

Social Procurement in NSW

A Guide to Achieving Social Value
through Public Sector Procurement



Social Procurement in NSW: A Guide to Achieving Social Value through Public Sector Procurement has been produced by the **Social Procurement Action Group (SPAG)**, a unique collaboration of representatives from Local, State and Federal Government working to promote social procurement practice in NSW.

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Wyong Shire Council

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SPAG wishes to thank all of the organisations who contributed case studies for the Guide

For further information about this guide or to be kept informed on future activities, please go to:
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Newleaf Community Renewal 'Greenwings'.



Brendan Carr Koori Job Ready.



Foreword

Welcome to the NSW Social Procurement Guide!

In the guide you will find inspiring case studies and comprehensive guidance and legal advice on how you can develop a social procurement framework and undertake social procurement projects in your organisation.

The overall goal of the Guide is to assist Government entities to harness their procurement budgets to deliver additional social value into the communities of NSW. The Guide builds on initiatives already undertaken by the public sector to enhance sustainable and strategic procurement practice.

One of the specific aims is to encourage public sector organisations to increase their expenditure with social benefit suppliers who provide jobs and training across the state.

The Guide will also assist social benefit suppliers to improve their approach to public sector tendering, and commercial sector entities to develop social procurement strategies that support their corporate social responsibility and social impact objectives.

The Guide has been produced by Chris Newman (PMMS Consulting) and Ingrid Burkett (Knode) on behalf of the NSW Social Procurement Action Group (SPAG). SPAG is an enthusiastic collaboration of representatives from a range of Local, State and Federal Government organisations, facilitated by Social Enterprises Sydney, working to promote social procurement practice in NSW.

I hope you find the Guide valuable. Social Enterprises Sydney looks forward to continuing to support the development of social procurement practice in NSW.

Liz Yeo

Chair

Social Enterprises Sydney





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Executive Summary

Introduction

Luke Sainthill, one of over 1000 aboriginal people employed and trained through social procurement activity supported by Koori Job Ready (KJR), reflects that “Without Koori Job Ready, Aboriginal people such as myself don’t have a chance to get a foot in the construction industry. Koori Job Ready made it possible for me to get a job and get into uni... I’ve got the world to thank them for...” (Luke Sainthill, Bachelor of Construction Project Management at UTS). The work of employment and training organisations like KJR, private sector organisations, and thousands of social enterprises and social benefit suppliers across NSW is creating life-changing results for people such as Luke. Real and sustainable community benefits, including training and employment outcomes are being created for people from our most disadvantaged communities. All of the work of these organisations is dependent on a growing commitment towards social procurement by public and private sector organisations in NSW and across Australia.

Most government investment at all levels in NSW is through procurement, with up to \$27b spent each year by State (\$20b) and Local Government (\$7b) alone. Modern strategic procurement process is designed to maximise the achievement of government objectives by purchasing goods and services from external parties through a robust, transparent and well planned and managed approach. By effectively incorporating social objectives at every stage of the procurement process, government can create the ‘demand’ that enables social enterprises, other social benefit suppliers and the private sector to not only deliver high quality goods and services and infrastructure, but also provide real community benefits, and address significant issues such as the chronic, sometimes generational unemployment faced by whole communities in some parts of NSW.

What is social procurement and why is it important?

Social procurement refers to the generation of social value through purchasing and procurement processes. In other words, social procurement is another way that public bodies can achieve their social objectives (alongside more traditional approaches to achieving these objectives).

Social procurement ensures that public sector purchasing decisions incorporate consideration of social value and are thus able to build real ‘triple-bottom line’ value propositions into procurement processes.

Social procurement offers public sector bodies a way to:

- > Build and sustain stronger communities, promoting social inclusion and breaking cycles of disadvantage;
- > Open new opportunities for strengthening the local and state skill base;
- > Strengthen local economic development;
- > Grow and strengthen innovative partnerships with corporate and community stakeholders and across the public sector;
- > Demonstrate leadership; and
- > Achieve greater value for money and ensure that this value reflects triple-bottom line principles.

Generating social value within public procurement processes is increasingly internationally recognised as a key way in which governments can ensure that their purchasing power maximises opportunities to generate positive outcomes and benefits for the people and communities they serve.

For more information see page 12

What is the context for social procurement in NSW?

Procurement practices in NSW, as elsewhere in Australia, have developed from a position of being an administrative and transactional function within the public sector, to being recognised as highly strategic and core to ensuring that government objectives are being achieved. In recognition of this, key programs are now underway in NSW to support the development of strategic procurement capability in State and Local Government.

A more strategic approach to purchasing and procurement interlinks with and underpins an engagement with social procurement, as the generation of social value increasingly becomes a strategic matter for public sector organisations. This in turn has been driven by both internal government agendas and objectives, and by external business and consumer concerns.

The growing focus on how procurement can deliver social value (alongside economic and environmental value) sits within the established public sector procurement framework, which is recognised, regulated and enshrined in law throughout Australia. It is important to note that this framework already facilitates social procurement and in fact supports the consideration of social value in procurement decisions alongside other dimensions of value for money. The legal advice on social procurement in Appendix 2 outlines all relevant considerations for NSW State and Local Governments.

For more information see page 21

How can public sector organisations build social procurement frameworks?

Social procurement presents an opportunity for organisations to integrate their broader organisational social objectives and their commitment to Corporate Social Responsibility (CSR) into mainstream practice. This requires changes to systems and processes, but equally importantly to organisational culture. In the same way as OH&S and, increasingly, environmental management have become a part of the way we do business, so the consideration of social objectives needs to become second nature in the way we undertake our procurement and purchasing.

To achieve this culture change requires a holistic approach to the way we expand social procurement practice within our organisations.

There are six elements to building a social procurement framework in organisations:

- > Leadership: *see page 29*
- > Planning: *see page 32*
- > Communication and education: *see page 30*
- > Opportunity analysis & pilots: *see page 33*
- > Policy and process: *see page 31*
- > Supplier development: *see page 39*

How can social value be integrated into the procurement project lifecycle?

The consideration of social value in procurement does not change the fundamentals of the procurement lifecycle. Social procurement should be integrated at the earliest stage in the project's development (for example, the planning stage) and integrated throughout the project. This part of the guide outlines how social value can be integrated into the procurement lifecycle.

- > **Procurement Project Planning:** social value should also be considered in business plans and feasibility studies at project level.

For more information see page 45

- > **Tendering, Assessment and Selection in a Project:** Any social benefits, specifications and evaluation criteria should be made clear, achievable and transparent in all relevant procurement documents.

For more information see page 53

- > **Managing Supply Arrangements:** The management of supply arrangements ensures that suppliers are meeting the required social value targets, and opens opportunities for review of performance.

For more information see page 62

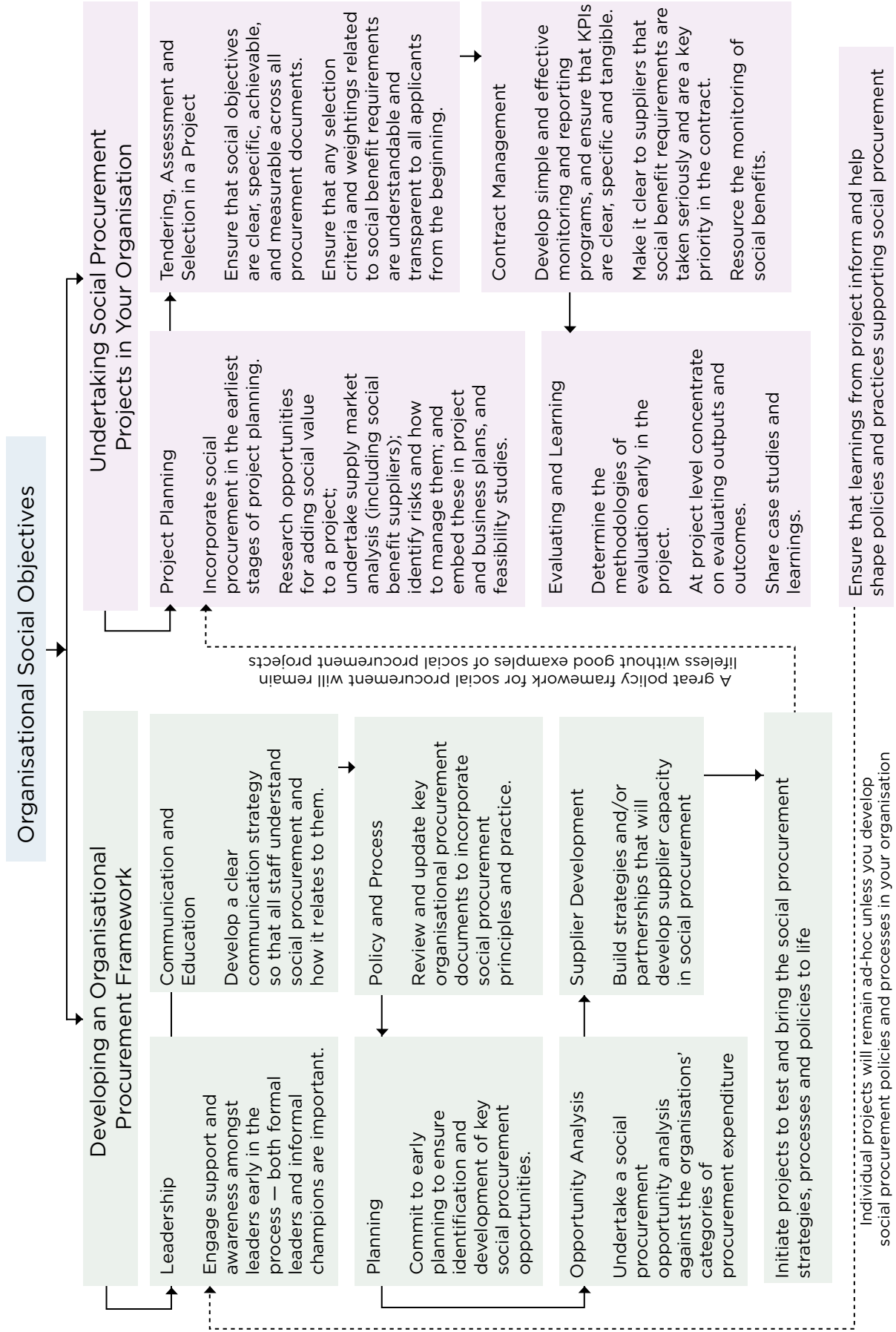
- > **Evaluating and Learning:** The purpose of evaluation is to measure the social value generated and to assess whether this reaches the expected or targeted social value articulated in a contract. It is equally important to review social procurement and document learnings to inform future activities.

For more information see page 64

Why Social Procurement?

- > **Integration** — Social procurement provides a sound and effective way for the public, private and not-for-profit sectors to achieve social goals and address community issues as part of the way they do business, integrating their commitment to Corporate Social Responsibility (CSR) into mainstream organisational activity.
- > **Innovation** — By encouraging a holistic look at the achievement of organisational objectives, social procurement practice encourages innovation and the development of new forms of partnership and service delivery models.
- > **Staff Satisfaction and Organisational Identity** — The ability to achieve demonstrable community benefits through social procurement increases job satisfaction and pride, while building a positive organisational identity.
- > **Competitive Advantage** — Governments and other clients are increasingly looking beyond the delivery of goods and services towards value-adds that deliver social outcomes and triple bottom line objectives. By integrating social procurement practice into mainstream procurement thinking, organisations can build a competitive advantage and directly demonstrate their capacity to add social value to their deliverables in a cost-neutral or cost effective way.
- > **Strategic Approach** — Rather than responding in an ad hoc way as policy and practice changes, social procurement can be introduced through a managed, systemic and achievable program, providing a whole-of-organisation model integrated as part of mainstream procurement policy and practice.
- > **People** — Ultimately the beneficiaries of social procurement practice are the people who have been given a chance to participate in the economy and their communities who are changing for the better. "It has helped me to achieve my goal, to pursue a stable position and have the opportunity to progress my career" Sarah, one of the 146 people employed by New Leaf Community Renewal from one of NSW's most disadvantaged communities.

Social Procurement: A Rough Guide for NSW Public Sector Organisations





Introduction

Social procurement is about ensuring that procurement helps public sector bodies to generate social value alongside financial and environmental value.

There is an increasingly strong business case for public sector entities to engage in social procurement as part of their commitment to generating triple-bottom line value. (For Local Government in NSW the new Integrated Planning and Reporting Framework refers to the quadruple-bottom line, including civic leadership.) This guide demonstrates that social procurement is legal and achievable, and can provide a highly effective way of delivering on public policy objectives, providing real and sustained benefits to our communities.

Social Procurement can help public sector organisations to:

- > Build and sustain stronger communities, promoting social inclusion and breaking cycles of disadvantage;
- > Open new opportunities for strengthening the local and state skill base;
- > Strengthen local economic development;
- > Grow and strengthen innovative partnerships with corporate and community stakeholders and across the public sector;
- > Align their externally focussed objectives with internal processes and practices;
- > Demonstrate leadership; and
- > Achieve greater value for money and ensure that this value reflects triple-bottom line principles.

Who is this guide for?

This guide is primarily focussed on social procurement in the public sector, and it is designed for use particularly in the NSW government context (local and state). However many of the issues described and the case studies highlighted are also relevant to corporates and not-for-profit organisations wishing to incorporate social outcomes in their procurement practices. Many of the case studies refer to cross-sector initiatives that involve government, corporate and not-for-profit stakeholders working together. In addition, the guide may be helpful for social enterprises and private suppliers wishing to understand social procurement and how they can effectively respond to the opportunities that are increasingly becoming available.

How to use this guide?

