

LGA NATIONAL ADVISORY GROUP FOR PROCUREMENT SOCIAL VALUE NATIONAL TASK FORCE

PERFORMANCE AND CONTRACT MANAGEMENT
IN SOCIAL VALUE – GUIDANCE BOOKLET

Created by:



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FOREWORD



The implementation of the Social Value Act in 2012 was the catalyst for public sector organisations to consider in greater depth how they can obtain more from their contractors and address some of the challenges they face in their local communities. As a result many now routinely ask bidders to set out and commit to providing social value benefits if they are successful in winning tenders submitted. The Local Government National Procurement Strategy 2018 places Social Value as a key deliverable and provides a Social Value Maturity Matrix for organisations to assess themselves against and offers techniques for improvement.

The majority of contractors take social value very seriously and are diligent about ensuring that they deliver on social value commitments made. There have been some instances, however, where contractors have failed to deliver on commitments and consequently public sector organisations have not received the benefits envisaged when letting contracts.

To reduce the possibility of this happening, this booklet provides guidance on best practice, approaches and techniques. These have been collated from public sector organisations at the 'coal face' of using social value in their tenders.

This is a very practical and easy to use guide and I would greatly encourage you to adopt the principles set out here to ensure that your organisation receives the maximum benefit from social value.

Nigel Kletz

Chair, Local Government Association National Advisory Group for Procurement
Director Procurement and Commissioning, Birmingham City Council

1. BACKGROUND

1.1 Many Public Sector Organisations now seek Social Value (SV) offers from bidders/organisations as part of their procurement or planning (section S106) and land development agreements and other processes, with the aim of obtaining SV benefits to meet the wider needs of local communities, businesses and the environment through the better spending of public money. This activity is especially resulting in some significant benefits being achieved from procurement activity as confidence has grown in using SV and as contractors have gained greater understanding of the needs of PSOs.

1.2 SV may be provided through a number of approaches: -

- 'additionality' ('Added' Social Value)
- a greater focus on service delivery that has an integrated social purpose ('Inherent' Social Value); and
- a greater focus on Social Impact from reform, innovation and preventative action and consequent medium to long term service improvements and cost savings ('Impact' SV).

1.3

USEFUL INFORMATION BOX

Legal and Best Practice requirements on Public Sector organisations include:

- i) Public Contracts (Social Value Act) 2012 duties;
- ii) Public Contracts Regulations 2015 Public Procurement selection criterion "Most Economically Advantageous Tender" representing the optimum balance between: Quality, Price and Social Value;
- iii) Revised Best Value Statutory Guidance incorporating reference to "Economic, Environmental and Social Value; and
- iv) UK National Advisory Board Report on Impact Investing – "The Rise of Impact" 2017 recommending at least a 20% weighting for Social Value in all tenders

The importance of Social Value has been further emphasised by the announcement on June 25th 2018 by David Lidington, Minister for the Cabinet Office:

"I can announce today that we will extend the requirement of the Social Value Act in central government to ensure that all major procurements explicitly evaluate social value, where appropriate, rather than just consider it. We will also require all departments in central government to regularly report on the social impact of new procurements".

<https://www.gov.uk/government/speeches/chancellor-of-the-duchy-of-lancaster-speech-to-reform>

1.4 Notwithstanding this, concerns have been expressed by some PSOs that following procurement, it is sometimes difficult to turn SV commitments made by winning bidders into tangible deliverables or that contractors are failing to deliver with the result that expected benefits are not being realised during the contract term.

- 1.5** It is emphasised that this problem occurs infrequently, and the vast majority of contractors are extremely diligent in delivering on SV promises made. However, in order to provide additional clarity and reduce the occasions when contractors fail to deliver on SV commitments made, it is important that PSOs have tools and techniques incorporated into tender documents, terms and conditions and contract management practices to minimise or eliminate the probability and/or impact of this risk.
- 1.6** This Guidance document therefore collates good practice from across the public sector to provide PSO staff with some tried and tested methodologies to enable successful delivery of SV through simple and clear processes. This will enable greater transparency about SV achievements; make contract variations easier when they relate to SV; enable greater standardisation of approach across all contracts and ensure that SV commitments are delivered, and policy objectives and local needs met.

2. CONSULT WITH THE MARKET TO UNDERSTAND WHAT CAN BE DELIVERED AND HOW

2.1 Wherever possible pre-market engagement should be held with potential bidders. Insofar as SV is concerned this will have a number of benefits; it will enable the PSO's key messages regarding SV to be conveyed, with emphasis on the importance that the organisation is attaching to SV in its procurement. The other key benefit is that it will often ensure a more equitable approach to the supply market, "levelling the playing field", particularly for SMEs who often have a good understanding of local community needs but may not appreciate what PSOs are interpreting as SV. Pre-market engagement will greatly assist with that understanding and improve SV bids received. Note that pre-market engagement does not have to be in the form of an 'event', it can be provided through clear messages sent out e.g. through publishing contract notices and the Invitation to Tender (ITT) documentation.

TOP TIP!

Put in place a Social Value Policy for your organisation

A Social Value Policy provides a clear link between the organisation's Plan and its procurements and enables Social Value to be placed in the context of how bidders can help the organisation to deliver the outcomes set out in the Plan.

A Social Value Policy also provides a framework by which an organisation can set out its approach to SV e.g. to determine which contracts SV will be applied to (value/scope) and the minimum weightings that will be set aside for SV in Quality/Price matrices

- 2.2** This type of engagement is also about market consultation by Commissioners and Procurement Professionals, allowing them to be better informed about the SV that Suppliers offer, or could offer with an onus on both parties to understand what the challenges are. Conversations can be open between all parties and the knowledge and learning from this process can be used to develop the approach, support networking between organisations for delivery, and help understand how contract management and reporting can be better undertaken to support and ensure delivery of SV outcomes.
- 2.3** If approached in the right way, early engagement can also provide a platform for different sectors to engage with one another (such as the VCSE and Private Sectors) to identify what opportunities already exist relating to what the PSO is trying to achieve, but also how they can engage pre-procurement to develop those relationships if they become successful in winning a tender.
- 2.4** Early engagement can also support the assessment of SV needs and opportunities within the PSO by allowing consultation with different service areas to understand what their priorities are that are relevant and proportionate to the contract. This not only assists when consulting with the market, but provides clarity to the market on what objectives the PSO is trying to achieve.

