

# **Procurement Policy Note – The Public Services (Social Value) Act 2012 – advice for commissioners and procurers**

## **Information Note 10/12 20 December 2012**

### **Issue**

1. The Public Services (Social Value) Act 2012 (the Act) received Royal Assent on 8 March 2012. It will be brought fully into force by commencement order on 31 January 2013
2. From that date the operative provisions of the Act will apply and commissioners and procurers must follow the Act and take it into account when considering procurements of certain types of services contracts and framework agreements.

### **Dissemination**

3. Please circulate this Procurement Policy Note (PPN) within your organisation, agencies, non-departmental public bodies (NDPBs) and any other bodies for which you are responsible, drawing it to the particular attention of those with a commissioning or purchasing role.

### **Contact**

4. Please direct any general enquiries to the Service Desk: 0845 000 499 [servicedesk@cabinet-office.gsi.gov.uk](mailto:servicedesk@cabinet-office.gsi.gov.uk)

## Introduction to the Act

5. The Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before the process starts. They also have to consider whether they should consult on these issues.
6. The Act applies to the pre - procurement stage of contracts for services because that is where social value can be considered to greatest effect. Commissioners should consider social value before the procurement starts because that can inform the whole shape of the procurement approach and the design of the services required. Commissioners can use the Act to re-think outcomes and the types of services to commission before starting the procurement process.
7. Demand for core public services will increase significantly over the next few years in a time of reduced funding. Increasingly, commissioners will need to identify better targeted more innovative and radical service delivery solutions to meet this demand.
8. In these tight economic times it is particularly important that maximum value in public spending is achieved. However currently some commissioners miss opportunities to secure both the best price and meet the wider social, economic and environmental needs of the community. Commissioners and procurers should be taking a value for money approach - not lowest cost - to assessing contracts and the Act complements that approach. The Cabinet Office's new Commissioning Academy will focus on these issues and this note explains the duties placed on commissioners and procurers by the Act. It also suggests approaches that may be taken when applying its considerations to the design of procurement processes. This note is not a substitute for reading the Act itself and authorities must familiarise themselves with it – see <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

## What are authorities required to do under the Act?

9. When it comes fully into force, the Act will require commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well being of the relevant area, how they might secure any such improvement and to consider the need to consult. The Act will only apply to public services contracts and framework agreements to which the Public Contracts

Regulations 2006 apply.

10. When considering how a procurement process might improve the social, economic or environmental well being of a relevant area the authority must only consider matters which are relevant to what is proposed to be procured. The authority must also only consider those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account.
11. The Act also provides that if there is an urgent need to arrange a procurement the requirements to consider consultation and the impact on social, environmental and economic well being can be disregarded if it is impractical to consider them. Urgency caused by undue delay by an authority will not be a valid reason not to comply with the Act's requirements.

### **Considering the economic, social and environmental well being of the relevant area and applying this to the procurement process**

12. The results of procurement processes can have a significant impact on economic, social and environmental well being in an area. There can often be additional value beyond the economic, social and environmental benefits that may be achieved by the services procured.
13. The Act does not prescribe how the results of the consideration of these impacts and feedback from any accompanying consultation should shape any procurement which is undertaken. It does enable the citizen and user perspectives on potential services to be taken into account in the development of outcomes and specifications for the services to be procured. With an increasing emphasis on procuring for outcomes and achieving better results for less expenditure specifications informed by the consideration of the issues set out in the Act can lead to more innovative and cost effective solutions. This might include co-commissioning of services across a number of public bodies or breaking requirements into smaller lots.
14. An example of how social value may be considered at various stages of the procurement process is presented in the annex to this action note and a number of technical questions and answers are presented below to advise commissioners and procurers how to apply the Act in practice.
15. Although the Act only applies to certain public services contracts and framework agreements to which the Public Contracts Regulations apply commissioners could, as a matter of good practice, consider how what it

is proposed to be procured might improve economic, social and environmental well being in order to obtain maximum value for money and for local authorities to comply with the best value duty. This may be particularly relevant in lower value contracts where services for citizens are being commissioned and procured.

16. [The Compact](#) sets out Government's relationship with the voluntary and community sector. It states at paragraph 2.1 that Government will ensure that social, environmental and economic value forms a standard part of designing, developing and delivering policies, programmes and services.

## Technical Questions and Answers

### **Does the Act apply to Part B Services Contracts and below threshold contracts?**

The Act will apply to services that fall under Part B of Schedule 3 of the Public Contracts Regulations 2006 as well as those that fall under Part A. The Act applies to contracts to which the Public Contracts regulations will apply so contracts below the relevant financial thresholds will not be covered. See [EU thresholds](#) for more information.

### **How does the Act apply to Framework Agreements?**

The Act will apply to framework agreements. When procuring an above threshold framework agreement for public services procurers and commissioners must consider the provision of the Act. The Act does not apply to services contracts awarded by calling off from a framework.