This guide is designed to provide practical guidance in developing and strengthening your organisation's social procurement practice — at both an organisational and project level. It may be used to assist in developing a Social Procurement Strategy for your organisation, provide the basis for training and stakeholder engagement, or be applied as needed to any project that seeks to achieve social value. The guide is divided into the following sections:

- > Introduction — Understanding the basics — What is social procurement and why is it important?
- > Social Procurement Context — Understanding how social procurement fits in the broader context:
 - Legal (Summary) — Federal and State Legislation
 - Policy — State Government Policies
 - Strategic Procurement — part of the broader government strategic procurement framework
- > Developing an Organisational Social Procurement Framework — how to incorporate social principles into your organisation's project planning and procurement practice

- > Undertaking Social Procurement Projects — how to incorporate social procurement practice into each stage of your project's procurement lifecycle

Throughout the document, case studies demonstrate the scale and diversity of social procurement practice underway across NSW and provide tangible models to learn from for your own organisation.

Current practice in NSW

Social procurement is not really new in public sector organisations in NSW. There are a broad range of innovative and successful activities underway across the State, many examples of which are highlighted in this Guide. What is new, however, is the desire by many organisations to move from ad hoc approaches to a more systematic incorporation of social value into broader sustainable and strategic procurement processes. This desire recognises that while there is some great work underway, there is much still to be done if the consideration of social value is to become part of mainstream procurement activity in NSW.

.....

Snapshots of some of the case studies included in this guide:

Housing NSW has generated social value through their maintenance and repair contracts for over a decade. They do this in a number of different ways. Some competitive tenders contain social clauses that weight a contractor's capacity to provide training and/or employment for social housing tenants. Other contracts are selectively tendered to Job Services Australia Agencies and, where applicable, to non-profit organisations, who train and employ social housing tenants in the course of carrying out the work outlined in the contract. Incorporating social value objectives in their contracts has enabled Housing NSW to address issues of unemployment and social exclusion amongst tenants. This has flow-on effects not just for social housing tenants and their families, but for Government, who is able to cost effectively address their social policy objectives and generate potential savings. Further details on page 58.

Parramatta City Council's (PCC) Procurement Policy includes consideration of social value in their procurement processes. PCC sees social procurement as a key part of its broader sustainable procurement framework that aims to generate triple-bottom line outcomes. Through its sustainable procurement activity, PCC is committed to supporting the establishment of a diverse and vibrant local supply chain, including suppliers who can deliver social benefits to the Western Sydney region. PCC's Social Enterprise Program complements their sustainable procurement practice, by providing support for the development and growth of social enterprises in the region. This activity supports Council's broader objectives of social inclusion, local employment, diversity and equality in the supplier market, and local economic development.

Well planned implementation of the Aboriginal Participation in Construction Guidelines has led to significant employment and training opportunities for indigenous communities in NSW.

The Nowra Jail project generated over 90 Indigenous employment positions. Managed by NSW Public Works on behalf of Corrective Services NSW, the contract for this project required tenderers to submit an Aboriginal Participation Plan (APP) as part of their bid. Members of the local Indigenous community had significant input at all stages of the project and early supplier education and engagement processes and the provision of an employment broker, funded by Department of Education, Employment and Workplace Relations (DEEWR), all assisted in the success of the project. The outcomes of the contract exceeded the original goals set and have led to sustained benefits for those employed and the broader community.

Koori Job Ready (KJR) have helped to create over 1000 employment opportunities for Indigenous people in NSW, by supporting both the 'demand' and 'supply' side of social procurement. By assisting government and private sector agencies in building clear and achievable social procurement clauses and targets into their tender processes, KJR are supporting 'demand'. They support 'supply' by assisting tenderers with the development and implementation of Aboriginal Participation Plans, providing recruiting, training and mentoring for new employees

What is social procurement?

In NSW around \$27 billion is spent annually by state and local public sector bodies in the purchase of goods, services and works. Increasingly there is a recognition of the strategic importance of this public sector buying power, particularly in relation to meeting key public policy and strategic government objectives. In addition, public accountability is leading to increased scrutiny and assurances that public funds are used most efficiently and in ways that drive sustainable outcomes, economically, socially and environmentally. As a result government bodies are beginning to incorporate consideration of 'triple-bottom line' performance and sustainability, not just within procurement processes but also across their supply-chains.

Social procurement refers to the ways organisations can generate social value through purchasing and procurement processes. In other words, social procurement is another way that public bodies can achieve their social objectives (alongside more traditional approaches such as funding and service delivery). Figure 1 outlines this definition of social procurement and highlights the benefits it can produce in the public sector.

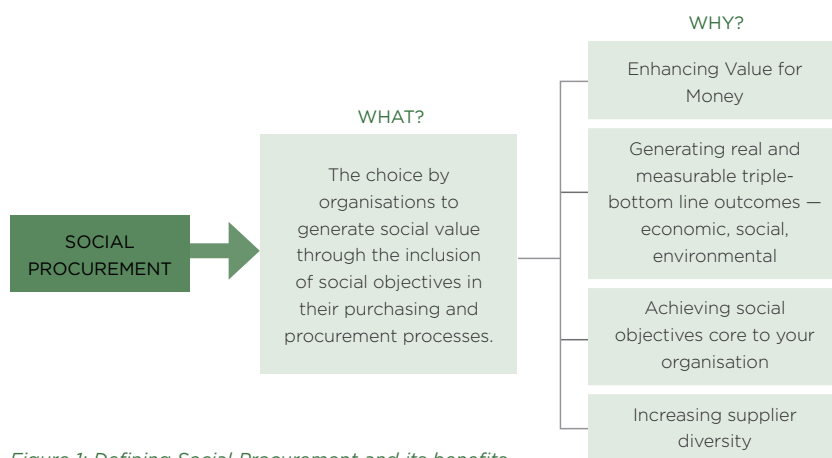


Figure 1: Defining Social Procurement and its benefits

This guide is focussed on 'procurement', referring to all forms of tendering, contracting and purchasing. It should also, however, be highlighted that social value can be generated in different ways around purchasing and procurement functions more generally. There are three core approaches to social procurement: promotion, purchasing and procurement, as outlined in Figure 2 below.



Figure 2: Three core approaches to social procurement

Why should public sector organisations engage with social procurement?

All levels of government have responsibilities for and a mandate to achieve social objectives — whether it be to build stronger communities, improve the health and well-being of constituents or to ensure the continuity of local jobs. For many public sector bodies this is done through direct service delivery and grant funding programs. Increasingly, however, it is recognised that social objectives can also be integrated into the whole business of public sector organisations so that public funds are strategically used to promote and achieve the objectives of government. As a result, public sector organisations are increasingly exploring the alignment of strategically important functions such as purchasing, procurement, and investment in ways that integrate social value.

As procurement has developed over the past two decades, the focus on how value can be generated through the procurement cycle has evolved — beginning with a more focussed understanding of cost and economic value, and then moving to incorporate both environmental and social value over time. Social value now sits alongside economic and environmental value in the consideration of the shared value that can be generated in and through organisations (see Figure 3).

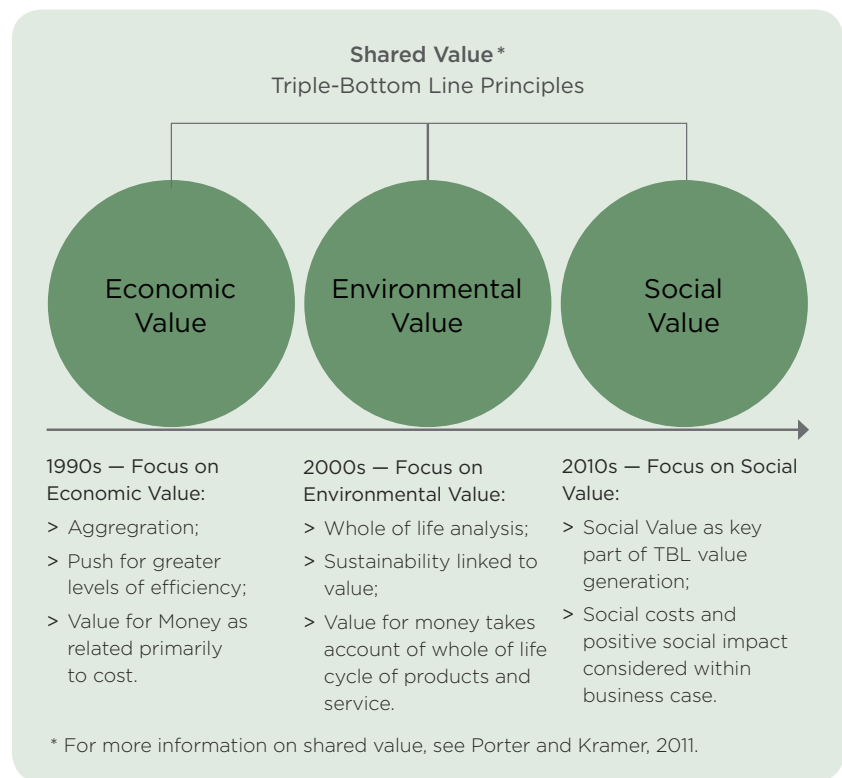


Figure 3: Towards Shared Value in Procurement Practice

What exactly is ‘Social Value’?

Social Value can be defined as the added social outcomes and benefits that are generated through a purchasing or procurement process over and above the direct purchase of goods or services.

- > Given that purchasing and procurement decisions have such strategic importance in many public and private bodies, it is important that decisions about ‘best value’ include consideration of the social value that could be generated through such processes. This extends the concept of ‘value for money’ beyond considering price and quality (as illustrated in Figure 4).

“All public strategies aim to turn the public’s hard-earned money ... into something more valuable: for example, security, better health or more education”

Geoff Mulgan, 2009

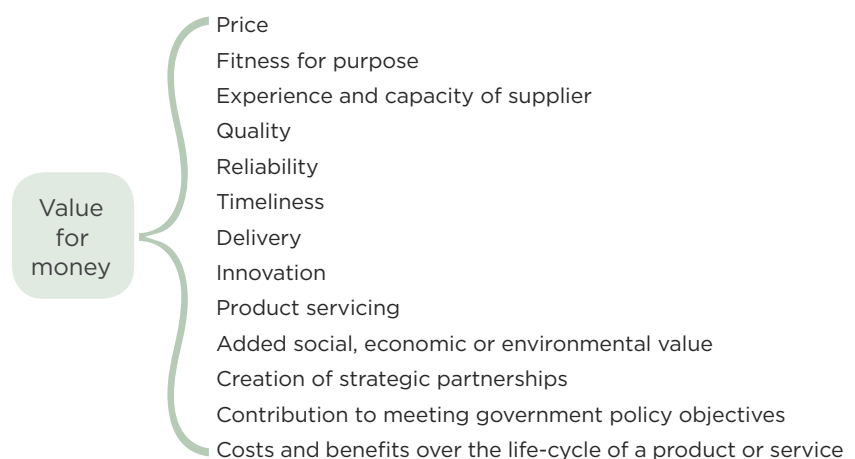


Figure 4: Extending the definition of Value for Money

Generating social value within public procurement processes is increasingly internationally recognised as a key way in which governments can ensure that their purchasing power maximises opportunities to generate positive outcomes and benefits for people and communities. For example:

- > The UK passed the 'Social Value Bill' in March 2012. This mandates that public bodies consider how positive social, economic and environmental value can be generated within all procurement of goods, services and works, and effectively enables social benefit providers such as social enterprises to compete on a more equal footing with other potential suppliers. Where appropriate, purchasers must then ensure the inclusion of this social value objective into the procurement process (see www.legislation.gov.uk/ukpga/2012/3/enacted);
- > In the US, the Federal government gives preference to small companies in the procurement process, particularly those that also deliver extra social value, such as small businesses owned by women, people from minority groups, people from economically disadvantaged areas or veterans. In 2009 the US Federal Government spent \$96.8 billion with small businesses (of the overall procurement spend of \$600 billion).

In Australia social value generation through procurement has also been recognised over recent years. For example:

- > In 2010 a national report on social procurement was released (see www.csi.edu.au/project/Social_Procurement_in_Australia.aspx) which included case studies from NSW. Parramatta City Council was a project partner in this report;
- > The Victorian government has developed guidelines and an expert toolkit on social procurement for local governments;
- > Numbers of government departments and local councils have recognised social procurement and the importance of considering social value in their procurement policies and plans;
- > A number of Australian states and the Australian Government have implemented procurement initiatives related to the **National Agreement on Indigenous Economic Participation**, and many have also joined the **Australian Indigenous Minority Suppliers Council** (including a number of departments in NSW and at least two NSW local governments);

The Australian Government and a number of Australian States have instituted exemption clauses related to **Australian Disability Enterprises (ADEs)** which effectively enables government departments to purchase from ADEs without first going to public tender if the purchase involves a simple procurement process.

Social Procurement is a key way in which public sector organisations can deliver outcomes in relation to their strategic social objectives. Table 1 outlines various ways in which social procurement can help Local and State Governments achieve important social objectives. The case studies explored throughout this guide also point to ways in which various public sector organisations have utilised purchasing and procurement to achieve their social objectives and deliver social value.

Social Value Objective	How these objectives can be achieved through social procurement
Employment and Training	<ul style="list-style-type: none"> > Building in to contracts opportunities for employment for people who have been excluded from the workforce; > Strengthening Place-based employment; > Generating training opportunities for people who have experienced long-term unemployment as a pathway into labour market participation.
Social Inclusion	<ul style="list-style-type: none"> > Building into contracts consideration about how suppliers could respond to reducing social exclusion in place or amongst particular populations by addressing: <ul style="list-style-type: none"> - poverty and low income; - lack of access to the job market; - limited social supports and networks; - lack of opportunities in local neighbourhoods; - exclusion from services; > Including, where appropriate, consideration of how suppliers could address disadvantage and exclusion associated with housing and tenancy; > Including, where appropriate, consideration of how suppliers could contribute to empowerment and capacity-building opportunities that generate pathways out of exclusion and disadvantage.
Diversity and Equality	<ul style="list-style-type: none"> > Ensuring that 'minority' businesses have fair and equal access to purchasing and procurement opportunities eg. Indigenous businesses; > Building a diverse supplier base that reflects the diversity of the community; > Ensuring that small businesses and social benefit suppliers have fair and equal access to procurement opportunities.
Local Sustainability	<ul style="list-style-type: none"> > Ensuring that the viability and sustainability of a local community and their economy is considered in purchasing and procurement decisions; > Using local suppliers can help to stimulate the local economy, particularly in those communities that have experienced economic or social hardship.
Social and Service Innovation	<ul style="list-style-type: none"> > Ensuring that purchasing and procurement can play a role in supporting social innovation by enabling entities to test and develop and scale innovations in a market environment; > Procurement can support social innovation and market creation through consideration of how procurement can open new markets.
Fair Trade	<ul style="list-style-type: none"> > Ensuring that supply chains are adhering to fair trade practices can generate social benefits for disadvantaged communities locally and internationally.