3. STRUCTURING THE CONTRACT TO MANAGE SOCIAL VALUE DELIVERY

- 3.1** A key approach to avoiding or mitigating the potential difficulties of a contractor not delivering on SV commitments made is to plan the structure and content of social value sections/requirements in tender documentation. This approach aims to ensure that potential bidders are fully aware that the PSO is taking the contribution SV can make seriously and SV bids submitted therefore need to be well thought through and of a high standard. This will help to minimise the opportunities for a contractor to win a tender on the back of spurious SV commitments whilst simultaneously rewarding contractors who are willing to work with the public sector to address local economic, social and environmental challenges.

TOP TIP!

In your tender documentation don't ask for vague SV requirements; e.g.

Q. Bidders are required to set out in their submission how they envisage social value will be delivered.

This requirement doesn't set out what social value means (some bidders, especially SMEs/VCSEs, may not be aware what social value is), what the organisation's aims and objectives are (in other words what SV offers would most benefit the organisation) and what a bidder needs to do to achieve a good score in this area.

- 3.2** The following paragraphs set out some key approaches that should be taken to ensure that the contract is structured in a way that will solicit sound and deliverable SV offers. In this sense SV is a two-way issue; a clear 'ask' will lead to a good outcome.
- 3.3** The approaches suggested in this Section need to be considered and used in the context of the organisation's policies and processes and adapted/used accordingly.

Overview: - Drafting the tender documentation

Good tender drafting is essential. The key requirements are as follows: -

- i) Contract documentation needs to set out a clear framework on the **working relationship** between the two parties.
- ii) Contracts need to contain **clear, precise SV outcomes and measures** to enable good contract management to take place.
- iii) Clarity and precision is ultimately needed to provide the **basis for enforcement**.

Socially responsible contractors take SV seriously and want their SV offers to be acknowledged and duly taken into account by PSOs. The ideal scenario is a contract where both sides are strongly committed to the importance of SV as a means to enhancing traditional public service delivery.

TOP TIP!

Use the TOMs (Themes, Outcomes and Measures) methodology to provide clarity to bidders

Both local government and the NHS has developed TOMs relevant to meeting their overall requirements. In local government for example a set of National TOMs has been agreed and approved by the Local Government Association's National Advisory Group for Procurement which; -

Provide a consistent measurement solution across the sector

Create a level playing field for business

Allows benchmarking

Pre-procurement

3.3 Introduction

Bidders committed to delivering social value are more likely to win tenders if the tendering organisation is clear about:

- i) The importance it places on social value e.g. by applying a weighting of at least 10% to social value in the quality scoring methodology;
- ii) removing any confusion as to what the organisation means by social value e.g. by using the Themes, Outcomes and Measures methodology; and
- iii) ensuring that social value outcomes are linked to the organisation's priorities

The Public Services (Social Value) Act places a pre-procurement duty on the Authority to consider Social Value; these general principles should help in fulfilling the requirement of "3(b) how, in conducting the process of procurement, it might act with a view to securing that improvement."

TOP TIP!

Read the Public Health Case Study at Appendix A

Integrated Lifestyle Services commissioned by Public Health at East Sussex County Council

This case study contains key tips to support effective contract and performance management to enable social value benefits realisation

Tender documentation

Bidders are more likely to submit unclear or vague SV offers and not deliver on SV if tender documentation is unclear as to what the PSO requires. It is important therefore that PSOs put effort into specifying their SV requirements clearly; relating it to priorities and other policies that seek to address the required outcomes.

The optimal approach to obtaining good SV offers from bidders is likely to be where the PSO defines the types of things it is seeking by way of SV but also seeks proposals from bidders to submit SV offers that the PSO might not have considered e.g. by setting out areas of focus or specific challenges where the PSO is having difficulty and seeking solutions/support from bidders.

Ensure that the weighting for SV is proportionate but high enough to incentivise bidders to provide good offers and reflect what their contribution is worth to end users. Also ensure that the offer is clear, precise and fully evaluated as SV is bound by the same rules of clarification and negotiation as the rest of the Quality Criteria.

Provide a clear scoring and assessment criteria for SV responses within the tender documentation to provide clarity to bidders on how their submission is going to be evaluated and how this could make the difference to them winning or losing a contract.

Ensure that bidders are not asked to submit quantitative SV commitments only as this may encourage bidders to over-inflate their offers simply to obtain a good score. To obviate this, it is important to also seek qualitative information e.g. by way of method statement questions to seek evidence that the bidder understands and can explain in detail how to deliver the quantitative SV they are offering. This will reduce the chance that contract obligations won't be delivered. It is important that qualitative questions asked are proportionate to the tender weighting for SV so as not to make the tender process too onerous on bidders and/or create barriers to entry for VCSEs and SMEs who may not have central bidding teams and/or additional resources to complete lengthy method statements within pre-set tender timelines.

It is worth bearing in mind also that SV is not necessarily just about additionality, it can also be about cost savings from a particular action such as early intervention initiatives.

Social Value delivery timing

It is essential to ensure that at the tender stage bidders are required to set out what year of the contract they will deliver their SV offers in. This has 2 purposes – one to ensure that the bidder has thought through delivery proposals, timing plans and SV impact e.g. that they are not offering an apprentice in the last year of the contract when it will not be possible for the individual to complete their apprenticeship. The second purpose is that it makes contract management easier so that PSOs take early action on any potential failure of delivery.

Change mechanism

Generally, there is more flexibility to set and amend SV requirements in a contract than there is for the core contractual requirements. If a contractor cannot for example, deliver the maintenance it has been contracted to undertake on a building there is no flexibility as that building still requires to be maintained. However, if for genuine reasons, the contractor is unable to deliver on particular SV commitment(s) made, then through discussion with the PSO it can, with agreement, change this for another SV commitment(s) of similar value/benefit.