### **What contracts are not covered by the Act?**

Contracts for goods and works are not covered by the Act. Contracts where there is a mixture of services, goods or works are not covered where the value of the goods exceeds the value of the services or where the works are more than incidental to the main purpose of the contract. Contracts below the relevant monetary thresholds in the Public Contracts regulations 2006 are not covered by the Act. Call-offs from framework agreement are not covered by the Act.

Other contracts that fall outside the scope of the Public Contracts Regulations 2006 (such as those for certain defence and security services) are not covered.

Although these contracts are not covered under the Act commissioners, as a matter of good practice, could consider economic, social and environmental well being in order to obtain maximum value for money. This may be particularly relevant in lower value contracts where services for citizens (such as welfare, social and health services) are being commissioned and procured.

### **What has to be considered in the pre-procurement stage?**

The Act requires authorities to make the following considerations at the pre-procurement stage:

- how what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area”
- how in conducting a procurement process it might act with a view to securing that improvement whether to undertake a consultation on these matters

### **What is the definition of public services contract?**

The definition of “public services contract” in the Act is the same as the definition in the Public Contracts Regulations 2006. The tests for mixed contracts are therefore the same as in the Public Contracts Regulations 2006. Mixed contracts for goods and service will only be covered if the value attributable to the services exceeds the value of the goods covered by the contract. Mixed contracts for works and services will only be covered if the works are only incidental to the main purpose of the contract.

### **What is the relevant area?**

The Act defines “relevant area” as being the area in which the authority (or authorities) primarily exercise their functions within the United Kingdom. For example, a local authority thinking of letting a contract for its own use would have to make considerations for its own geographical area, even if the contract is only directly relevant to part of the local authority’s area. A local authority procuring a framework agreement for use by itself and neighbouring authorities would have to consider that wider area, even if the framework agreement is only likely to be directly relevant to part of that wider area. Authorities whose functions extend throughout the UK would have to consider the area of the UK, even if the contract or framework agreement is only directly relevant to a part of the UK. Areas outside the UK do not have to be considered even if an authority has functions outside the UK.

Although the Act requires considerations to be made in respect of the “relevant area” contracting authorities should be careful to ensure that suppliers from across the EU and beyond are able to compete on an equal footing for any contracts advertised. In line with the EU Procurement Directives, EU Treaty principles and the UK’s international obligations contracting authorities should not do anything to discriminate against suppliers from other member states or countries who are party to the World Trade Organisation’s Government Procurement Agreement.

### **What is the pre-procurement stage?**

This is the stage of the commissioning process where services are conceived and are designed and specifications developed and engagement with partners, stakeholders and current and potential providers takes place. This period ends when the first of one of the following events occurs:

- sending a notice in the Official Journal of the European Union inviting tenders, requests to be selected for tender or to negotiate or to participate in a competitive dialogue for a services contract or framework agreement
- publishing an advertisement seeking offers or expressions of interest in relation to a contract or framework agreement
- contacting suppliers to seek an offer or expression of interest in relation to a contract or framework agreement
- contacting a supplier in response to an unsolicited offer or expression of interest in relation to a contract or framework agreement
- entering into a contract or concluding a framework agreement

### **Who should be consulted and how should it be done?**

The Act does not set out who should be consulted in the pre-procurement period. Cabinet Office procurement advice on lean sourcing already emphasises the importance of consulting with supply markets before formal procurements begin so the requirements of the Act are complimentary to the principle of consulting before procurements start to develop robust and intelligent specifications. Potential service users and organisations that represent them in the community could be consulted as well as other agencies that provide or commission services.

Consultation will be particularly relevant when considering procurements for services which are delivered directly to citizens. The voluntary and community sector, along with other providers and interested groups, should be engaged from the earliest stage to help shape policies, programmes and services. Central Government

contracting authorities should be mindful of the principles of [The Compact](#) between government and that sector. Other authorities may have local compacts with the voluntary and community sector and should be mindful of those arrangements. Consultation may be less relevant in procurements for “back office” services such as those for information technology or human resources where services are supplied directly to the contracting authority.

The Act does not set out how consultation should take place so commissioners should consider the most appropriate form of consultation bearing in mind the needs and requirements of people and organisations being consulted, the size of the procurement and the likely social, environmental and economic impact of the procurement. The Cabinet Office publishes principles on consultation exercises at [Consultation Principles](#) . Authorities may wish to take account of those principles when deciding whether to consult and how to do it. The expectation is that consultations should be “digital by default” and carried out on line if at all possible but authorities should consider the types of services they are looking to procure and the best way of getting the views of potential users who may not be familiar with modern IT.