Table 1: Social Procurement can assist public sector organisations achieve their social objectives and deliver social value

CASE STUDY: WYONG SHIRE COUNCIL 'THE ENTRANCE COMMUNITY CAFÉ'**Broad Social Outcomes**

The Entrance Community Café is the centrepiece of the 'The Entrance Community Centre' developed by Wyong Shire Council Centre in 2005, following overwhelming community support to retain and develop the old Entrance Infants School Site for community use. The Centre is designed to provide a strong focal point to create social capital in the local community and provide an important base for community service providers and groups to meet the needs of families in an area of social disadvantage.

In addition to many local service providers, the Centre encompasses an Exhibition Art Gallery; dedicated art and dance workshop spaces; general purpose rooms; computer rooms; a Men's Shed and The Entrance Community Café. The café is a fully equipped operational facility able to provide training and education opportunities whilst serving patrons of the Community Centre and surrounding community. Wyong Shire Council is managing this venture within a social enterprise framework. Any profits made from cafe operations are reinvested in growing the facility's infrastructure, supporting additional community training and related projects.

A diverse range of partnerships have been established through this project with Local Employment Agencies, Registered Training Organisations, local businesses, non-government organisations, schools, community groups and community members engaged in the work of the Cafe.



Above: The Entrance Staff.

cont. →

Key outcomes from the project to date include:

- > Enterprise experience and the provision of Certificate 2 Hospitality training has led 75% of participants directly into local employment. Theoretical training has been supplied through an onsite classroom provided at the Community Centre in the morning, moving into the cafe facility upon opening, thus allowing students to put into practical application those skills learnt, serving actual customers in a functional business.
- > The Samaritans Foundation operating the Café one or two days a week, using the facility to provide support programs for their clients with a disability. As with hospitality students, greatly enhanced outcomes have been the result from meaningful interaction with a broad spectrum of the community.
- > A partnership between Council and local service organisations operating a weekly “Play Café”, providing health and nutritional advice to local parents of small children.
- > Regular “Café Connections” mornings for new migrants and the local Culturally and Linguistically Diverse (CALD) community.
- > The establishment of a community garden located within the Community Centre.
- > Catering services to functions held within the Community Centre and exhibition openings for The Entrance Gallery.
- > Increased overall patronage of the Community Centre.

The overwhelming success of the project has been built on an initial framework designed to get as many groups and individuals involved as possible. The project manager had a clear vision that success would only be achieved through broad “ownership”.

While the facility is owned by Council, and the project was designed and managed by Council staff, the benefits lie within the community. Whether through the diverse and unique partnerships built; the recognised strength of the training model; the high employment outcomes; the increased utilisation and understanding of a major community centre within the LGA; the establishment of the community garden and other projects funded through café income; the provision of a “community hub” for the local neighbourhood or the establishment of affordable and ethical catering services; everyone benefits in some way.

Where to Start

Organisations may choose to start or further strengthen their social procurement development in different places. While successful and sustainable social procurement practice will ultimately rely on both elements being done well, there are two key ways (illustrated in Figure 5 below) to begin:

1. Begin with a whole-of-organisation approach, in developing social procurement as part of a strategic procurement framework, engaging staff and suppliers, developing policies and building awareness;
2. Begin with a project to test the idea of social procurement through practical application.

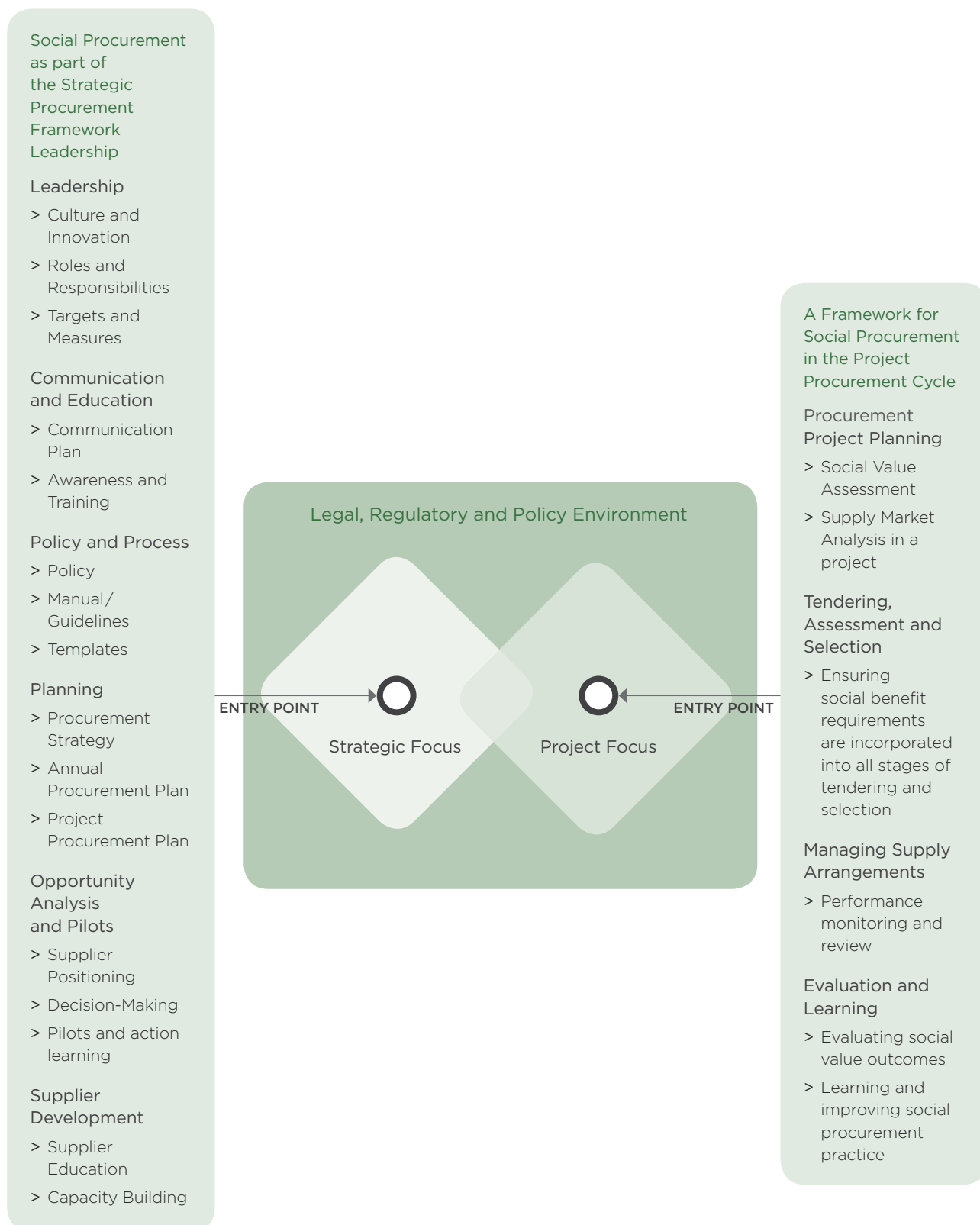


Figure 5: Two key ways to start the social procurement journey

Organisational framework as a starting point: Wollongong's early steps towards social procurement

As part of their participation in the LGP NSW Local Government Procurement Roadmap Program, Wollongong City Council are developing a Social Procurement Roadmap. Responding to leadership on social procurement from Council and staff, the Roadmap will provide a two-year plan for developing a sustainable social procurement framework at Wollongong (for a full description of steps involved in this plan see case study on page 29).

Project and procurement cycle as a starting point: WSROC's Mattress Removal and Recycling Contract

Following the identification of an increasing problem with the supply of mattress collection services by a member council, WSROC explored the development of a single contract for mattress removal and recycling across eight councils in Western Sydney. Through a feasibility study they undertook a supply market analysis and identified possible social enterprise suppliers. WSROC incorporated social benefit clauses into the tender documents, and weighted them at just under 10%. The open tender process resulted in a social benefit supplier winning the contract on cost and compliance. The success of the project has led WSROC to commit to incorporating social benefit criteria in all of its contracts (for a full description of the project, see the case study on page 56).

Below: Soft Landing in action.



Context of Social Procurement in NSW

“Procurement is now seen as one of the top value creators in any business or government agency, and fundamental to government service delivery”.

NSW Government Procurement Discussion Paper, January, 2012; p.5.

Strategic Procurement Context in NSW

Procurement practices in NSW, as elsewhere in Australia, have evolved from being an administrative and transactional function within the public sector, to being recognised as highly strategic and core to ensuring that government objectives are being achieved. Government procurement represents very significant expenditure in NSW. The NSW Government spends **\$12.7 billion** on goods and services and over 7 billion on construction each year (NSW Government Procurement discussion paper, 2012 and Aboriginal Participation in Construction Guidelines, 2007). It is estimated that NSW councils collectively spend approximately **\$7 billion each year**. For Councils in NSW, procurement will normally account for over **50%** of their overall expenditure. (NSW Local Government Procurement Roadmap Program, 2012.)

Recognition of the scale of this activity and the accompanying risks and opportunities available have led to a transformation of the procurement profession over the last 20 years. In the private sector and increasingly in the public sector, organisations have introduced more strategic approaches to procurement that identify and carefully plan procurement practice to achieve a balance of objectives including those outlined in Figure 6.

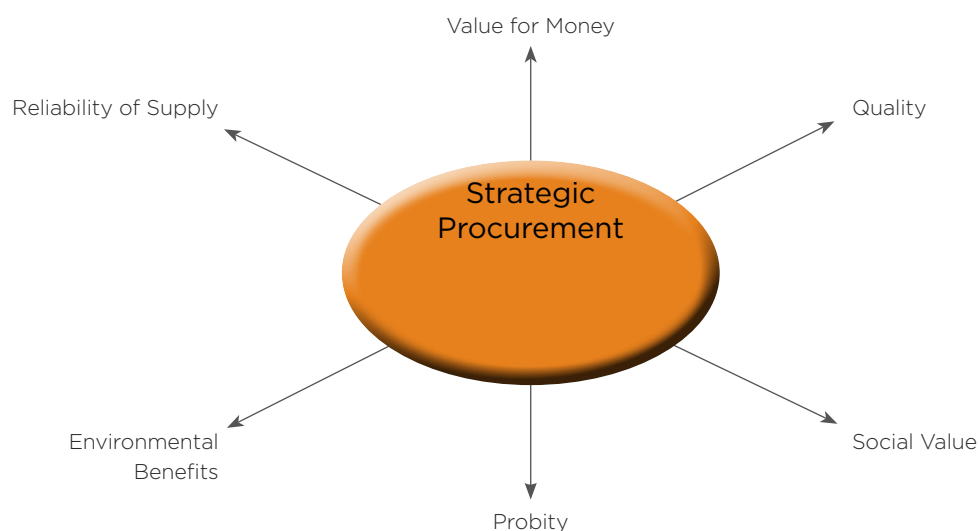


Figure 6: Strategic Procurement aims to identify and carefully plan to achieve a balance of objectives

Key Programs are now underway in NSW to support the development of strategic procurement capability in State and Local Government. The following Programs are both based on the principle that the successful development of procurement capability requires a multi-dimensional whole-of-organisation approach. Programs underway include:

- > **NSW State Government Agency Accreditation Scheme:** The NSW Government is currently undertaking a program to assess Agency procurement capability. Assessed agencies will be able to undertake different levels of goods and services procurement. Each agency is being assessed against the following criteria:
 1. Strategy
 2. Governance, Control & Policy
 3. Procurement Process
 4. Procurement Tools & Systems
 5. Information Management & Reporting
 6. Organisation & Capability
- > **NSW Local Government Procurement Roadmap Program:** Despite the scale of Council procurement activity, results from the first Stage of the Procurement Roadmap undertaken in a partnership between Local Government Procurement (LGP) and PMMS Consulting in early 2012 have confirmed that the profile and understanding of strategic procurement practice within councils is still relatively low. It is often considered primarily an administrative function, rather than a key strategic tool to assist Councils in achieving their objectives. This is beginning to change with the introduction of programs designed to support the development of organisational and personal procurement capability across the sector, such as the NSW Local Government Procurement Roadmap Program. This program assesses and supports procurement development against eight 'dimensions' of activity that need to be developed to drive improved organisational procurement performance (see Figure 7).

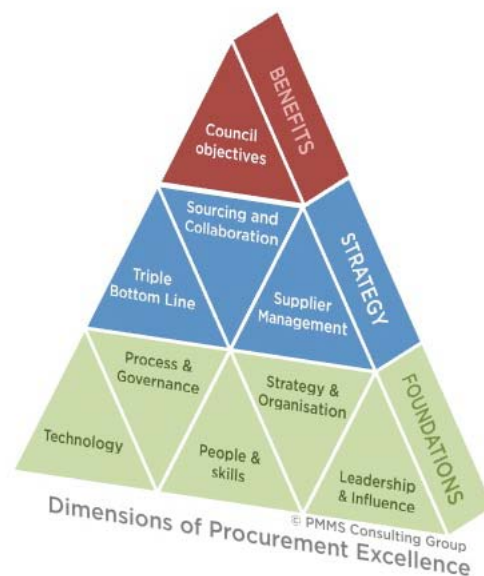


Figure 7: Eight Dimensions of Activity in the NSW Local Government Procurement Roadmap Program

Social Procurement within the Strategic Procurement Framework

Together these programs provide a broader framework to support improved strategic and operational procurement practice across Government in NSW. The programs are designed to support the growing maturity of procurement within each organisation and agency.