To accommodate such changes it is important that a change control process is set out in the contract terms and conditions so that there is a clear mechanism for making changes to SV offerings where it is pragmatic to do so. This would include a commitment to a certain level (value) of Social Value and what might replace that value in the event of non-delivery. Use of the TOMs mechanism which provides financial proxies can assist with this as it provides relative benefits of different interventions.

The spirit of Social Value

One of the natural reactions to preventing a failure by a contractor to deliver SV commitment(s) is to include remedies in the contract. Whilst this is prudent, remedies should be viewed as a last resort; the establishment of good relations with the contractor to ensure that there is a willingness to jointly find solutions to problems that may be encountered is most important and contract documentation should be written to include regular contract review meetings (including SV) to engender good dialogue. To this end a focus on partnership, collaboration, effective and creative engagement and the anticipation of issues to resolve them and strengthen the contract.

SV is about creating additional well-being and this is most often accomplished through the building of positive relationships that look for opportunities and mutually beneficial solutions.

Delivery and continuous improvement

In tender documentation bidders should be required to set out how they will manage the SV delivery of their commitments during the contract e.g. who the named manager will be who will take responsibility for SV delivery, commitment to meetings on SV delivery (frequency) and what management information they will provide at meetings to demonstrate performance. A commitment to continuous improvement for SV should also be sought in order that bidders can highlight how SV will continue to ensure relevant commitments are delivered and impacts are maximised.

'Contractualisation' or Incorporation of offers made

It is important to ensure that bidders for contracts are made aware that SV offers made will form part of the contract and they will be held to account for their delivery.

Once the SV provisions have been ascertained, through the PSO's specified requirements and the Tenderer's offer in response, they are agreed in principle and need to be incorporated into the contract. This is typically achieved through a contractual obligation upon the contractor to meet the SV requirements, as specified in a schedule to the contract. Such an incorporation clause can helpfully, expressly state the integral nature of the SV outcomes, so that is in no doubt. Also, recognising that some still desirable SV outcomes may be less clearly measurable than others, the incorporation clause can increase the effectiveness of the contractual provision, by using the concept of "reasonable endeavours". This sets an objective, assessable standard for delivering and managing the less formally measurable SV outcomes. Thus, a simple incorporation clause, included within the clauses establishing the principal contract delivery obligations, might read:

"The contractor shall, as an integral part of its obligations under this Contract, deliver the Social Value requirements set out in Schedule X and shall use reasonable endeavours to deliver the Social Value requirements set out in Schedule Y."

This principle may be adapted to the other main ways of incorporating the SV outcomes, so that, again, the integration point is made expressly and so that effort is made to make the same distinctions between absolute and reasonable endeavour requirements in obligations which are: i) drafted within the main service specification; and/or ii) in provisions incorporated by reference from the tender documentation.

4. WHAT TO INCLUDE IN CONTRACTS: EXAMPLES OF GOOD PRACTICE /TECHNIQUES

- 4.1** This section provides examples of techniques and best practice used by different PSOs. Whatever technique or approach is used it is important wherever possible to meet regularly with the contractor to discuss/monitor delivery of SV under the contract. Having frequent 'face to face' meetings will ensure SV deliverables remain on the agenda and that progress and impact can be suitably managed and reported. It also provides a useful forum whereby any difficulties encountered by the contractor in delivering the SV committed can be discussed and, if necessary, alternative options provided.
- 4.2** Effective engagement, including frequent meetings, is a feature of a good working relationship and contract management. It can also be a means of discussing challenges and addressing difficulties where needed. To assist with this it is a good idea to include clauses that outline expectations about collaborative working and relationship management
- 4.3** The following Techniques are set out in the following Sections:
- KPIs
 - SV Charter
 - Retention approach

A. Linking Delivery to Key Performance Indicators (KPIs)

KPIs are used in contracts to monitor the performance of contractors in delivering on tendered commitments. Usually KPIs are a feature of larger value contracts but they could equally be applied in lower value contracts. Generally, a KPI measuring SV delivery would be one of a number of KPIs monitoring/measuring the performance of a contractor across the entire requirements of the contract.

For each of the indicators, a level of performance is defined, representing the minimum level of service to be provided. The means of measuring performance is also defined, as well as the level and value of service credits to be levied for any possible failure to achieve the minimum levels.

It is important to ensure that KPIs and incentives are relevant and proportionate to the contract and that the contractor is provided with a realistic rectification period to put anything right that has gone wrong.

A KPI failure will be converted into Service Credits. As a rule of thumb the total value of all Service credits should represent around 20% of the total contract price thereby putting 20% of the contract at risk for failure by the contractor.

It should be remembered that there is a cost to including KPIs in contracts as bidders will calculate the risk of a KPI failure and build that into the contract price so it is important not to be over-zealous in using KPIs in a contract or applying service credits against them.

KPIs are then set and monitored on these targets through monthly/quarterly performance meetings (depending on the value/risk and complexity of the contract and the organisations contract management approach). An example of criteria that can be used to assess the performance of the contractor in delivering SV via a Key Performance Indicator (KPI) is set out below.

Table 1: KPI template example

KPI [insert KPI number]	Social Value Delivery
Performance Standards:	Social Value was defined and set out by the Public sector organisation in the tender documentation. The contractor committed to delivery of a programme of SV targets during the contract and is required to adhere to this programme. Monitoring against performance will be reviewed at Quarterly meetings with the contractor. In preparation for these meetings the contractor is required to provide details of SV commitments and evidence that they have been delivered.
<p>Performance points: [XX] points for a failure to deliver on any SV target in any Monitoring Period with a 10-calendar day rectification period.</p>	

KPIs may be general effective gauges of performance, informing the continuing delivery and contract management and need not only be linked to assessment against commitments and consequent price adjustments.

TOP TIP!

