

Agenda Item No: 6
Report To: Overview and Scrutiny Committee
Date: 21 July 2015
Report Title: Public Services (Social Value) Act 2012
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Portfolio Holder: Cllr Shorter – Portfolio Finance, Budget and Resource Management



Summary:	To update members on how the Public Services (Social Value) Act 2012 is being implemented.
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Key Decision: No

Affected Wards: All

Recommendations: **The Committee be asked to consider the information provided and advise officers:-**

1. If Members would like to consider developing corporate Social Value priorities to reflect our organisational priorities and the needs of the local area.
2. if any further information is required, and
3. whether the Committee wish to receive a further update in a year's time

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Report Title: Public Services (Social Value) Act 2012

Purpose of the Report

1. To update members on how the Public Services (Social Value) Act 2012 was being implemented and whether the Council were deriving all available benefits.

Background

2. The Public Services (Social Value) Act 2012 (the Act) received Royal Assent on 8th March 2012, and was brought fully into force by commencement order on 31st January 2013.

The Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before the process starts.

“Social Value” is a way of thinking about how scarce resources are allocated and used. It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when we choose to award a contract. Social value asks the question: “If £1 is spent on the delivery of services, can that same £1 be used, to also produce a wider benefit to the community ?”

Although the Act only applies to the pre-procurement stage of certain public services contracts (because this is where the social value can be considered to greatest effect) as a matter of good practice, commissioners in the council are also encouraged to consider Social Value for all procurement activity including Works contracts.

The Public Services (Social Value) Act 2012 is attached in Appendix A.

Application of the Public Services (Social Value Act) 2012

3. Traditionally, within the council tenders have been evaluated on price only. Evaluating tenders using a combination of “Quality” (incorporating Social Value) and “Price”, otherwise known as MEAT (Most Economically Advantageous Tender) has changed the way procurements are dealt with.

Consideration at pre-procurement stage is given to how Social Value can benefit the wider community. The pre-procurement stage of the commissioning process is where services are conceived and are designed, specifications developed and engagement with partners, stakeholders and current and potential providers take place. Officers are encouraged to consider what benefits can be realised from the procurement, and how specific evaluation questions can be ‘weighted’ and criteria developed to judge the most advantageous tender.

These additional benefits can take almost any form, ranging from the very tangible, such as apprenticeships or training, sub-contracting opportunities for small businesses, to softer, but equally important benefits such as engagement with communities or groups of individuals.

A number of examples are listed below, and some have been used in procurements within the council;

- Creating skills and training opportunities (e.g. apprenticeships or on the job training);
- Creating employment opportunities for the long-term unemployed or NEETs (those not in education, employment or training);
- Offering work placements to school children and young adults;
- Creating supply chain opportunities for SMEs and social enterprises;
- Encouraging community engagement;
- Encouraging ethical and fair trade purchasing

The following example details data gathered during works which were commissioned in 2014/15. A specific question was asked during the tender process around the use of apprenticeships and training for staff working on kitchen and bathroom refurbishment works to council housing, results below;

2014/15 Kitchen and Bathroom Refurbishment	Contractor					
	A	B	C	D	E	F
Number of staff working on ABC contracts	37	31	6	2	4	2
Number of apprentices in company	6	7	2	11	3	1
Number of apprentices working on ABC contracts	6	1	1	1	1	1
Current apprentice/training scheme provider	West, East Kent & Ashford College	CITB	CTS Ltd.	Various	CITB	in house
Average number of hours apprentices spend in an educational setting per working week	1 day	7	8	8	9	4
Number of directly employed 'local' staff working on ABC contracts	21	7	0	0	4	0
Number of sub-contracted 'local' staff working on ABC contracts	10	25	0	0	0	2

When approaching procurement, consideration is given to the type of organisation that may be interested in the contract. Understanding who might be attracted by the opportunity and ultimately who might be able to deliver it is extremely important. For example, if it is for an extremely complex or high value works contract, then we may require a minimum number of new employee apprenticeships, etc. to be delivered through the contract. If the contract is a smaller services contract we consider whether small businesses and community or voluntary organisations could deliver it.