A more strategic approach to purchasing and procurement is central to an engagement with social procurement, as the generation of social value increasingly becomes a strategic matter for public sector organisations. This in turn has been driven by both internal government agendas and objectives, and by external business and consumer concerns.

Internal government drivers	External business and consumer drivers
<ul style="list-style-type: none"> > Broader value generation agendas; > Civic and social leadership objectives (such as reporting on civic leadership and community engagement through the NSW local government integrated reporting framework); > Increasing focus on strategic procurement (see for example, the NSW procurement discussion paper, 2012); > Integration of sustainable procurement agendas (see for example, the NSW Government's Report on Environmentally Sustainable Procurement, 2010); and > An acceptance of triple-bottom line principles within procurement practice. 	<ul style="list-style-type: none"> > Increased community and public interest in sustainable and ethical supply chains; > Rising interest in social and shared value generation across business more generally, alongside a perspective that shared value needs to be integrated into business models, not merely aggregated in functions such as corporate social responsibility; and > The rise of social benefit businesses such as social enterprises, and the realisation that particular businesses have the potential to play a part in transforming disadvantage amongst particular groups (such as, for example, Indigenous businesses; CALD businesses).

Social Procurement Legal and Policy Environment in NSW

The growing focus on how procurement can deliver social value (alongside economic and environmental value) needs to occur within the established public sector procurement framework, which is recognised, regulated and enshrined in law throughout Australia.

Legal Advice Overview

As outlined in the attached detailed legal advice (see Appendix 2) procurement processes that involve the expenditure of public monies rely on a number of basic principles. It is important to note these principles are equally applicable to social procurement:

- > **Open, transparent and accountable dealings** — there is a consistent approach to informing and treating suppliers as well as to the procurement framework, policies and procedures adopted by government. Processes are conducted in an open and honest manner in the best interest of the public;
- > **Dealings promote fairness and competition in the supplier market** — all suppliers are treated fairly and have the same opportunity to be the successful bidder; and,

- > Dealings result in best value for money — the benefits of the purchase are optimised against the allocated budget and costs required to achieve the best result for the local community. This does not mean that the cheapest option is necessarily the best value for money.

In NSW the laws governing public sector procurement (and therefore also social procurement) are as follows²:

- > Legislation and accompanying regulations governing **Local Government** bodies, including: the *Local Government Act, 1993 (NSW)*; and the *Local Government (General) Regulation 2005 (NSW)*;
- > Legislation and accompanying policies that govern **State Government** bodies including the *Public Sector Employment and Management Act 2002 (NSW)* and the *Public Sector Employment and Management (Goods and Services) regulation 2010 (NSW)*, as well as the *Public Finance and Audit Act 1983 (NSW)*, the NSW Government Code of Practice for Procurement and the NSW Government Tendering Guidelines;
- > **Federal trade practices legislation** including the Competition and Consumer Act 2010 (CTH) and accompanying state legislation including the *Fair Trading Amendment (Australian Consumer Law) Act 2010 (NSW)* which effectively replaces the Fair Trading Act 1987 (NSW) with the provisions of the recently federalised Australian Consumer Law; and
- > **Common law** relating to contracts, in particular commercial (procurement) contracts.

“There is nothing in any of the Local, State or Federal laws, or the common law, which prevents or limits the ability of either Local or State Government to consider the social outcomes/benefits which might be gained from a particular tender as part of Government’s procurement processes.

In fact, in a very real sense both Local and State procurement regulations require these types of outcomes/benefits to be considered in order to achieve the best value for money when assessing tenders”.

Social Procurement Legal Advice, see Appendix 2; page 73.

As outlined in the attached detailed legal advice (see Appendix 2), these laws create a legal framework that already facilitates social procurement and in fact supports the consideration of social value in procurement decisions alongside other dimensions of value for money. The advice provides a detailed overview of the legal and policy issues that should be considered in both strategic organisational frameworks and in applying social procurement in particular projects.

Where it is relevant, reference will be made to particular aspects of this legal advice in the next two sections of this guide (however it is strongly recommended that this advice be read in its entirety).¹

Common Legal Questions

Q. Is Government allowed to consider the social outcomes/benefits as part of its procurement process?

There is nothing in any of the Local, State or Federal laws, or the common law, which prevents or limits the ability of either Local or State Government to consider the social outcomes/benefits which might be gained from a particular tender as part of Government’s procurement processes. In fact, in a very real sense both Local and State procurement regulations require these types of outcomes/benefits to be considered in order to achieve the best value for money when assessing tenders. By looking at these issues deliberately,

¹ Legal advice for social procurement, see Appendix 2, page 73.

Governments need to be conscious though of disclosing prior to close of a tender precisely what significance will be placed on what specific types of social outcomes/benefits which might be able to be offered by tenderers.

Q. Is it possible for Government to write a compliant tender specification that is exclusive to social enterprises?

Similarly with respect to seeking to favour 'local' businesses, tenders can be made compliant where they only seek to approach social enterprises and other social benefit suppliers. This can be done in a way that does not offend anti-competition provisions in trade practices legislation but specific legal advice on the particular circumstances desired should be sought in each instance to ensure protection against any potential liability from non-compliant would be tendering parties. For further discussion on specifics of this, see page 81 of this advice regarding selective tendering.

Q. Can Government give preference or weighting to "local" businesses? How do we define "local"?

If the desire is to favour geographically 'local' businesses for the purposes of using local businesses as subcontractor suppliers, for assisting with jobs, training or other community development, then this can be framed as a measure for a social outcome in the tendering process — this might mean defining the term 'local' by reference to a small geographical area, or by a much larger regional area, as well as by setting as a requirement in the tendering process that tenderers will be weighted for a specific percentage of overall weighting, depending on their plan for fulfilling these desired outcomes.

Alternatively, under particular circumstances, certain limited tendering processes can be undertaken whereby only specific businesses are considered as part of the tendering process.

In each of these instances however, government bodies need to ensure that the process they are seeking to adopt does not offend anti-competition provisions in trade practices legislation. It is strongly recommended that specific legal advice be obtained in these types of matters so as to protect against any potential liability from non-compliant would be tendering parties.

Q. What definition of social procurement/benefit should we use in calling for tenders? How do we weight it?

Social benefit can take many different forms and the form for one community may be defined in a very different way to another community. Types of matters that could be considered in terms of desired social outcomes might include (but by no means are limited to):

- (a) Place based and other people focused employment (such as with respect specifically to youth, Indigenous, long-term unemployed, disabled or other disadvantaged groups);
- (b) Training and pathways to employment;
- (c) Housing/tenancy benefits;
- (d) Environmental benefits;
- (e) Infrastructure for communities;

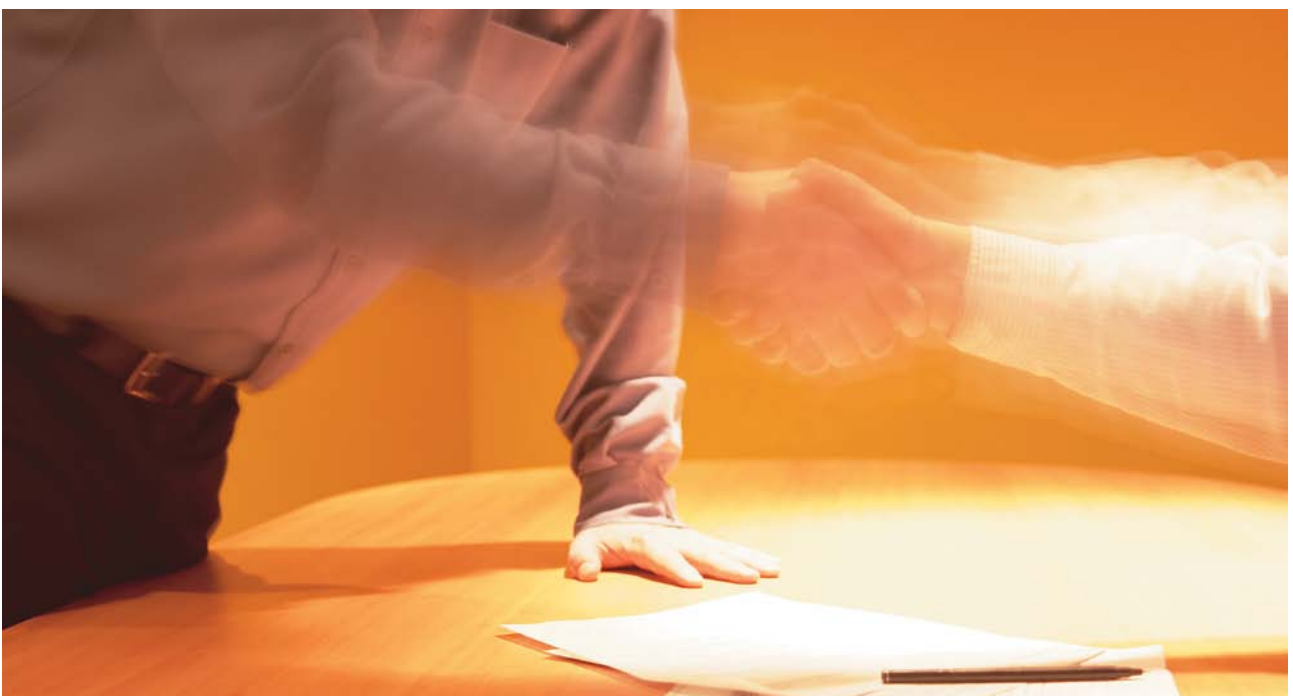
- (f) Empowerment and community capacity building;
- (g) Work experience opportunities;
- (h) Opportunities for the creation of social enterprise hubs/recreation centres/incubation type centres;
- (i) Fee for service for the community but at a reduced/nominal/no fee, depending on a person's financial means.

The definition of a social benefit as part of a procurement policy should refer to those relevant matters above (or others) as being matters that the procuring agency considers to be of significant value. Weighting for these types of factors will depend on the value that the specific procuring agency places upon them, in contrast with other tendering criteria (price, reputation, experience etc.). It is critically important however that as part of the tender process, the weighting figure for these types of benefits is disclosed and a figure allocated so that potential tenderers have full awareness of the significance which will be placed upon their ability to satisfy these factors.

Q. How can Government incorporate social procurement into processes whilst still complying with their legal obligations?

Government is well placed to incorporate social procurement into its current procurement processes with very little change necessary. All that is needed is a deliberate intention by the procuring agency to consider social benefits as factors of significance in the tendering process and to disclose to potential tenderers (prior to close of tender) the relevant weighting that will be allocated accordingly.

Where procuring agencies however, wish to focus exclusively on social enterprises in certain tenders, specific advice should be obtained to ensure the tendering process is compliant with necessary trade practices laws.



Specific Social Procurement Policies in NSW

The NSW Government Policy framework already includes two key policies designed to support social procurement practice for specific groups:

Employment of Indigenous People

- > The National Partnership Agreement on Indigenous Economic Participation resulted in a commitment to two key policy initiatives in NSW focussed on how procurement processes can support the training and employment of Indigenous people:
- > The Aboriginal Participation in Construction (APIC) Guidelines are aimed at increasing the employment of Aboriginal people on government construction projects. The guidelines are recognised in the NSW Government Procurement Policy (NSW Government 2006). The guidelines are focussed on selected construction projects and require participating government agencies to ensure that:
 - The assessment of contracts takes into account a supplier's commitment and demonstrated ability to effectively plan and implement Aboriginal participation; and
 - The appointed suppliers meet and report on agreed Aboriginal participation targets over the life of the contracts. These targets are detailed in specific Aboriginal Participation Plans developed for each construction project.
- > The Aboriginal Participation in Procurement (APIP) Guidelines which complement and extend the APIC Guidelines to cover a broader range of NSW Government contracts. These Guidelines have not yet been implemented, but aim to increase Indigenous employment through greater involvement of Indigenous people and suppliers in the provision of goods and services to the NSW Government.

Procurement of Goods and Services from Australian Disability Enterprises (ADEs)

- > Following Federal Government regulatory changes, the Public Sector Employment and Management (Goods and Services) Regulation (NSW, 2010) introduced provisions so that goods and services can be purchased from recognised ADEs in NSW without an open tender, and outside of standing offer contracts established by the State Contracts Control Board, within the framework of Value for Money. This exemption is outlined both in the above regulation (Clause 27) and in the Premiers Memorandum concerning purchase of goods and services from ADEs (M2010-06).

Developing an Organisational Social Procurement Framework

Social procurement presents an opportunity for organisations to integrate their broader organisational social objectives and their commitment to Corporate Social Responsibility (CSR) into mainstream practice. This requires changes to systems and processes, but equally importantly to organisational culture. In the same way as WH&S and increasingly environmental management have become a part of the way we do business, so the consideration of social objectives needs to become second nature in the way we undertake our procurement and purchasing.

To achieve this culture change requires a holistic approach to the way we expand social procurement practice within our organisations. The model illustrated in Figure 8 identifies six key areas of focus in supporting change and organisational development.