Thurrock Example

An example of the methodology used by Thurrock Public sector organisation is set out in Appendix B. Thurrock’s approach to monitoring is to ask Bidders in tender documentation how they propose to contribute to the Public sector organisation’s aims of Social Value. The bidders are asked to set out what targets they will commit to deliver this.

B. Social Responsibility Charter – Birmingham City Public sector organisation

The Birmingham Business Charter for Social Responsibility consists of a set of 6 principles, identified as those being the most likely to deliver the desired social, environmental and economic benefits for Birmingham and aims to help the local economy by supporting local businesses, creating jobs and making sure workers are paid a fair wage.

Any organisation can sign up to the Charter but organisations that bid for higher value contracts with the PSO must sign up to the Charter as part of the contracting process.

Birmingham City Public sector organisation’s Social Value Charter

The Charter is governed by clauses contained in the contract terms and conditions that set out the requirements on contractors. The relevant clauses are as follows: -

Table 2: Birmingham Business Charter contract terms and conditions clauses

Birmingham Business Charter and Social Value Policy
<p>Agreement</p> <p>1.1 The Provider agrees to sign up to the Public sector organisation’s Business Charter for Social responsibility (the Charter) as set out in Part XX of the XXXXX Schedule. The Service Provider agrees to meet the standards as required by the Charter throughout the duration of this agreement.</p>
<p>Action Plan</p> <p>2.1 In fulfilling its obligations under the Charter, the Provider shall develop and implement an action plan approved by the Public sector organisation. The Provider’s Action Plan shall include sufficient detail as to how the principles of the Charter shall be implemented during the duration of this Agreement. The Provider shall maintain the Action Plan throughout the duration of this Agreement, recording completed actions and those yet to be implemented. The Action Plan shall form part of the contract reviews to be undertaken by the Public sector organisation.</p>
<p>Annual Statement</p> <p>The Provider shall provide to the Public sector organisation on each anniversary date, beginning from the Commencement Date, an annual statement confirming how the principles of the Charter have been implemented or are yet to be implemented.</p>

The full Charter Guidance document is set out at Appendix C.

C. Retention

This approach is aimed at holding back payment in the contract until SV commitments are met. A retention regime for SV commitments would operate as follows: –

Consider the SV offer from bidders as a % of contract value by using the Financial Proxy values from the TOMs

1. Link the retention to either:

- i) If the authority has a payment deduction regime with a cap on deductions, to the relationship between this cap and the contract value; or
- ii) If there is no readily identifiable cap, to a reasonable estimate of the contractor's profit margin on the contract.
- iii) Under approach (ii) the profit margin would be based on industry indicators before the start of the procurement and would apply across the board, regardless of the bidder's actual profit margin (which would probably not be known anyway).

Note – these are not penalties, but a proportion of the payment held back until SV commitments are met.

2. As with a KPI regime, it is important to give the contractor reasonable opportunity to rectify any problem.
3. One issue with using Retentions is how to determine that commitments have not been met. At one end of the scale, one approach is for there to be a £ for £ deduction for the whole shortfall below the SV target. On the other hand, a view could be taken that there are lots of reasons why SV might not be delivered which are beyond the contractor's control and what they really want to remedy is the contractor's failure to proceed with due diligence or wilfully ignoring the commitments.
4. The options in 2. would work as follows:

Option 1 – a performance deduction / service credit / KPI / levy cap is already in place

Assumed contract value: £10m

SV offer as % contract value: £1m (10%)

Maximum level of performance deductions under the main contract: 20%

Maximum retention for non-delivery of social value commitments: £200,000

Option 2 – based on estimated profit margin

Assumed contract value: £10m

Social value offer as % contract value: £1m (10%)

Estimated industry profit margin: 5%

Maximum retention for non-delivery of social value commitments: £50,000

With either option, there is the question about getting the balance right between a measure that incentivises a contractor to follow through on its commitments whilst not discouraging bidders from putting forward proposals in the first place, or inflating pricing for the risk factor of non-delivery.

It is also important that any SV retention calculation is not disproportionate to any other (general) retention calculation and then being able to ensure the relationship between the 2, and how to trigger each. It is therefore considered better to have a conservative and deliverable SV proposal than one that is exaggerated because the contractor knows it is never going to be held to account.

Retention may be turned into a more positive approach by added payment for SV beyond mainstream service delivery, most especially when directly related to cost-saving service improvements or early intervention initiatives to reduce future demand. Such payment arrangements may be set-out as integrated outcome-based payments, or at a less sophisticated level bonus payments.

5. PRACTICAL APPROACH TO CONTRACT MANAGEMENT

- 5.1** This section sets out what actions a contract manager could take if, during the delivery phase of the contract, it is considered that the SV commitments and actions committed to by a contractor have not been delivered. As set out earlier in this Guidance, remedies should be the last course of action once all other routes to resolve the matter have been exhausted.
- 5.2** Contract management is both a PSO and a Supplier function and ideally a collaborative one. It is the part of the contract which provides assurance that it is working as intended and which can trigger action at an early stage to address issues. It is also not only about PSOs holding Suppliers to account, Suppliers have, on occasions, an equivalent need to hold PSOs to account in relation to support and other obligations.
- 5.3** Before seeking remedies it is important to ensure that that contracts contain clear, practical and fair procedures for engagement within the contract with a clear path toward remedies if needed. This path is likely to include; discussion of issues between contract manager and account manager; making operational adjustments if necessary; identifying an issue as one needing resolution; if unresolved escalating to formal breach resolution processes; if unresolved escalating to dispute resolution processes; and if unresolved escalating to suspension/termination processes (noting, of course, that manifest, serious breach accelerates escalation).
- 5.4** The recommended steps before remedies are considered include: -
- i) Holding discussions with the contractor to discuss the non-delivery. It is possible that there has simply been a recording error or that delivery has taken place very recently and the data has not been updated.
 - ii) Following discussions, the contract manager may determine that the contractor is positive about completing the outstanding commitment and therefore may agree a revised timescale with the contractor for delivery.
 - iii) It may be identified that the contractor has genuinely sought to deliver the SV target but for various reasons has been unable to e.g. the contractor has committed to providing an apprentice from the local area, but no one has been forthcoming who could fill that role. In these circumstances the contract manager may agree to vary the SV commitment from the contractor to another SV target of equivalent proxy value.
- 5.5** A number of attempts should be made to get the contractor to deliver the SV commitment made or a commitment of a similar value. However, if, following meetings and discussions with the contractor (assuming it has been possible to hold such meetings), it is evident that the contractor has no intention of honouring commitments made or agreeing alternatives, then the process for seeking remedies should commence.