### **How should Contracting Authorities apply the results of considerations and consultations to the procurement process?**

The Act does not apply to any formal stages of the procurement process but it does require commissioners to consider social value issues and how they can be applied to the outcomes required. This in turn will inform the development of the specification and the assessment of bids. The Cabinet Office’s lean standard operating process places a heavy emphasis on engagement with supply markets before procurement processes commence – see [lean sourcing](#) . The requirements of the Act complement this approach. This type of engagement has two benefits. It enables the views of potential service users, potential suppliers and other stakeholders to be taken into account when designing the specification for the service to be procured. This can lead to more innovative solutions which take into account wider economic, environmental and social concerns. It also alerts the potential supply base to forthcoming procurements. If this is done early in the process it enables the supply base to “gear up” to meet demand and also may enable smaller organisations or those from the charitable or voluntary sectors to form a consortium or enter into other commercial arrangements to bid for contracts.

### **What about procurements which are planned at the time the Act comes fully into force but and advert has not yet been issued?**

The Act applies when an authority proposes to procure or is making arrangements for procuring services. If one of the events that lead to the end of the pre-procurement stage have occurred at the time the Act comes fully into force the Act will not apply. If the project is still in the pre-procurement phase at the time the Act comes fully into force and the first of these events happens after that time, the Act will apply. Authorities may therefore wish to consider the provisions of the Act before it comes fully into force and check the conclusions of their considerations when it does come into force to ensure they are still valid. If there have been significant changes further consideration may be required. Authorities should take note that if a procurement has to be conducted urgently the consideration and consultation requirements of the Act do not apply providing the need for urgency was not caused by undue delay by the authority.

### **What bodies does the Act apply to?**

The Act applies to those bodies that are defined as contracting authorities under the Public Contracts Regulations 2006, except that it does not apply to Welsh Ministers, the First Minister of Wales, the Counsel General to the Welsh Assembly Government, the National Assembly for Wales Commission or any other authority whose functions are wholly or mainly Welsh devolved functions.

### **How can contracting authorities demonstrate that the Act has been considered?**

Although the Act does not prescribe that considerations made under it should be recorded, as a matter of good practice, contracting authorities may wish to keep a formal record to show that they have made the considerations required under the Act, as well as the rationale for any subsequent decisions. In the interests of transparency contracting authorities may also wish to indicate in any subsequent advertisements and tender documents that the requirements of the Act have been considered.

### **How does the Act relate to Local Authorities' Best Value duty?**

The Local Government Act of 1999 sets out a general Duty of Best Value for specified local government organisations 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."*

Under the Duty of Best Value local authorities should consider overall value, including economic, environmental and social value, when reviewing service provision.

Communities and Local Government publish statutory guidance on the duty at [Best Value Duty](#).

Local authority commissioners should note that the Best Value Duty complements the approach in the Act but there are some differences which are summarised in the table below:

	<b>Best Value Duty</b>	<b>Public Service (Social Value) Act</b>
Duty	Consider value (including social value)	Consider how to improve social, economic and environmental well-being
Body	Local authorities	All contracting authorities
Contract	Services, goods and works	Services only
Procurement stage	Throughout the process	Pre-procurement
Value of contract	Any value	Only above relevant EU procurement thresholds
Consult?	Yes – end user	Yes – on the service being provided

### **Annex - Example**

This example illustrates how social value can be considered at various stages of the commissioning and procurement process.

A local authority is considering the provision of a meals on wheels service for elderly people. During the pre procurement stage the contracting authority decides that as this is a service which will be provided directly to citizens it will consult potential users and potential suppliers along with other interested stakeholders.

The results of the consultation suggest that many potential service users suffer from loneliness and social isolation. Feedback from a community group suggests that a service where people are collected and taken to a local community centre for their meals would help combat problems of loneliness and isolation. Feedback from the

local NHS trust suggests that many potential users would benefit from contact with health professionals for routine medical services who could spot other medical and mental health issues at an earlier stage. In addition feedback from local people suggests the development of a new community centre would provide a valuable new community resource.

The council takes this feedback into account when designing the outcomes it wishes to see from this new service as wider economic and social benefit would derive from improving community cohesion for users of the service, in addition to improving user's health and improving access to care facilities.

As well as informing the specification of a service, considerations under the Act may inform selection of economic operators. When considering a potential supplier's technical or professional ability a supplier's experience in delivering similar services may be relevant.

The local authority decides to procure a meals on wheels service which is based on bringing people to a local community centre. When considering suppliers' technical ability to deliver this service experience in providing specialist transport services as well as catering is considered as well as experience of providing services to elderly people. The selection criteria that are established make it clear that suppliers can demonstrate their technical ability through sub-contractors taking on specialist roles in the delivery of the service, as part of a consortium as well as by a single supplier.

### **Useful Links and case studies**

The National Council for Voluntary Organisations have published six case studies on how voluntary organisations can provide public services which demonstrate social value. Commissioners and procurers may find it useful to read these examples - [NCVO social value case studies](#) .