Social Procurement Framework

1. Leadership
 - Culture and Innovation
 - Roles and Responsibilities
 - Targets and Measures
2. Communication and Education
 - Internal Mapping
 - Communication Plan
 - Awareness and Training
3. Policy and Process
 - Policy
 - Manual/Guidelines
 - Templates
4. Planning
 - Procurement Strategy
 - Annual Procurement Plan
 - Project Procurement Plan
5. Opportunity Analysis and Pilots
 - Supplier Positioning
 - Decision-Making
 - Pilots and action learning
6. Supplier Development
 - Supplier Education
 - Capacity Building

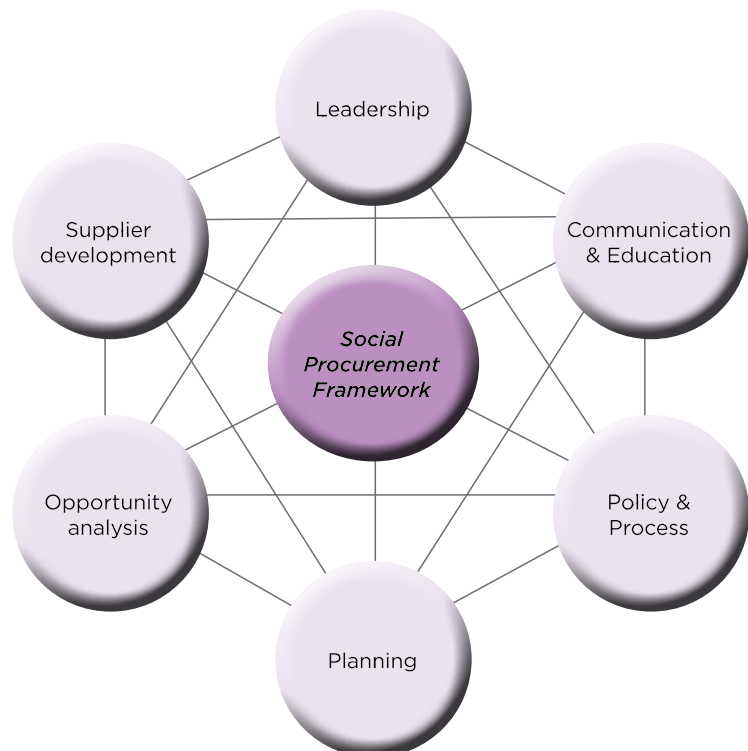


Figure 8: Six key areas of focus in supporting change and organisational development.



Leadership

Social procurement is a very attractive investment model for government. If undertaken as part of a robust procurement framework, the value-add achieved through the delivery of social objectives can not only support the achievement of Government objectives, but also enhance organisational reputation and pride. Success though requires leadership and support, both from Ministers and Councillors and from GMs, Department Heads and Senior Management. It is important to take time to engage leaders early in the development process, to build awareness and support. It is also important, however to acknowledge that the movement towards social procurement does not always come from leaders — quite frequently there are champions and intrapreneurs involved in initiating and fostering social procurement in public sector organisations.

Experience across many organisations suggests that most leaders will intuitively understand the value of social procurement, and it can be a reasonably easy 'sell'. For politicians, the opportunity to

CASE STUDY: WOLLONGONG CITY COUNCIL SOCIAL PROCUREMENT ROADMAP

Setting a Clear Direction

As part of their participation in the LGP NSW LG Procurement Roadmap Program, Wollongong City Council are developing a Social Procurement Roadmap. Responding to leadership on social procurement from Council and staff, the Roadmap will provide a two-year plan for developing a sustainable social procurement framework at Wollongong. Actions against each of the six elements include:

Leadership

- > Establish a Social Procurement Steering Committee and clear project leadership roles.

Education and Awareness

- > Undertake Workshops and training to engage Council staff and councillors.
- > Develop and implement a social procurement Communications Plan.

Processes and Practice

- > Establish organisational targets and processes to track and measure social benefits through social procurement practice.
- > Review and update current systems and processes to incorporate social procurement at all stages of the procurement process.

Planning

- > Develop, implement and monitor progress against a two-year Social Procurement Roadmap.
- > Review Council procurement planning processes to incorporate consideration of social value.

Opportunity Analysis and Case Studies

- > Undertake an internal survey to understand current and planned social procurement and related activity across Council.
- > Undertake an opportunity analysis to determine procurement projects with key opportunities for social procurement objectives.
- > Develop and implement key pilot social procurement projects to provide case studies and action learning examples

Supplier Development

- > Undertake a social enterprise and service provider mapping process to assist in understanding the social procurement environment.
- > Integrate social procurement into council's broader economic development activity, including supplier education and engagement.
- > Continue to expand the Social Enterprise Hub Project to encourage social enterprise development and activity in Wollongong.



Engagement and Awareness Strategy

The Victorian Government Social Procurement Toolkit identifies 12 key steps in establishing an Engagement and Awareness Strategy:

- ❑ Define your goals
- ❑ Identify your stakeholders
- ❑ Conduct stakeholder information needs analysis
- ❑ Define key terms
- ❑ Set the context
- ❑ Create key messages for each stakeholder group
- ❑ Demonstrate the benefits of social procurement through case studies
- ❑ Dispel common misconceptions of social procurement
- ❑ Identify and address risks
- ❑ Determine message delivery mechanisms
- ❑ Draft a communications timetable
- ❑ Evaluate the engagement and awareness strategy

support projects that not only deliver services and infrastructure, but community benefits, such as local jobs and training as well, is very positive. For Senior Management, social procurement not only presents a way to achieve organisational objectives, it can also increase organisational identity and pride. Leaders however are very aware of risk and costs, so it is vital that social procurement is presented as part of a robust procurement framework that will effectively manage risks and ensure that any additional costs are clearly identified and balanced against the planned social objectives.

Communication and Education

Achieving leadership support is vital in 'selling' social procurement to the organisation. However it needs to be backed up with a clear Communication Strategy that will ensure all staff understand social procurement and how it applies to them.

Social Procurement is not new — A key part of the education process is to understand that for most organisations, social procurement is not really new. Many organisations already support local suppliers or have requested evidence of CSR through their procurement practice. The change is really to encourage a more visible systemic and mainstream approach to social procurement. Identifying the way in which triple-bottom-line procurement is already being undertaken across the organisation, can help address any concerns as to taking on something new.

Personal Stories — One of the most powerful ways to promote social procurement is through personal stories from those involved. The impact that a job can have on the lives of an unemployed person and their family and community can be remarkable. Remarkable too, can be the sense of pride and job satisfaction felt by the project manager, who not only delivers a quality service or sound piece of infrastructure, but changes people's lives forever. Social procurement can strengthen the sense of meaning at a personal, professional and organisational level.

Training — Training and skill development opportunities are increasingly available in strategic, triple-bottom-line, and social procurement. Building the skills and experience of key personnel can strengthen organisational capacity and provide 'go to' people who can support project development and implementation. For procurement professionals in particular, building social and strategic procurement skills can strengthen their roles and influence, enabling them to directly support the achievement of broader procurement objectives.

CASE STUDY: PARRAMATTA CITY COUNCIL

Sustainable Procurement Survey — Triple Bottom Line Procurement

To strengthen their understanding of current council practice, Parramatta City Council has recently undertaken an organisation-wide internal survey, followed by a stakeholder interview program. The survey has identified 16 diverse projects that have incorporated social, sustainable and local economic development elements into their procurement processes.

The results highlight the scale and range of activity underway 'under the radar'. Case studies are now being developed to support an Education and Training program.



Policy and Process

The Procurement Policy, Guidelines/Manual and templates provide the framework through which an organisation's procurement activity is undertaken. To embed social procurement as a legitimate part of mainstream practice does not require a suite of new documentation. It is important only that the key organisational procurement documents are reviewed and updated to incorporate social procurement principles and practice.

Document	Purpose	Social Procurement Principles	Example
Procurement Policy	Provide the high level principles and framework for organisational procurement practice	<ul style="list-style-type: none"> > The Policy does not create any barriers to the incorporation of social and triple bottom line objectives as legitimate considerations in organisational procurement practice. > The Policy actively encourages the appropriate consideration of social and triple bottom line objectives as part of council's robust strategic procurement framework. 	<p>"By taking into account the social and environmental performance of all goods and services procured BMCC strives to ensure that all its procurement results in the best possible outcomes for the community and the environment in accordance with the community strategic plan". <i>Blue Mountains City Council – Sustainable Procurement Policy</i></p> <p>"In addition to prices tendered, evaluation criteria shall contain the critical factors to be used in the evaluation of tenders. These factors may include, but are not limited to: value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement". <i>NSW Government Procurement Policy</i></p>
Procurement Manual/ Guidelines	Provide step by step guidance to support the application of the Procurement Policy and ensure sound procurement practice at each stage of the procurement cycle.	<p>The Procurement Manual should provide clear and accessible guidance on incorporating social objectives at each stage of the procurement cycle, including:</p> <ul style="list-style-type: none"> > Procurement Project Plan/Strategy development > Specification and KPI development > Tender/quote processes > Evaluation and weighting criteria 	<p><i>NSW Government Local Jobs First Plan</i></p> <p>Local Jobs First Plan Criteria:</p> <ul style="list-style-type: none"> > The number of existing and new employees engaged in delivering the contract and their location > The number of local suppliers that will win work as a result of the contract and their employment numbers > The number of apprentices and trainees supported by the contract > Regional economic impact, skills enhancement and technology transfer that will result from the contract.
Procurement Templates	Provide a range of standard good practice templates to support key aspects of the procurement cycle.	<p>The Procurement templates should provide for the effective incorporation of social objectives into relevant standard organisational procurement templates at key stages of the procurement cycle, such as:</p> <ul style="list-style-type: none"> > Procurement Project Plan > Standard Contract templates > Evaluation Plans > Contract management > Social/Sustainable impact assessment 	<p><i>Aboriginal Participation in Construction – Aboriginal Participation Plan Template:</i></p> <p>www.nswprocurement.com.au/PDF/Construction/apic_template_aboriginal_participation_plan.aspx</p>

Table 2: Overview of policy and process documentation that can support social procurement



Planning

One of the key features of strategic procurement practice is a commitment to early planning to ensure that opportunities to maximise the benefits from procurement are identified and developed. As Government across NSW continues to improve its strategic approach to procurement, organisations seeking to achieve social objectives should aim to incorporate social procurement at each stage of their planning process, including longer range procurement planning cycles.

Document	Purpose	Social Procurement Principles	Example
Organisational Procurement Strategy/Roadmap	Provide a strategy to drive on-going improvement in organisational procurement practice.	<ul style="list-style-type: none"> > The Procurement Strategy/Roadmap should incorporate the development of social procurement as part of a broad range of clearly defined actions to drive the development and improvement of strategic procurement practice. > The Procurement Strategy/Roadmap should include actions to develop social procurement practice over time across dimensions including: <ul style="list-style-type: none"> - Procurement planning - Training - Process and governance - Sourcing and collaboration - Contract Management. 	DFS Public Works publicworks.nsw.gov.au/ NSW LG Procurement Roadmap Program www.lgp.org.au/
Annual Procurement Plan/Procurement Management Plan	Develop a Plan that identifies all proposed procurement activity and project priorities for the following year.	<ul style="list-style-type: none"> > Annual procurement planning provides a very effective mechanism to encourage early identification and high level planning for upcoming procurement activity. > The annual procurement planning process should incorporate an 'Opportunity Analysis' to identify key projects that may be well placed to deliver social objectives 	NSW Government Procurement Management Plan — part of the NSW Procurement Accreditation process www.nswprocurement.com.au/Government-Procurement-Frameworks/Goods---Services/Agency-Accreditation-Scheme-for-Goods-and-Services/Responsibilities-of-Accreditation.aspx
Project Procurement Plan/Strategy	The Project Procurement Plan/Strategy provides a structured model to ensure sound strategic planning for significant or complex procurement projects	The Project Procurement Plan/Strategy development process should include the assessment of social value opportunities and a clear plan as to how the procurement process will deliver on those opportunities as part of the broader goals of the procurement project.	NSW Procurement Planning Template http://www.nswprocurement.com.au/PDF/Construction/Procurement-Planning.aspx

Table 3: Overview of planning documents that can support social procurement



Opportunity Analysis

A key step in understanding how social procurement can be applied, is to undertake an opportunity analysis against each of the organisation's key categories of procurement expenditure. This process will assist in identifying which spend categories and procurement projects may best deliver social procurement outcomes. It can also be used to highlight pilot projects that can demonstrate the potential for procurement to deliver social objectives.

The Supplier Social Value Positioning Model (based on the Kraljic's Supplier Positioning Matrix) is a tool that can assist in undertaking an opportunity analysis to support procurement decision-making. As demonstrated in the Figure 9 and Table 4 below, the Model can be used for a high-level assessment of social procurement opportunities across different supply categories. In these examples the social value assessed is 'Opportunities for employment and training'

Applying the Model

1. List categories of goods and services purchased by the organisation
2. Assess the level of desired social value available within each supply category
3. Assess the level of complexity and risk in achieving the desired social value. Consider the following elements:
 - a. Supply availability — if there are a number of social benefit suppliers available and/or for profit businesses who can provide the social value, then it will be placed low on the Y axis. If there are limited suppliers available, this will position it higher on this axis.
 - b. Quality Requirements — if specifications are such that very high or specialised qualities are required then the category will be positioned high on the axis. Common trade standards or lack of quality requirements place it in a lower position.
 - c. If the scale or level of complexity and risk of the category or procurement process is significant, then it will place higher on the Y axis.
4. Position the category on the graph and determine the supplier social value positioning category, i.e. Bottleneck, Routine, Strategic or Leverage.