Seeking remedies

- 5.6** The following approaches may be considered (depending on what potential remedies were included in the original tender documentation).
- i) determine that the contractor has defaulted against the terms and conditions of the contract and invoke appropriate performance management clauses. Subject to provisions contained within the contract the first step is likely to be to give the contractor informal or formal notification that it is in default and to set out the rectification period that the contractor has to put things right and the consequences of not putting it right;

- ii) if the contractor responds positively and rectifies the issue then no further action need be taken, but in the event the contractor does not respond then any service credits, retentions or other remedies set out in the contract will need to be applied;
- iii) public sector contracts above a certain value will invariably contain contract termination clauses. In reality it is very difficult to apply termination clauses as a number of issues will be involved. It is also very unlikely that a PSO would seek to make termination clauses apply for a default on SV commitments particularly if the contractor is delivering the primary contract requirements satisfactorily. The only time that a PSO might terminate a contract for non-delivery of SV commitments is where the SV delivery directly relates to the main contract deliverables and/or if the contractor is defaulting across other core service deliverables of the contract, not just for SV;
- iv) remember, good contract management also seeks to continually improve delivery of the contract. Therefore both parties need to seek opportunities in which they can support delivery of agreed SV outcomes (either where they are not being or haven't been delivered) before seeking remedies, as the overall objective is to achieve outcomes that benefit the PSO.

APPENDIX A

Case Study: Integrated Lifestyle Services commissioned by Public Health at East Sussex County Council

Service Overview

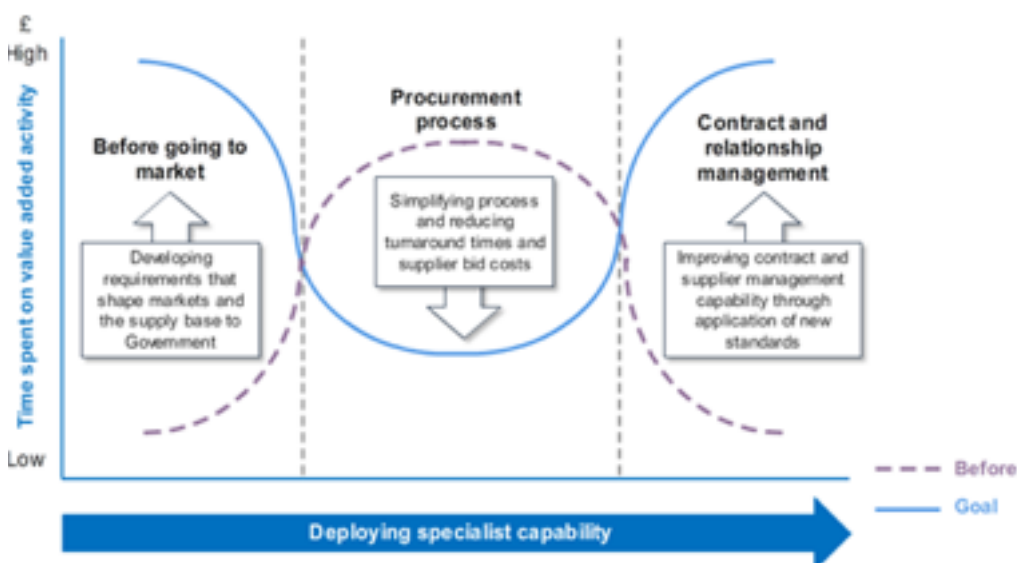
- Service aims to support individuals to make changes to their lifestyle behaviours which will reduce their risk of developing conditions such as diabetes, cancer and heart disease which can lead to premature death.

Procurement

- Route to market: Open procedure
- Contract value: £2.1 million per annum
- Contract term: 4 years + 2 years (optional extension)
- Social Value: allocated 10% weighting within Quality criteria. Bidders were required to complete and submit the Orbis Social Value Measurement Charter (bespoke version of the National Themes Outcomes and Measures approved by the Local Government Association) as part of the tender submission.
- Social Value secured: £109,998

Why is Contract & Performance Management Important?

Contracts provide a foundation for building effective commercial relationships, they help us realise the benefits from our sourcing activity by working in partnership with our suppliers and they also protect us when things don't go according to plan. Historically in the Public Sector our efforts and resources have been focused predominantly on the procurement process as depicted by the model below from Crown Commercial Services however there is an increased need for us to focus our capability and effort towards pre-market engagement and contract and relationship management in order to deliver better outcomes and ensure benefits realisation. (Source: CCS DNA Model for Commercial Activity)