To help in this approach all procurements with an estimated value of £15,000 or greater are advertised on a regional procurement portal, creating a transparent process and opening up the opportunity to small and local businesses. (Projects with a lesser value can also be advertised if required). The use of 'Constructionline' (the government's pre-qualification database of contractors), for construction related projects aids contractors bidding for work, as it reduces time and costs completing a long pre-qualification questionnaire, and helps the council as the contractors have already been vetted.

Data is also being collected as part of the Corporate Contracts Register which details if the supplier who is undertaking a project is a SME (Small and Medium Sized Enterprise) or Voluntary, or Charitable Organisation.

Other matters to consider

4. As with many elements of procurement law there is limited guidance as to how to establish whether something is, or is not linked to the subject matter of the contract. To avoid any challenges care should be taken to analyse what we are seeking to commission, what social benefits we hope to secure and whether it can properly be said that the social issue is linked to the core requirement of the contract. Consideration of Social Value needs to be proportionate to the type, value and length of a contract. Each project should be evaluated on an individual basis, rather than a one size fits all approach for all procurements.
5. Even though some commissioners may perceive the considerations of the Social Value Act difficult to achieve, we actually include elements of the Act in our procurements without specifically labelling it Social Value. To ensure that the act is considered, a consistent approach to procurements should be undertaken in the council, utilising the advice and help of the Procurement Officer and the adoption of standardised documentation which is being developed.
6. The Act does not prescribe that considerations made under it should be recorded or monitored, but as a matter of good practice, we should keep a formal record that we have made considerations under the Act, as well as the rationale for any subsequent decisions. Some data is being collected on the benefits derived from applying the Act but a consistent and robust approach to post-procurement activity is to be developed by the Procurement Officer to evidence and measure outcomes and any resulting benefits from the procurement, without getting bogged down in bureaucracy.
7. Small Businesses and Social Enterprises have to negotiate numerous hurdles to bid for works. For transparency, and again to avoid challenge commissioners should ensure the contract requirements that are put in place

are not too onerous for smaller businesses and social enterprises to fulfil, for example request a high level of public liability insurance.

Conclusion

8. Recent research by Social Enterprise UK Wates Living Space, Orbit Group, PwC and the Chartered Institute of Housing revealed that;
 - Delivering social value improves community relations for local authorities and housing associations
 - Definition and measurement of social value are the main barriers to implementation
 - Social value can deliver cost savings and better services
9. Commissioning, and particularly the procurement process, has not traditionally been seen as an inherently creative cycle of activity. However, the process can be used to produce a wider benefit to the community.
10. Including social value requirements in a contract doesn't guarantee outcomes. Officers need to make sure the outcomes are delivered and proven, and manage the contract with the successful contractor in a way that enables the maximum social value to be realised.
11. Social value is being considered in all relevant procurements, but consideration by members about what social value means to the council, should be undertaken with a view to developing our own social value priorities, specifically the definition of a local supplier. These need to reflect our own organisational priorities and the needs of the local area. This will help to develop a more consistent approach to procurement with commissioners understanding the main Social Value priorities for the council.
12. Contract Procedure Rules are currently being reviewed and will include guidance on the Social Value Act, the use of this legislation can provide the legal context which supports local procurement

Recommendation

13. That Cabinet considers developing and defining corporate Social Value priorities which reflect our organisational priorities and local needs.
14. Review of the Corporate Procurement Strategy to be undertaken in October 2015. The review to include the development and production of a brief strategy document on Social Value detailing our corporate priorities and providing guidance and training to commissioners.
15. Review the outcomes from the Social Value Act in a year's time.

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Public Services (Social Value) Act 2012

2012 CHAPTER 3

An Act to require public authorities to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes.

[8th March 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Contracts of relevant authorities

- (1) If a relevant authority proposes to procure or make arrangements for procuring the provision of services, or the provision of services together with the purchase or hire of goods or the carrying out of works, by—
 - (a) entering into a public services contract that is not a contract based on a framework agreement, or
 - (b) concluding a framework agreement as regards which public services contracts are likely to constitute the greater part by value of the contracts based on the agreement,

it must comply with the requirements in subsections (3), (6) and (7) before starting the process of procurement.

