


Infrastructure and social value in public contracts – making it concrete

22 November 2023  Craig Elder

This was first published to the [Local Government Lawyer](#).

Social value, in its broadest sense, is the reason that government bodies procure infrastructure. Whether supporting transport, [healthcare](#) or [education](#), social value can be viewed as a thread weaving through most programs of public [infrastructure](#).

The Public Services (Social Value) Act 2012 provided a statutory basis for social value, requiring all public bodies to consider the “economic, social and environmental wellbeing” which flows from the projects they commission.

[Central government](#) bodies must go further, with a policy requirement since 2020 to allocate at least 10% to social value in any [procurement](#) by using a Social Value Model. Many sub-central authorities are choosing to follow suit. The fact that a significant weighting is being given to this aspect moves it far from its original realm of “warm words”, underscoring the importance of ensuring that this element is described, properly evaluated and, perhaps most importantly, delivered.

Social value – what really is it?

Government guidance and its Social Value Model focus on key themes: Covid-19 recovery, tackling inequality, fighting climate change, equal opportunity and wellbeing. However, procuring entities have discretion to tailor their procurements. Any public body procuring infrastructure will wish to consider which of the themes set out in the Social Value Model are most applicable and are clearly linked to the subject matter of the contract.

This will of course greatly vary depending on the nature of the infrastructure project in question, but some obvious themes emerge:

- infrastructure offers a key route to generation of local employment, training and skills. The most obvious opportunities flow from actual employment in the supply chain delivering the project, but contractors can also work to improve skills amongst the wider population. For example by offering interview training, CV workshops, and guaranteed interviews to applicants from certain specified, hard-to-reach groups or those facing barriers to skilled employment
- the impact that infrastructure projects can have on supply chains. For example, by raising awareness amongst “non-traditional” suppliers and SMEs, and reaching out to these organisations to support and enhance their ability to provide credible tenders. This may extend to structuring supply chain procurements in a manner that will support start-ups and innovative enterprises
- creating habitats which increase bio-diversity, pollination and green space either as part of, or as a supplement to, the core infrastructure. Less tangible deliverables are also possible, such as increasing employee and community awareness of the drive for net zero, and the role they can play, and working with supply chains to drive sustainable behaviours.

Isn't this too nebulous to be effectively evaluated?

Ensuring that effective social value offers are properly incentivised and evaluated is an issue which has long bedevilled attempts to deliver concrete benefits. Detailed guidance in relation to evaluation of public contracts generally, and of the social value component in particular, does exist. However, when procuring an infrastructure project the following issues still remain:

- the cost of any concrete initiatives built into supply chains, or of enhancements to design, will be included within the financial model underpinning the cost of the proposals. This means that, effectively, a contracting authority might ultimately pay (for example) £12 for each £10 of activities delivered when the overhead/profit margin of the contractor is accounted for
- what does “good, bad or indifferent” actually look like? There is no shortage of standard scoring mechanisms and guidance on the criteria for awarding a particular score. However, they tend to focus on the extent to which particular requirements are delivered or exceeded. This brings contracting authorities back to the point noted above: are they really just setting out deliverables, whether green spaces or local employment initiatives, which they will then pay for (with a mark-up)?
- this may be no bad thing in and of itself. If there are valuable outputs which the contracting authority wants as part of its infrastructure program, why not specify, procure and pay for them as part of the procurement? The twist is that, if attributing 10% (or even more) to social value, which is then effectively reduced to a series of requirements funded by the public purse, how do contracting authorities incentivise social value commitments that are genuinely “better” and, importantly, deliver more “bang for the public buck”?

So what is the answer?

One approach is to require each bidder to integrate a specified, social value spend within their proposals and assess the effectiveness of that spend against clear, desired outputs. For example, the impact that the bidder’s use of the proposed spend will have on the spread of employment opportunities, creation of skills in the local community, reduction in emissions or biodiversity net gain.

Award of the social value marks, which at 10% (at least) for central government projects, would then focus on the value-add of the proposals, and reduce any tendency towards box-ticking initiatives the cost of which is passed back to the contracting authority. This approach also creates a level-playing field, focussing on quality and innovation, rather than the amount of the investment being re-charged to the contracting authority.

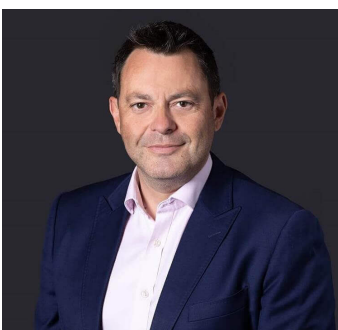
These social value projects can (and should) be enshrined as binding obligations within the relevant infrastructure contracts. One additional approach would be to provide for the contracting authority and contractor regularly to discuss delivery of social value, reviewing whether the originally proposed social value arrangements remain the most effective way of spending the “social value pot”. This provides the contracting authority with flexibility to direct its spend in new ways should innovative new initiatives appeal, with the benefit of a social value fund to react in an agile manner.

And what is the outcome?

There are many ways of embedding social value in an infrastructure above, and the approach described above is but one. Whatever method is adopted, benefits might be direct, with renewable energy and other initiatives being built into infrastructure proposals, or less tangible, such as bringing communities along in support of new infrastructure which can often be controversial.

What is clear is that contracting authorities in the UK control a significant infrastructure spend and, with cleverly designed social value requirements, award criteria, and associated contractual provisions, there is every opportunity to use these budgets to drive these positive outcomes.

Key contact



Craig Elder

Partner

craig.elder@brownejacobson.com

+44 (0)115 976 6089

Related expertise

Arm's length bodies

Central government

Government

Local government