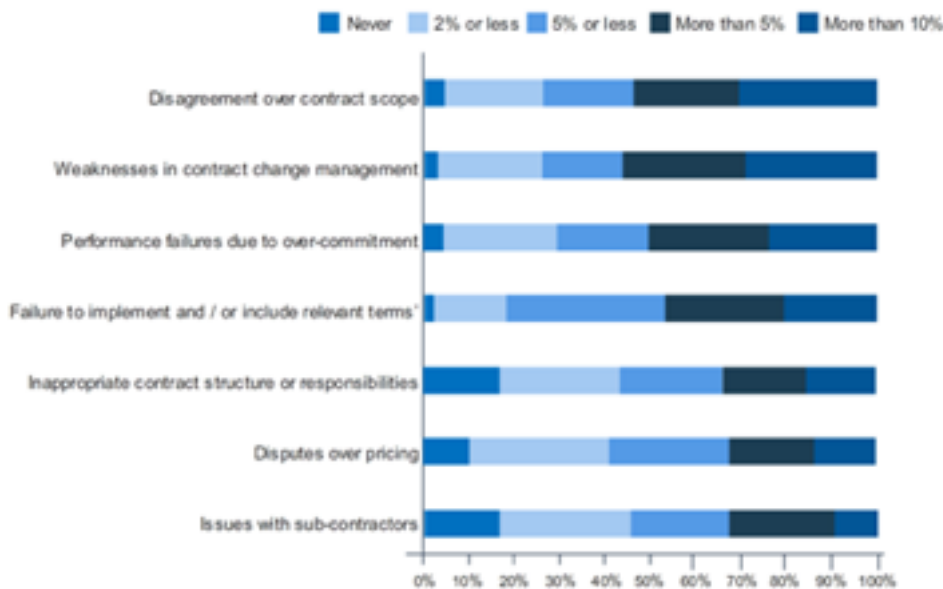
What goes wrong with contract and performance management?

According to the International Association for Contract & Commercial Management (IACCM), contracts are relatively complex instruments. There are multiple stakeholders, and organisations with an interest in the content of a contract. It is driven by a host of policies, procedures and regulations, as well as the practical considerations of feasibility, complexity, value for money and risk management.

IACCM recommends that we think of the contract as a tool for better project management. Recognising that it defines what it is that the project must deliver, who it is that will undertake that delivery, the timeline for the deliverables, the responsibilities of the participants, the way that performance will be overseen and measured, the compensation that will accrue to the supplier and the consequences if anyone fails to perform or if the objectives are not achieved.

The slide below provides an example of research findings and reflects a worldwide study undertaken by the IACCM with the National Audit Office (NAO), as part of the NAO’s efforts to improve the results of public sector projects.

THE CAUSES OF POOR PERFORMANCE



Source: IACCM 10 Pitfalls of Contract Management (Advanced Practitioner Training)

Top 3 tips to support effective contract and performance management to enable social value benefits realisation

1. Be clear about the scope and goals

It is essential that contracting authorities are clear about their requirements and expectations for social value in order to enable bidders to submit commercially viable tender responses.

Within the tender documents East Sussex County Council was clear about the intention to include Social Value, why it would be included, how it would be included and the requirements in relation to contract management. Below are extracts taken from the Invitation to Tender (ITT) document that was published for this procurement:

“East Sussex County Council **considers social value in all goods, works and services it procures above £100k**. Social Value is a fundamental part of assessing value for money and determining the most economically advantageous tender. Accordingly this tender will take into account the social value priorities of the Council relating to the economic, social and environmental well-being of the county.”

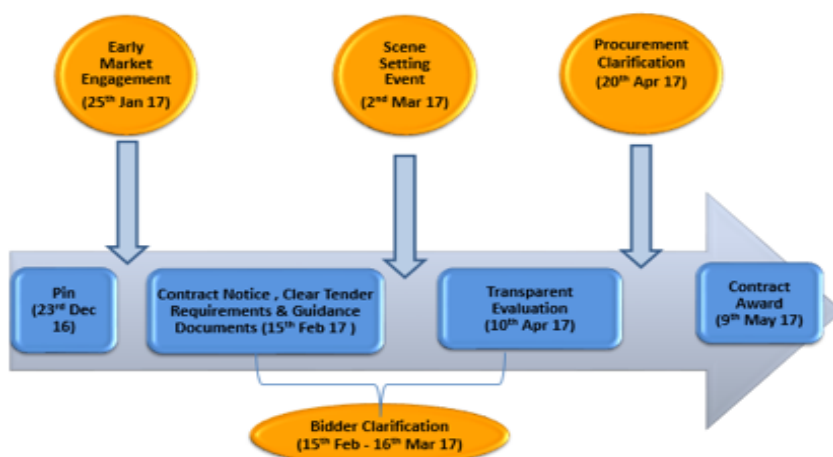
“As with all submissions and representations made as part of the tender and clarification process, the successful Bidders’ **proposal for delivering Social Value will be included the contract.**”

“The measures and deliverables selected will be **contractually binding** upon the successful bidder, for delivery and reporting during the contract period.”

2. Early stakeholder engagement and open & transparent communication

Engagement is crucial to securing commitment from stakeholders. Including Social Value within Commissioning and Procurement is more about inspiring and promoting a culture of civic leadership than it is about managing processes. Many of our suppliers are delivering wide ranging benefits to our communities as part of their Corporate Social Responsibility programmes and have been for decades. Early market engagement provides an opportunity for us to share with suppliers how much we value this contribution and how important it is for all of our public sector suppliers to adopt this culture of suppliers behaving “ethically and contributing to the economic development while improving the quality of life of the workforce and their families, local communities and society at large. (World Business Council’s definition of CSR)

The diagram below outlines the process that was followed during the procurement of the Integrated Lifestyle Service.



Market engagement was a key feature within the procurement process in order to ensure that suppliers received the key messages in relation to social value. More importantly, sufficient clarification time was allowed to ensure suppliers had the opportunity to check their understanding and submit bids that were realistic and achievable for them to deliver during the life of the contract. To avoid performance failures due to over commitment the following was included in the ITT:

“Bidders must note that the social value proposals made at the tendering stage will form a contractual commitment and be monitored as a key performance indicator during the contract term.”

“Bidders should therefore ensure that commitments made within the Charter are within their capacity and capability to deliver.”

3. Incorporating flexibility for change management supported by strong governance

As we in the public sector face operating challenges due to volatile, uncertain, complex and ambiguous market conditions so too do our suppliers. To remain responsive to the needs of our residents it is essential that we as contracting authorities accept that change during the life of the contract is inevitable and we should therefore structure our contract management process to facilitate and enable these changes as and when they are required.

According to the IACCM top performing organisations suffer contract value erosion of less than 4%, against more than 16% in the worst performers. A distinguishing feature in all of the best organisations is the investment they have made in post-award contract management capability. The need for governance which refers to those activities, processes and policies that support the management of the contracting process and the achievement of contracting objectives and outcomes is therefore essential in our strive for value for money.

