## Annexe 2

- Has your contracting authority:**
- Checked its powers for the contract in question?
- Identified its policy basis for social value in commissioning and procurement?
- Considered what social and environmental benefits could be achieved in the scope of the procurement?
- Consulted the market place about how the services could be delivered differently to maximise the social value from the contract?
- Reflected its policies on social value and the outcomes of market consultation in the business case for the procurement?
- Worked out verifiable requirements that reflect social value to be included in the specification for the services?
- Included reference to social value being reflected in the procurement in the relevant OJEU Contract Notices and other tender advertisements?
- Asked about track record in delivering the services as described in your specification in the pre-qualification questionnaire (but not whether the potential bidder has corporate social or environmental responsibility policy)?
- Thought about how to describe environmental or social characteristics in the evaluation criteria for the award of the contract?
- Worked out what resources are needed to ensure as best as possible that the maximum social value in the procurement. Who do you collaborate with to make this a success?
- Put in place simple ways of measuring and rewarding performance of the contract's social value requirements?

# Social Enterprise UK

We are the national membership body for social enterprise. We offer business support, do research, develop policy, campaign, build networks, share knowledge and understanding and raise awareness of social enterprise and what it can achieve. We have a network of 15,000 organisations and operate a very busy website. We also have a lively and growing social media presence.



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## Social value support for local authorities, housing associations and other public bodies

The Public Services (Social Value) Act is due to be implemented from January 2013. But are you ready for it? We are working with local authorities, housing associations and other public bodies across England and Wales to help them get ready for implementation. Our services include:

- **Comprehensive social impact measurement services**
- **Tender review services – to assess how you can get the best social value out of your contracts**
- **Needs assessment – where can you add most social value in your area or sector?**
- **Training, templates and toolkits to help ensure your organisation complies with the Act**
- **Answers to key legal questions**
- **Meeting peers who are getting to grips with social value**

The Act is a unique opportunity for public bodies to get the greatest social value for every pound they spend – and help build sustainable growth in the wider economy. Our services can be designed to meet your needs and your budget.

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