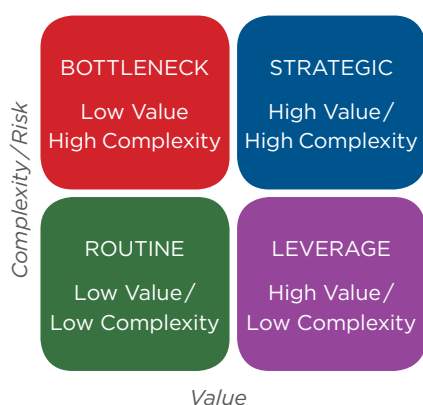


Figure 9: Supplier Social Value Positioning Model (based on Kraljics Matrix — Kraljics, 1993)

Strategies for each Supplier Social Value Positioning Category

- > **Bottleneck** (eg. IT Networks/specialised plant/specialised consultants/design) — High risk and/or high complexity supply categories that can provide little social value. Generally low priority for social procurement unless there is a specific social enterprise solution available.
- > **Routine** (eg. stationery, plant and equipment) — These categories may provide low social value, but it may be relatively easy to put some simple standard clause in the purchase process to maximise any social value available (fair trade, buy local).
- > **Leverage** (eg. cleaning, maintenance, horticulture, catering etc.) — These categories are priority areas for social procurement as they provide significant opportunities for employment and training, have active supply markets and represent low business risk. Social procurement requirements should be integrated into these categories.

> **Strategic** (eg. Road maintenance, and civil construction and building projects) — Large scale social value opportunities may be available for these projects, but there may be limited social benefit suppliers available. Developing social elements into these projects will take considerable planning, case by case social procurement strategies, and potentially some capacity building for suppliers, but the investment in planning and development may lead to very significant social value benefits.

Table 4 is an example of an applied Supplier Positioning process.

Supply Category (examples only)	Social Value Analysis	Social Value Rating (1-low — 10-high)	Risk/Complexity Issues	Risk/Complexity Rating (1-low — 10-high)	Supplier Positioning
Cleaning	Labour content — High Training Needs — Low Sustainable employment pathways — Med	8	Business Risks — Low Social Benefit Suppliers available — Med Private Business Social Capacity — Low	4	Leverage
Office Catering	Labour content — High Training Needs — Med Sustainable employment pathways — High	7	Business Risks — Low Social Benefit Suppliers available — High Private Business Social Capacity — Med	2	Leverage
IT Network Support	Labour content — Low Training Needs — High	2	Business Risks — High Social Benefit Suppliers available — Low Private Business Social Capacity — Low	8	Bottleneck
Civil Construction	Labour content — High Training Needs — Med Sustainable employment pathways — Med	8	Business Risks — Med — High Social Benefit Suppliers available — Low — Med Private Business Social Capacity — Med	6	Strategic
Stationery Supply	Labour content — Low Training Needs — Low Sustainable employment pathways — Med	2	Business Risks — Low Social Benefit Suppliers available — Low Private Business Social Capacity — Low	4	Routine

Table 4: Applying the supplier social value positioning model

CASE STUDY: SALVOS LEGAL

New Social Enterprise Models

For example, there are a growing number of professional 'social businesses', whose aim is specifically focussed on generating social value as part of their core business. For example, Salvos Legal is a not-for-profit law firm owned and run by The Salvation Army. It specialises in property and transactional commercial law to assist individuals, businesses and corporates by providing professional legal advice. The costs paid for these legal services fund the operation of Salvos Legal Humanitarian, also run by The Salvation Army, which provides free legal advice and assistance to those most in need without any fee. As the field of social business and the social economy more generally broadens, the categories in which potential suppliers whose core mission and business models are focussed on the generation of social value are likely to grow in number and in capacity. Category Analyses therefore should seek to open up possibilities for generating social value, and should be linked also to market analyses that explore the range of social benefit suppliers that could potentially deliver value for money to public sector organisations.



Category Opportunity Audits

Examining purchase categories and looking for opportunities for social procurement.

For example, categories that may be of particular interest for social value generation focussed on employment and training could include:

- > Maintenance
 - Buildings
 - Grounds
 - Vehicles
- > Parks, Gardening and Landscaping
- > Food/Catering
 - Daily (Morning teas, Lunches, Afternoon teas)
 - Special Occasions catering
- > Construction
- > Supplies
 - Office supplies and delivery
- > Leisure/Recreation/Entertainment
- > Transport
- > Design/Media/Art
- > Cleaning
 - Regular office cleaning
- > Waste Management and Recycling
- > Environmental Services

“I couldn’t find anything for over a year after I finished school, I came into the job with no experience and at first it was a little bit daunting but it was good. I could see that it was helping the residents out. I started off doing a Certificate III in Business Administration part of a 12 month traineeship ... It has helped me to achieve my goal, to pursue a stable position and have the opportunity to progress my career.”

Sarah, 23 years still employed by Newleaf

Pilots and Action Learning

Using the Supplier Social Value Positioning Tool (refer p. 33) to complete the Opportunity Analysis will assist in identifying some key categories that can deliver high social value, with manageable complexity and risk. By identifying upcoming procurement opportunities within the chosen selected categories, pilot projects can be identified and developed to introduce social procurement practice and demonstrate the possibilities of the model. Pilot projects should be carefully planned and supported to maximise the effectiveness of the project. Identifying champions in the organisation to lead these pilot projects can also be a useful way to engage senior staff in the process. Finally, pilots should also be accompanied by clear and well-document action learning and evaluation processes to ensure the experience can be learnt from and built upon for the future.

CASE STUDY: BONNYRIGG HOUSING ESTATE

Identifying Opportunities for Social Procurement in Major Contracts

The redevelopment of the Bonnyrigg housing estate in South West Sydney is a major long-term project, involving a significant public-private partnership, with contracts extending for up to 30 years (2007-2037). In 2007 a consortium of five companies was chosen by Housing NSW to manage different aspects of the Bonnyrigg development, referred to as the ‘Bonnyrigg Community Living Project’ (BCLP): St George Community Housing, Becton Property Group, Spotless Services Australia, and Westpac. This is a \$733 million redevelopment involving the integrated physical and social renewal of an 81 hectare site in Bonnyrigg. There are eighteen stages in the physical renewal, and a 30-year contract with HNSW for tenancy management/support and facilities maintenance.

Becton Property Group, an award winning development company is responsible for the master planning and residential construction, St. George Community Housing manages the community tenancies on the project, and Spotless Services Australia has a 30 year property maintenance contract in relation to the properties. Bonnyrigg Management Pty Ltd (trading as Newleaf Communities) was created by the consortium and is responsible for managing the following services:

- > Management and Integration of partners;
- > Development and execution of strategies that deliver Community Renewal and;
- > Communication and consultation to all key stakeholders.

Bonnyrigg Management Pty Ltd’s primary role is to ensure the interfaces between the Project Company, Tenants and Community and that all Services delivered on the project have a customer focus and deliver clear outcomes.

Newleaf Community Renewal (a joint venture non-profit company) was also established by Becton and Spotless partners to undertake the community renewal services. In 2008 Newleaf Community Renewal established a social enterprise, “Green Wings”, initially funded through the DEEWR Jobs Fund to provide supported work placements for the local community in property care services.



“I have acquired various skills, such as working in a team and obtaining licences such as white cards and asbestos removal... I have been promoted to team leader and have found it challenging to lead a team and manage people. It’s been a new experience meeting with managers... It’s been a good experience.”

Ming, 26 years
still employed by
Green Wings

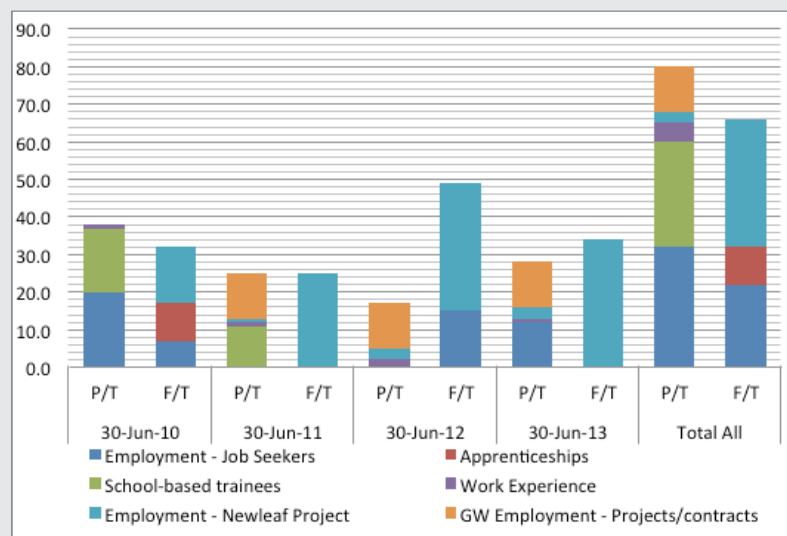


The entities of Newleaf Community Renewal and Green Wings were established outside the requirements of the Project, as an initiative of the consortium to add value and to source external funding to support community development work in the local Bonnyrigg community area.

Green Wings seed funding ceased in June 2011, having achieved 58 job placements over the two years. Since June 2011, this social enterprise has achieved viability and managed to attract contracts from within the project partnership, external organisations and local government across the South West Sydney region.

In May 2012, Newleaf enhanced its existing partnerships with South West Sydney Institute of TAFE, local Job Service Providers, local industry, community and DEEWR and commenced a community-based supported education training and employment program (Certificate II — Horticulture) for 15 job seekers. In September 2012, a Certificate II Construction Pathways program will commence with existing partners and the Master Builders Association. A further 15 placements are on offer to job seekers. Both programs offer employment pathways on successful completion.

To date, Newleaf Community Renewal has been successful in providing education, training and employment opportunities to 146 individuals in the local community.



The length of the contracts and the location of this project, in an area with one of the lowest SEIFA (Socio-Economic Index for Area) scores in NSW, have provided an opportunity through Newleaf Community Renewal services to target social disadvantage and contribute to the local economy. The Project Deed itself does not obligate private corporate partners in the project to embed social procurement. While this may have been a missed opportunity, the Newleaf Community Renewal business unit “Green Wings” and the support of project partners is in itself a significant success in providing positive training, employment, economic and social outcomes and continues to provide leadership in social procurement benefits.

A key learning from this project is the value of embedding social procurement early in project planning, policy and programs, particularly in a project such as this in an area that has significant levels of unemployment, and where there will continue to be large numbers of social housing residents over the life of the redevelopment.

CASE STUDY: WESTERN SYDNEY PARKLANDS TRUST — PROVIDING OPPORTUNITIES FOR SOCIAL ENTERPRISES

Bringing Back the Bush — Bush Regeneration Social Enterprise Program

The Western Sydney Parklands Trust is providing an opportunity for social enterprise organisations to partner with the Trust in its objective to restore and expand bushland throughout the Parklands corridor and in addition, to draw local communities in Western Sydney into the Parklands. In turn the partnership will enable social enterprise organisations to deliver on their core objectives for Western Sydney, such as:

- > mitigating long-term unemployment;
- > addressing exclusion of young people, Indigenous people, women and refugees; and
- > employing people with a disability.

The Social Enterprise Program is an approach which involves allocating a portion of the Parklands Trust's environmental budget (initially \$200,000) to undertake bush regeneration and revegetation in the Parklands, whilst also linking with workplace training programs or other social enterprise programs in the environmental restoration field.

Contracted under the Trust's *Professional Services Contractor Agreement — Site Work for Bush Regeneration and Revegetation Works*, the first stage will run from November 2012 through to December 2014. A selective tendering process will target social enterprise organisations in Western Sydney that have the capacity to achieve great outcomes both for the Western Sydney Parklands and also those in our community who would benefit from this type of opportunity.





Supplier Development

Critical to success of social procurement activity is the maturity and capability of the supply market to meet the business and social procurement objectives. If for example, the social objectives being sought include employment of disadvantaged groups, suppliers need to have the capacity to meet these requirements. For private providers, these requirements may be new to them and they will often need to work with a sometimes complex training and employment environment. Social enterprises too may not be in place, or not geared up to meet either the business or social requirements.

There are a number of ways in which Government can play a role in developing this capability.

Mainstream supplier education

Mainstream supplier education has generally been associated with specific projects (see Nowra Jail Case Study pp. 50–52). However as both government and private sector contracts begin to require the achievement of social objectives, supplier education becomes critical. Models may include:

- > Education can form part of council Economic Development Programs supporting their local businesses in establishing a competitive advantage in being able to deliver social objectives, or to partner with social benefit suppliers;
- > Integration of social procurement education into State Government supplier engagement processes at an industry, regional or project level;
- > Peak bodies in specific industries, can provide education and practical support for industries such as construction, who are increasingly being expected to deliver social outcomes (see also part two of this guide — supplier market analysis, page 47).

Social Benefit Supplier capacity building

At Federal, State and Local Government levels, support is being provided for programs that are helping the establishment, growth and development of social enterprises. On-going and extended support for these programs can assist social enterprises to position themselves to take on Government contracts and deliver them successfully, providing quality goods and services, while delivering a range of social outcomes, including real employment and training outcomes for a range of disadvantaged communities.

Councils are playing an important role in supporting the development and growth of social enterprises in their communities. This activity complements the on-going economic and business development work that many councils undertake to attract and support local small to medium enterprises. By directly supporting social enterprise development councils are helping to build a more diverse supply market, and supporting organisations with a commitment to providing community benefits, including the provision of training and employment for a range of disadvantaged residents.

CASE STUDY: WYONG, PARRAMATTA AND WOLLONGONG COUNCILS

Social Enterprise Capacity Building

Three Council approaches to social enterprise development are highlighted below:

Wyong Shire Council

Wyong Shire Council recognises the contribution social enterprises can make to our communities. They contribute to social innovation, increase social inclusion and cohesion, and encourage resourcefulness, participation and cooperation.

In addition to its own enterprise ventures, Council is assisting the growth of social enterprises within the region through the employment of a specialist Social & Community Enterprise Coordinator. The position's focus will include the development and delivery of resource material and learning modules targeted at the Social Enterprise sector; providing a peer networking and support structure; and brokering specialist business development support to assist the incubation of new enterprises.