To mitigate against the risk of social value erosion clear change procedures and governance were embedded into the contract management for the Integrated Lifestyle Service. Social Value is a standard agenda item during meetings between the contract manager and supplier and quarterly reports are submitted to demonstrate the progress being made by the supplier towards achieving their social value commitments. The key performance indicators for social value were based on the supplier's tender submission however the collaborative relationship between the contract manager and the supplier allows for flexibility where external factors and/or operational changes make the social value commitment overburdensome for the supplier during the life of the contract. In this situation the supplier can deliver alternative social value provided that the financial value of the social value delivered is equivalent to the value that was submitted in their tender response. The benefit of a flexible and collaborative approach is that it shifts the focus from compliance to collaboration enabling us to work together so that we deliver value for money to our taxpayers in a mutually beneficial way.

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For further guidance and the action plan template.

APPENDIX B



thurrock.gov.uk

An example from Thurrock's Adult Substance Misuse contract is shown below. Any under-performance would be discussed with the supplier and addressed via action/improvement plans.

Extract from contract:

1.1 Social Value

1.1.1 The Public sector organisation is fully committed to implementing the aims of the Social Value Act 2012 and through this procurement, how the economic, social and environmental wellbeing of Thurrock could be improved both during the process and on an ongoing basis.

1.1.2 To this end, the Provider will implement a range of initiatives to achieve the relevant improvements to include, but not limited to:

- Local employment, training and apprenticeships
- Environmental sustainability – use of products and working practices

Thurrock also include a SV question in their "Response to Quality Evaluation" (the % will vary depending on the value of the contract):

3.3 Social Value

How do you propose to contribute to the Public sector organisation's aim of delivering Social Value as set out in Section 7 of the specification? If you are awarded the contract, what targets will you commit to meet to deliver this?

(Max 1 side A4) (Max 3%)

KPIs are then set and monitored on these targets through monthly/quarterly performance meetings (depending on the value of the contract). An example from our Adult Substance Misuse contract is shown below. Any underperformance would be discussed with the supplier and addressed via action/improvement plans.

Social Value KPIs						
CS1 – Social: create a great place for learning and opportunity	Number of volunteers	10 volunteers	10	6	3	Quarterly update, annual target
	SU co-production meeting frequency	At least once per month	12	6	3	
	Corporate staff will volunteer to support a local community based initiative	1 initiative per year	1	0	0	
CS2 – Economic: Encourage and promote job creation and economic prosperity	% staff paid at or above living wage	Number of staff paid at or above living wage divided by all staff	100%	95%	90%	Quarterly update, annual target
	Apprenticeships	Number of Apprenticeships	1	0	0	
	% budget spent with Thurrock based suppliers	Budget spent with suppliers with Thurrock postcode divided by total budget.	=>6%	3-5%	< 3%	
	Secure research monies into Thurrock	Value of research money contributing to service	£10K+	£8-10K	< £8K	
CS3 – Equality: Build pride, responsibility and respect to create safer communities	Number of events promoting community cohesion and diversity	Number of events per year	2	1	0	Quarterly update, annual target
	Percentage of Service Users without a Smoke alarm referred to the Fire Service for support/ Installation	Number of Service users without a smoke alarm who agree to be referred to the Fire Service divided by all Service Users without a Smoke Alarm.	80%	70%	60%	
CS4 – Compassion: Improve health and well-being	Number of Service Users supported into employment	Number of Service Users per annum sustaining employment for at least 12 weeks	10+	8-10	< 8	Quarterly update, annual target
	Recovery Coaches trained to support and befriend	Number trained to be Recovery Coaches per annum	3+	2	<2	
	% Recovery Workers trained to delivery smoking cessation interventions at Level 1	Number of Recovery Workers Level 1 trained - divided by all recovery workers	100%	80%	< 80%	

APPENDIX C

Birmingham City Public Sector Organisation Charter for Social Responsibility

The following details Birmingham City Public sector organisation's Charter for Social Responsibility. It should be read in conjunction with their Social Value and Living Wage Policies and guidance. The Charter is currently being reviewed to reflect and additional information can be found here: www.finditinbirmingham.com/charter



Birmingham Business Charter for Social Responsibility

The Birmingham Business Charter for Social Responsibility (Charter) is a set of guiding principles which the Public sector organisation adheres to and invites all organisations to adopt as a mechanism for managing how they deliver social value.

Charter signatories will consider and describe how they can improve the economic, social and environmental well-being of Birmingham that result from their activities. This includes indirect outcomes through commissioning and procurement.

Commissioning and contracting decisions will take account of the principles of this Charter and it forms part of the terms of new BCC contracts, and Conditions of Grant Aid (COGA).

The strategic context for the Social Value outcomes identified in this Charter is derived from the key Public sector organisation policy drivers. These are:

- **Children**
A great city to grow up in. We want to make the best of our unique population and create a safe and secure city for our children to learn and grow up in.
- **Homes**
A great city to live in. Provide housing in a range of types and tenure, to meet the housing needs of all of the current and future citizens of the city.
- **Jobs & Skills**
A great city to succeed in. By 2031 Birmingham will be renowned as an enterprising, innovative and green city.
- **Health**
A great city to lead a healthy and active life. Helping people become healthier, especially relating to physical activity and mental wellbeing.

Charter Principles:

- Local Employment
- Buy Local
- Partners in Communities
- Good Employer
- Green and Sustainable
- Ethical Procurement

Local Employment

Charter signatories will create employment and training opportunities for local people especially in target areas:

- Commit to create employment and training opportunities for local residents, targeting areas of high unemployment and groups facing disadvantage, including people with disabilities through activities such as work experience placements, apprenticeships, internship and mentoring.
- Seek opportunities to work with schools and colleges to help to ensure that the local young people are equipped with the right skills to match the requirements of the labour market.
- Advertise employment opportunities through the Employment & Skills Services at the Public sector organisation to ensure that those opportunities are targeted at those furthest from the job market.