- (2) The authority is to be treated for the purposes of subsection (1) as having started the process of procurement as regards what is proposed to be procured as soon as it takes whichever of the following steps is the first to occur—
 - (a) sending a notice to the Official Journal of the European Union for the purpose of inviting tenders, requests to be selected to tender or to negotiate or requests to participate in relation to a public services contract or framework agreement relating to what is proposed to be procured;
 - (b) publishing an advertisement seeking offers or expressions of interest in relation to such a contract or framework agreement;
 - (c) contacting a person in order to seek an offer or expression of interest in relation to such a contract or framework agreement;
 - (d) contacting a person in order to respond to an unsolicited offer or expression of interest in relation to such a contract or framework agreement;
 - (e) entering into such a contract or concluding such a framework agreement.
- (3) The authority must consider—
 - (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - (b) how, in conducting the process of procurement, it might act with a view to securing that improvement.

- (4) In subsection (3) “the relevant area” means the area consisting of the area or areas of the one or more relevant authorities on whose behalf a public services contract is, or contracts based on a framework agreement are, intended to be made.
- (5) For the purposes of subsection (4) the area of a relevant authority is an area consisting of the area or areas by reference to which the authority primarily exercises its functions, disregarding any areas outside the United Kingdom.
- (6) The authority must consider under subsection (3)(b) only matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- (7) The authority must consider whether to undertake any consultation as to the matters that fall to be considered under subsection (3).
- (8) If an urgent need to arrange the procurement in question makes it impractical to comply with the requirements in subsections (3), (6) and (7) before the time indicated by subsection (1), a relevant authority may disregard the requirements to the extent that it is not practical to comply with them.
- (9) Subsection (8) does not apply to the extent that the time available is reduced by undue delay on the part of the authority after this section has come into force.
- (10) Failure to comply with subsection (1), (3), (6) or (7) does not affect the validity of anything done in order to comply with the Regulations.
- (11) The following are not required to comply with subsections (1), (3), (6) and (7)—
 - (a) the Welsh Ministers;
 - (b) the First Minister for Wales;
 - (c) the Counsel General to the Welsh Assembly Government;
 - (d) the National Assembly for Wales Commission;
 - (e) a relevant authority whose functions are wholly or mainly Welsh devolved functions.
- (12) For the purposes of subsection (11) a function of a relevant authority is a Welsh devolved function if—
 - (a) provision conferring or imposing that function upon the authority is within the legislative competence of the National Assembly for Wales, or
 - (b) provision conferring or imposing that function upon the authority is made by the Welsh Ministers.
- (13) This section has effect in relation to a relevant authority’s proposed procurement or arrangements for procurement only if the public services contract or framework agreement in contemplation is such that the Regulations would have effect in relation to it.
- (14) If anything done before the commencement of this section would to any extent have satisfied the requirements in subsections (1), (3), (6) and (7) if done after that commencement, the requirements are to that extent to be treated as satisfied.
- (15) In this section—

“framework agreement” has the same meaning as in the Regulations, and a reference to a contract based on a framework agreement is a reference to a contract entered into on terms established by such an arrangement;

“public services contract” has the same meaning as in the Regulations (and includes a contract that is treated as being a public services contract by the Regulations);

“the Regulations” means the Public Contracts Regulations 2006 (S.I. 2006/5), or any regulations replacing those regulations, as from time to time amended;

“relevant authority” means a person or body that is a contracting authority for the purposes of the Regulations.

2 Local authority contracts

In section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations in the case of local and other public authority contracts), after subsection (10) insert—

“(11) This section does not prevent a public authority to which it applies from exercising any function regulated by this section with reference to a non-commercial matter to the extent that the authority

considers it necessary or expedient to do so to enable or facilitate compliance with a duty imposed on it by section 1 of the Public Services (Social Value) Act 2012.”

3 Financial provisions

There is to be paid out of money provided by Parliament any expenditure incurred in consequence of this Act by a Minister of the Crown, government department or other public authority.

4 Short title, commencement and extent

- (1) This Act may be cited as the Public Services (Social Value) Act 2012.
- (2) Section 3 and this section come into force on the day on which this Act is passed.
- (3) Sections 1 and 2 come into force on such day as a Minister of the Crown may by order made by statutory instrument appoint.
- (4) This Act extends to England and Wales.