Council has also actively supported, with other key regional stakeholders, the development of a Central Coast Regional Social Enterprise Strategy. The document provides a blueprint for the future with targeted objectives designed to inspire social enterprise and entrepreneurship, support existing and new enterprise growth and develop benchmark governance mechanisms. www.innov8central.com.au/images/stories/SocialEnterprise_4_Strategy.pdf

Parramatta City Council

Parramatta City Council's Social Enterprise Program's vision is to "... **make a positive contribution towards improving social wellbeing.**" Its mission is to "... attract, incubate and grow social enterprise opportunities to increase sustainable employment opportunities and pathways for marginalised individuals". Parramatta's community capacity building approach, of which the social enterprise program is a part, seeks to include and engage those people who are 'left out' by providing them with opportunities to actively participate and share in the benefits of a strong and connected community

The Program has included **Six Key Strategies:**

1. Social entrepreneur and social enterprise identification and development
2. Mentoring and other business support for local social enterprises
3. Seed funding local social enterprise development
4. Maximising social enterprise opportunities arising from PCC procurement and assets
5. Impact measurement and analysis
6. Documenting knowledge about social enterprise models at the local, state and national levels

Community Capacity Building Grants — Social Enterprise in Parramatta. Forming an important part of Council's Annual Community Grants Program, these Grants provide funding for the development and growth of social enterprises and social enterprise activity in Parramatta. Over six rounds, more than \$450,000 of social enterprise grants have now been awarded. In 2012, grants of up to \$25,000 were also provided to encourage existing social enterprises from elsewhere to set up in Parramatta. This new approach reflects the value of supporting tried and tested organisations and business models to establish themselves within a new community.



Wollongong City Council

Since 2010, Wollongong City Council has been working with Regional Development Australia, non-government agencies and existing Social Enterprises in the Illawarra region to establish a Social Enterprise Accelerator (originally call a "Hub"). The Project was launched through a Social Visioning Workshop in August 2012. Key roles of the Accelerator will include:

- > Skilling — Business advice, consultancy and training
- > Supporting — Support services, peer and professional mentoring
- > Informing — Portal for resources and events
- > Networking — Opportunities to learn from peers
- > Advocating — Raising the profile across public sector, private sector and the public

CASE STUDY: AUSTRALIAN INDIGENOUS MINORITY SUPPLIER COUNCIL

Creating opportunities for Indigenous Business

AIMSC is an independent minority supplier council modelled on similar organisations in North America that have the aim of linking corporate and government buyers with minority suppliers such as Indigenous businesses.

AIMSC was started with three core aims:

1. Creating an **enabling environment** for Australian Indigenous businesses, so that they could become a self-generating force. This required some targeted policy change, such as the Indigenous Opportunity Policy and exemptions;
2. **Finding and supporting Indigenous suppliers** so that they have the opportunity to compete for business and contracts through a certification process that ensures that they are at least 51% owned and managed by Indigenous people;
3. **Recruit corporate and government members to become leaders and champions** of purchasing and procurement from Indigenous businesses, demonstrate this commitment with performance targets and help to embed this commitment to supplier diversity through their supply chains.

AIMSC undertakes both **strategic work** (helping members to think through and plan how they can build Indigenous businesses into their supply chains); and **transactional work** (helping to broker actual contacts and support Indigenous businesses to compete for work).

AIMSC has learnt from international experiences that long-term success for Indigenous businesses requires:

- > **Real, concrete commitments** and an understanding from purchasing bodies that this commitment needs to extend beyond a CSR response;
- > **Measurable performance** so that commitments are linked to Key Performance Indicators;
- > Repeat business needs a **commercial basis**, it cannot be based on charitable intentions.

As at April, 2012, AIMSC had over 140 Corporate and Government members, had certified almost 130 Indigenous businesses, generated over \$26m in contracts and over \$18m in transactions between its members and suppliers. This has flow-on effects for growing Indigenous job opportunities, with a 5% net growth in jobs across AIMSC suppliers over the past 3 years, and 52% of new jobs in these businesses going to Indigenous people.

Though there are currently not many Local Government members, the **City of Sydney** was a founding member of AIMSC, with the CEO and a Councillor as representatives, and the commitment being subject to the legal requirements governing the Council's procurement of goods and services. Parramatta City Council has also recently become a member. A number of NSW State Government Departments are also members of AIMSC, and are committed to increasing the diversity of their supply chains to include Indigenous businesses.

Some of the key learnings from AIMSCs first three years of operation are of particular interest in fostering and promoting social procurement:

- > Policies and contract criteria are not, in and of themselves, sufficient to ensure that purchasing and procurement generate social value. Actual **implementation of policies, and follow-up with measurement, monitoring and evaluation are critically important** if social value is really to be generated through contracts and purchasing;
- > It is important for purchasers (corporate and government) to **see and be able to articulate the business case for promoting and enacting social procurement**. If it remains at the level of a community development, CSR or charitable activity then long-term and scaled social value generation will not be realised;
- > Research and evaluation of the **commercial and social value generated is important** to back up, support, promote and scale-up the work of social procurement. This needs to be done at the level of companies, but also more generally by bodies promoting social procurement.



CHECKLIST

Developing an Organisational Social Procurement Framework

- ☐ Ensure that there is both management and political leadership support and 'buy-in' for social procurement, and in so doing remember that social procurement must be presented as part of a robust procurement framework that will effectively manage risks and ensure that any additional costs are clearly identified and balanced against the planned social objectives.
- ☐ Ensure that there is senior managerial support for social procurement within the organisation, as this will have a critical effect on the success of, and internal enthusiasm for, social procurement projects.
- ☐ Back up management and leadership engagement with a clear Communication Strategy that will ensure all staff understand social procurement and how it applies to them.
- ☐ Communicate the social procurement message internally and externally
- ☐ Embed social procurement into all relevant policies and processes, so that it becomes an integral component of procurements and not merely an afterthought.
- ☐ Nominate at least one officer to be the social procurement "go-to" person that other officers can call upon for advice and/or assistance with social procurement projects.
- ☐ Integrate social procurement into your organisation's strategic business planning, operations and reporting.
- ☐ Within public sector organisations, establish linkages between the community services/social policy units and procurement, finance and engineering/infrastructure units of the council in developing the council's social procurement framework and generating the necessary cross-unit support for social procurement initiatives.
- ☐ Develop a database of social benefit suppliers in different procurement categories.
- ☐ Identify procurement categories and upcoming procurements that might lend themselves to social procurement.
- ☐ Develop a strategy for supplier engagement and development to ensure that all suppliers have the capacity and confidence to deliver on social value.

Some of these considerations are adapted from the Victorian Government Social Procurement Toolkit: www.dpcd.vic.gov.au/localgovernment/social-procurement/social-procurement-toolkit-introduction

Undertaking Social Procurement Projects in Your Organisation

This part of the guide is designed to support the achievement of social value within a project by integrating social procurement principles at each stage of the procurement lifecycle.

Though tendering and contracting is most often referred to in this guide, the value of promotion and purchasing to generate social outcomes should not be underestimated (refer to Figure 2 in section one for more information). Indeed, small scale activity — using social enterprise catering or including social enterprises in a selected quotation process, for example, can provide important stepping stones for an organisation and help to build the case internally for the value of social procurement practice.

CASE STUDY: PENRITH CITY COUNCIL AND KALLICO CATERING

Social Benefit through Purchasing Practice

Kallico Catering is a local for profit Aboriginal owned and operated business that seeks to build the capacity of Aboriginal people through training and employment in the hospitality industry. Due to the fluctuating nature of business in a small catering enterprise, the work available is highly casualised. Although not self identifying as an intermediary labour market (ILM), it is often the case that once employees develop skills that make them more competitive in the mainstream labour market, they move on to other opportunities. Kallico has also offered work experience to women who have experienced domestic violence. Catering has been supplied on a number of occasions by Kallico for Penrith Council, predominantly Community and Cultural Development Department projects and events. In 2010–2011 Penrith Council's purchases from Kallico totalled around \$18,500, delivering not only high quality, Indigenous-inspired catering, but also generating social value, support for local Indigenous employment and enterprise, and recognition of local Indigenous culture and food. This is particularly important in a region with a relatively high Indigenous population. Kallico Catering is an AIMSC certified Indigenous supplier. See: www.kallico.com.au.



CASE STUDY: PARRAMATTA COMMUNITY ASSIST LAWN MOWING**Innovative Service Delivery**

The CALM project introduced sustainability criteria into its EOI process for contractors to provide mowing for frail and disabled residents. A social enterprise, Happy Home Helpers had its EOI approved to join the list of contractors and is now providing a very successful service to the community, while providing genuine employment and training for disadvantaged residents. A supervised team of 4 people, including long-term unemployed and some with intellectual disabilities and mental illness issues are now working in the community to provide lawnmowing services. They receive full induction, training and support, but still need to operate in a competitive market, where residents choose from the list of available contractors. While up to 20% more expensive than some of their competitors, they are gaining a lot of work. Clients consider them to be dedicated, passionate, reliable and providing high quality work.

The participants themselves have developed their confidence, skills and sense of self-worth. Council is not only supporting the delivery of a valued community service, but also providing real employment to disadvantaged residents, with all of the positive impacts that is having on them and their families and communities. The positive outcomes from the social enterprise participation and the sense of pride that the Project Officer, team members and community participants feel has surprised them, and they are “very excited” about the possibility of extending the model for this and other council services.

Social Procurement in a Project Lifecycle

It is important to note that the consideration of social value in procurement does not change the fundamentals of the procurement lifecycle. The focus of this guidance is on the incorporation of social value from the earliest stage of project planning through each stage of development and delivery.

At the project level it is again important to consider any legal or policy implications or barriers that need to be addressed as part of the incorporation of social value into a tender and contract. In particular, any project incorporating social value should ensure:

- > **Transparency and openness** — all potential suppliers are clear about any social value requirements and relevant weightings from the beginning of a procurement process;
- > **Fairness** — All suppliers are treated fairly, including any potential social benefit suppliers;
- > **Value for money** — social value is considered within a value for money framework, and the purchase optimises benefits against the allocated budget and costs required to achieve the best result for the local community (see the legal advice in Appendix 2).

Figure 10 opposite outlines the key points across a procurement lifecycle where particular actions or considerations can assist you to incorporate social procurement into any given project. These are explored further in this section of the guide.

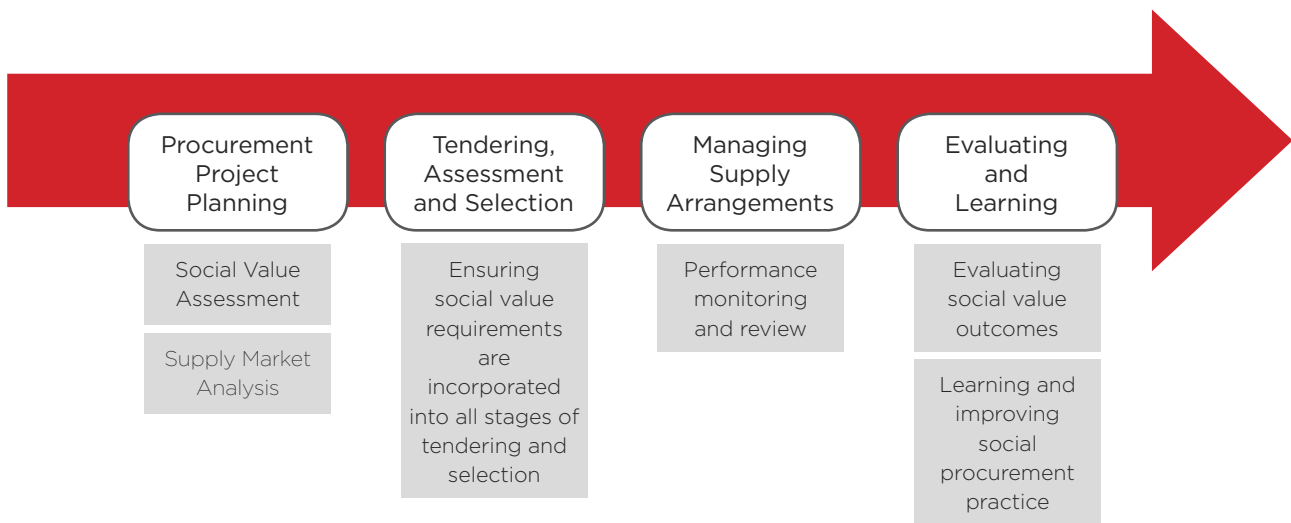
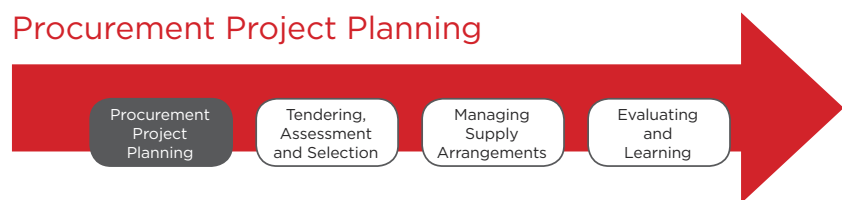


Figure 10: Key Elements of Incorporating Social Procurement across the Procurement Lifecycle of a Project

Procurement Project Planning



As discussed, procurement planning happens at both a strategic level in organisations and at a project level. While there are some overlaps between these levels of planning (rightly so!), this section focusses on planning that happens around a particular project and examines ways in which you can plan to engage more closely with opportunities to generate social value. At a strategic level councils and government departments have annual planning processes where projects and ideas are discussed, and spend plans generated. These represent an excellent forum for ensuring that social value is incorporated into procurement plans (see section two of this document).

However, it is also important for social value to be considered in business plans and feasibility studies at project level. Just as in other procurement processes, inaccurate or inappropriate definitions of, and planning for, social benefit requirements can result in lost opportunities, confusion amongst suppliers and wasted resources. Two particular tools that can assist in articulating social value in project planning are examined below — that is, social value assessment and supply market analysis.