Buy Local

Charter signatories will take account of the social, environmental and economic impacts of buying locally when commissioning and contracting, thereby reducing unemployment and raising the skill level of the local workforce.

- Support the local economy by choosing suppliers close to the point of service delivery where possible.
- Use Find it in Birmingham as the primary method of sourcing suppliers for contracts in Birmingham, increasing the accessibility of opportunities to local businesses throughout the supply chain.
- Encourage their suppliers to endorse the principle of Buy Local throughout their supply chains.
- Where possible, commit to purchasing from businesses on the Find it in Birmingham website and from social enterprises and small businesses.

Partners in Communities

Charter signatories will play an active role in the local community and support organisations, especially in those areas and communities with the greatest need.

- Build capacity by supporting community organisations with resources and expertise in areas with the greatest need, for example mentoring and working with youth organisations and services.
- Make a local impact by improving local facilities and areas, for example staff volunteering schemes. Provide support to third sector organisations and work with third sector organisations to deliver services and contracts.
- Have a shared sense of responsibility; consider good citizenship and safeguarding issues relating to children and vulnerable adults.
- Work with schools and colleges, offering work experience and business awareness to students, especially those from disadvantaged areas or communities.
- Make accessible all sub-contracting opportunities to a diverse supply base including the third sector and local suppliers and provide mentoring and support to assist these organisations to tender for and deliver these supply opportunities where necessary.
- Help to support the health and wellbeing of communities in which the business operates by for example linking with local schools and colleges, other local businesses and residents' groups to help run or sponsor activities / events, which will directly benefit those living there.

Good Employer

Charter signatories will support staff development and welfare within their own organisation and within their supply chain.

- Ensure that employees are given a fair reward for their labours and help foster a loyal and motivated workforce by adhering to the Public sector organisation's Living Wage Policy.
- Recognise employees' rights of freedom of association and collective bargaining, including not using blacklists in recruitment processes.
- Provide a safe and hygienic working environment.
- Shows a clear intent and positive commitment to the health and wellbeing of employees, which encourages healthy lifestyle choices that assist with addressing health issues through the adoption of policies such as the Workplace Wellbeing Charter.
- Promote diversity and inclusiveness, not discriminate in respect of recruitment, compensation, access to training, promotion, termination of employment or retirement based upon race, caste, national origin, religion, age, disability (including learning disability), mental health issues, gender, marital status, sexual orientation, union membership or political affiliation.
- Not operate exploitative zero hour contracts
- Have and comply with a whistle blowing policy, safeguard against harassment or intimidation.

Green and Sustainable

Charter signatories will commit to protecting the environment, minimising waste and energy consumption, using resources efficiently and contributing towards Birmingham's Clean Air Zone. These commitments will also apply to their supply chain.

- Reduce Carbon footprint – be aware of main impacts on carbon emissions including the indirect carbon used in manufacturing processes and the direct impact of operations and logistics.
- Measure carbon emissions and ensure a plan to reduce emissions, where possible, is being implemented using carbon measurement tools. Specific targets to be included in major contracts.
- Eliminate unnecessary waste by adopting the "reduce, reuse, recycle" philosophy.
- Be a good neighbour, minimise negative local impacts (noise, air quality), improve green areas (e.g. biodiversity, visual attractiveness).
- Protect the environment and minimise adverse impacts and instil this approach throughout the supply chain.

Ethical Procurement

Charter signatories will commit to the highest ethical standards in their own operations and those within their supply chain.

- Work to the highest standards of business integrity and ethical conduct.
- Pay their fair share of taxes.
- Ensure the well-being and protection of work forces in the supply chain, which must be supported by robust systems and procedures.
- Uphold the principles of the Universal Declaration of Human Rights and the Fundamental International Labour Organisation Conventions; including the use of child and forced labour.
- Adopt best practice when procuring goods and services, e.g. procure low energy products, buy Fairtrade and avoid the use of rainforest timber from unmanaged sources.
- Pay suppliers no later than the terms stated in the primary contract if contracted to the Public sector organisation, otherwise adopt a similar policy such as the Prompt Payment Code.

Implementation:

Charter signatories will consider and describe, in an action plan, how they can improve the economic, social and environmental well-being of their locality that result from their activities. This includes indirect outcomes through the supply chain.

Approved projects that address the Public sector organisation’s key priorities and are relevant to the contract will be provided for inclusion in action plans. Supporting these projects will need to be the primary focus of the action plans.

The Public sector organisation requires all of its suppliers and grant recipients to adopt this Charter subject to thresholds below and invites all other organisations to do so voluntarily. The Charter will be applied proportionately according to the table below:

	Tier 1 BBC4SR does not apply	Tier 2 Light touch application tailored by contract or grant type (see guidance for details)	Tier 3 Fully consider Social Value and all action plan measures (see guidance for details)
Contracts for Services	< £200k	£200k to £750K	Over £750K
Contracts for supply of Goods	< £1m	£1m to £5m	Over £5m
Contracts for execution of Works	< £1m	£1m to threshold in Article 4(a) Directive 2014/24/EU*	Over threshold in Article 4(a) Directive 2014/24/EU*
Grants	< £200k	£200k to £750K	Over £750K

Where the contract is a mixed contract [e.g. a contract for the supply of goods and services], then the contract type that characterises the main subject matter of the contract in question will apply.

All Contractors, subcontractors and grant recipients are required to adhere to the Public sector organisation’s Living Wage Policy.

Action plans need to include commitments and actions that are proportionate, relevant to the contract, specific and measurable and cover the contracted period. Progress on them will be monitored via an annual report. Action plans must be approved prior to the award of contract or issue of grant.

Organisations without a contract or grant are encouraged to sign up to the Charter.

Where a framework agreement is established by the Public sector organisation that covers an area wider than Birmingham, participating Contracting Authorities are able to achieve social value outcomes for their relevant areas.

What is meant by Local under Local Employment and Buy Local is context dependent, however, as guidance, 30 miles from the point of delivery is reasonable.

Visit www.finditinbirmingham.com/charter