Social Value Assessment: Opportunities, Risks and Issues for further consideration if social value is to be generated

This process involves research and analysis to identify and assess opportunities, risks and issues associated with generating social value in a project. The outcomes of this work can inform the project plan and feasibility studies, ensuring that social value is embedded at the earliest stage of a project. Table 5 below provides an overview of a Social Value Assessment Framework that could be used to draw together these factors.

Social Value Goal (examples only — generate directly from your own social objectives)	Opportunities within the contract	Opportunities within the broader supply chain (eg. Sub-contracting)	Potential Risks and how they could be managed	Any other issues for further consideration
Employment	Setting targets for participation of particular groups.	Targets for sub-contracting of specific elements to social benefit suppliers.	Supplier Reaction: Briefing sessions to inform and prepare suppliers for inclusion of clauses; Underperformance: Clear and achievable targets.	> Capacity building opportunities for social benefit suppliers should be considered. > Evaluation and learning frameworks should be in place.
Fair Trade	Inclusion of fair-trade clauses in catering contracts to ensure use of fair trade tea and coffee.	Emphasis of fair trade commitment to be demonstrated in supply chain of appointed contractor.	Supplier Reaction: Briefing sessions to inform and prepare suppliers for inclusion of clauses; Extra Costs: market analysis of fair trade supplies	> Links to sustainability objectives > Need for a supplier market analysis to ensure best value fair trade supply chains

Table 5: An overview of a project-based social value assessment framework

CASE STUDY: HUNTER RESOURCE RECOVERY AND MAI-WEL E-CYCLING SERVICES

Sustainable Community Benefit

Hunter Resource Recovery (HRR) is a joint venture recycling company established by Cessnock, Lake Macquarie and Maitland City Councils in June 1997. As a joint venture company, HRR combines the resources of the three councils, providing both a more cost effective service; and also providing “best practice” recycling technologies. HRR now handles the management, co-ordination and implementation of recycling, waste minimisation and associated education strategies, representing an estimated 350,000 residents or a service area of 118,500 homes, making it one of the largest recycling contracts in Australia.

cont. →



Mai-Wel E-Cycling Services provide a environmentally friendly and cost effective solution for the recycling of end of life electrical and electronic goods. The service offers an e-waste dismantling and separation into commodity types for recycling. Customers include all local Councils, government and educational departments, health and business as well as members of the public. Mai-Wel E-Cycling Services (a division of The Mai-Wel Group) is an Australian Disability Enterprise, employing 21 supported employees, 6 management and support staff and 13 production assistants. It is an integrated workplace providing employment opportunities for people with a range of barriers to employment such as mental health, disadvantage or disability.

Hunter Resource Recovery has subcontracted Mai-Wel E-Cycling Services to provide e-cycling services to residential rate payers, and they also have contracts with other local councils, including Newcastle and Port Stephens. The value of the contracts Mai-Wel E-Cycling has with Hunter Resource Recovery is currently \$492,035 (current as of 31st January, 2012).

The outcomes for HRR and other local councils include significant environmental benefits (to date Mai-Wel has prevented many tonnes of e-waste entering landfill, and this has been redirected to commodity recyclers); and social benefits (with recent contracts there are now over 30 supported employees, and both real jobs and training opportunities, including accredited on-the-job training).

Supply Market Analysis

At a project level, a supply market analysis can help purchasing organisations to understand how a particular market works including: key trends, suppliers and stakeholders, and the overall market dynamics. In social procurement, a supply market analysis can additionally assist purchasers to understand:

- > what opportunities may exist within a supply market to further government priorities and strategic social objectives;
- > what social benefit suppliers exist in the particular market and their current capabilities;
- > are there successful models of social value generation for this supply category
- > what the diversity of the suppliers in a market is;
- > what the strengths and weaknesses of suppliers are in relation to both commercial and social value generation;
- > how risk can be managed when social value is added to a contract environment; and
- > how suppliers may respond to the addition of social value into procurement projects.

Figure 11 (overleaf) outlines some of the key questions that could help to integrate social value into a supply market analysis for a particular project.

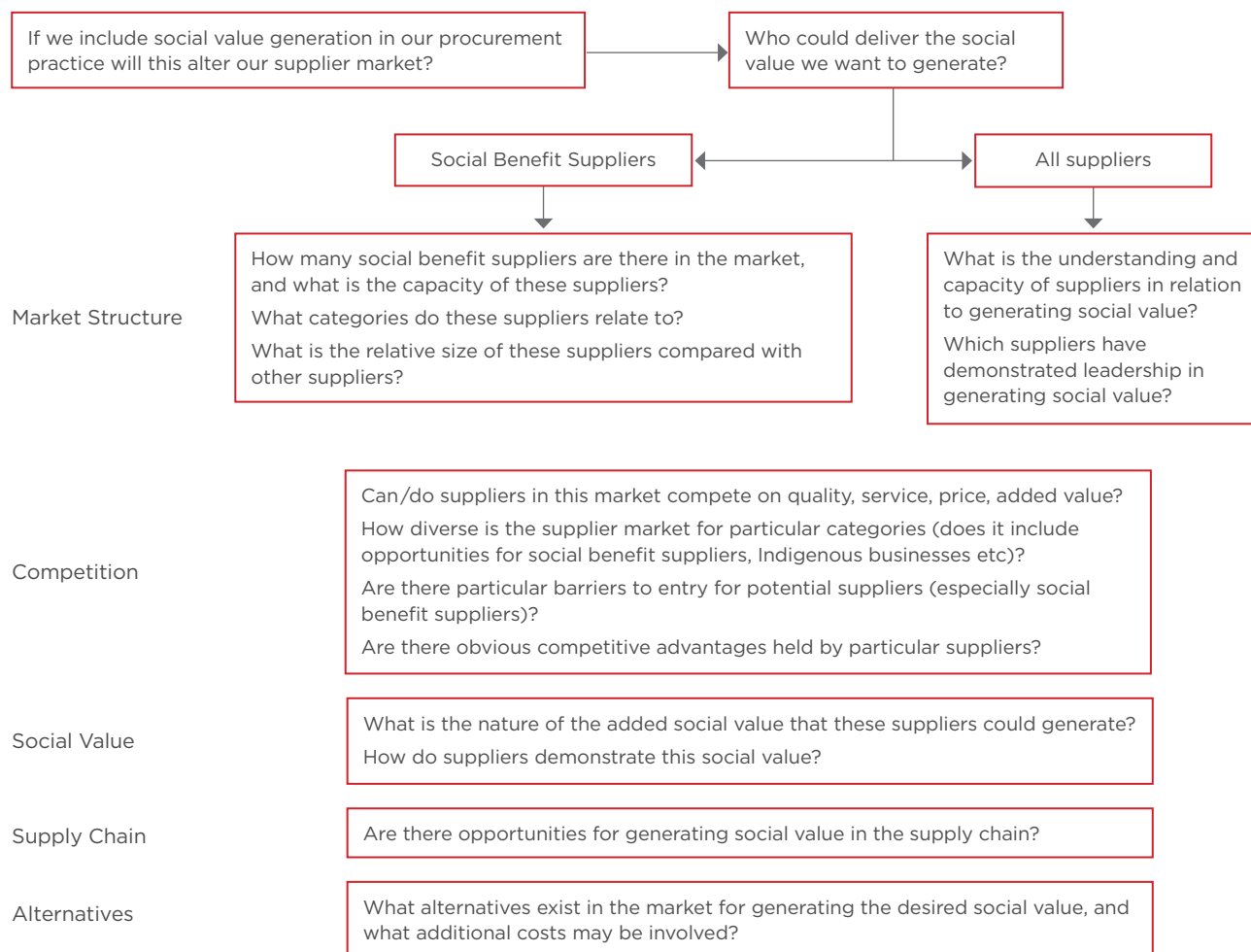


Figure 11: Additional Questions for Inclusion in a Supply-Market Analysis when Planning for Social Procurement

To prepare for the supply market analysis you may also want to map out peak bodies, intermediaries and networks who could provide some market intelligence about potential social benefit suppliers. Some of the key peak bodies who may be engaged to offer assistance for linking potential suppliers to purchasing bodies are listed here.

You may also want to seek out and engage particular organisations who can support mainstream suppliers to deliver on the social objectives in a contract. These will of course vary according to the substance of the social objectives, but may include Job Services Australia providers, capacity-building intermediaries, non-profit organisations, peak bodies, local level intermediaries or even units internal to a public sector organisation who may have specific expertise in the particular social value objectives and who could offer a degree of support in the process.

Supply Market Intermediaries	Overview of Services Offered
<p>Social Enterprises Sydney (social enterprise)</p> <p>www.socialenterprises.com.au</p>	<p>Social Enterprises Sydney (SES) is a practitioner-led, membership-based social enterprise that provides a range of activities to build the capacity of social enterprises across the Greater Sydney Region.</p> <p>Social Enterprises Sydney is focused on the development of social enterprises into sustainable and commercially viable entities. Developed and delivered by Social Enterprises Sydney, their development program includes workshops, mentoring, peer-to-peer mentoring/networking sessions and Coaching opportunities all designed around the needs of a Social Enterprise.</p>
<p>Social Traders (social enterprise)</p> <p>www.socialtraders.com.au</p>	<p>Social Traders is a nonprofit organisation established in 2008 to support and encourage the establishment of commercially viable social enterprises throughout Australia. Working with government, community, business and research partners, they aim to:</p> <ul style="list-style-type: none"> > Raise awareness about social enterprise and demonstrate its benefits > Open up markets for social enterprise products and services > Increase finance available to start and develop social enterprises > Build capacity of social enterprises to trade successfully > Support the coordination of social enterprise development in Australia. <p>Social Traders also manages a directory of social enterprises in Australia, which is useful for finding social enterprise suppliers.</p>
<p>Australian Disability Enterprises (ADEs)</p> <p>www.australiandisabilityenterprises.com.au</p>	<p>Australian Disability Enterprises provide real work opportunities for people with disability across Australia. The ADE website offers a portal through which to find ADEs; get quotes from ADEs; and provides guides to purchasing from ADEs.</p>
<p>Social Firms Australia (SoFA) (Social firms)</p> <p>www.socialfirms.org.au</p>	<p>SoFA provides assistance with the commercial expertise required to establish and grow viable social firms, and the expertise in the adjustments required to assist employees with a mental illness get and keep a job. SoFA can also make connections to suppliers that are social firms.</p>
<p>Koori Job Ready (KJR) (Aboriginal employment)</p> <p>www.dsf.org.au/current-projects/386-koori-job-ready</p>	<p>KJR works with private and public sector organisations to support aboriginal participation and employment outcomes through all aspects of the tendering and project delivery processes. KJR runs training, mentoring and recruitment processes, particularly focused in the areas of hospitality and construction.</p>
<p>Australian Indigenous Minority Supplier Council (AIMSC) (Indigenous businesses)</p> <p>www.aimsc.org.au</p>	<p>The Australian Indigenous Minority Supplier Council (AIMSC) aims to integrate small to medium Indigenous businesses into the supply chains of Australian companies and Government agencies, thereby creating a sustainable, vibrant and prosperous Indigenous enterprise sector in Australia. They do this in three key ways:</p> <ul style="list-style-type: none"> > Finding, supporting and certifying Indigenous suppliers; > Connecting Indigenous suppliers with corporate and government purchasers; > Reforming legislation and policy to create an enabling environment for Australian Indigenous enterprises. <p>In other words, AIMSC is engaged in both strategic work (assisting member corporate and public sector organisations to plan for building Indigenous enterprises into their supply chains) and transactional work (brokering contact between members and Indigenous suppliers).</p>

Project Planning and Business Case

At the earliest planning stages, it is important to provide a clear rationale for initiating a new social procurement activity or incorporating new social value into an agreed Project. The Project Plan or Business Case (if required) should set out the costs and benefits of incorporating social benefit requirements into a contract, and include a social value and risk management assessment and mitigation plan.

Early work in the planning phase can be an excellent vehicle for refining the specifications and procurement strategy, ensuring clear outcomes are identified and linked to policy objectives. It can also provide an opportunity to refine selection criteria, and performance measures.

Steps:

- 1 Ensure that the inclusion of a social benefit requirement is appropriate for the particular contract
- 2 Ensure procurement business case includes social benefit objectives in the overall objectives of the project
- 3 Undertake a social value assessment identifying opportunities, risks and issues related to incorporating social value into the project
- 4 Incorporate social benefit suppliers into a supply market analysis if this is undertaken as part of the business case and, if necessary, make appropriate links to peak bodies and support organisations
- 5 Outline potential costs and benefits of social procurement in cost-benefit analysis
- 6 Incorporate any risks and mitigation strategies related to social clauses
- 7 Ensure social requirements are built in to the requirements, outputs and performance measures in the business case

Checklist:

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CASE STUDY: DFS PUBLIC WORKS SOUTH COAST CORRECTIONAL CENTRE

Aboriginal Participation in Construction

Challenge: To improve employment and engagement with local Aboriginal communities through Government projects without significantly increasing project costs.

The Story: The NSW correctional system's "1000 Inmate Beds Project" includes the building of new correctional facilities. The total project is valued at almost \$300M. Part of this project, the South Coast Correctional Centre (SCCC), is valued at \$155M, and provides 600 multi-classification beds for men and women. It is situated 5 kilometers south of Nowra. This project took two years to develop, and two and a half years to build.

Nowra is a regional area of NSW with a large and economically and socially depressed Aboriginal population. Historically, it was the first region to rehouse members of the Stolen Generation. There are a high number of local Aborigines in jail, with up to 25% of the inmate population at SCCC estimated to be Aboriginal.

As part of a whole-of-government approach to improve the lives of Aboriginal people, the NSW Government Aboriginal Participation in Construction (APIC) Guidelines, 2007, were developed to increase employment and business opportunities for Aboriginal people on government construction projects, including those engaged with the private sector. APIC Guidelines are part of NSW Government Procurement Policy and aim to provide Aboriginal people with apprenticeships, on-the-job skills training and career opportunities to new workers.

The Impact/social objectives sought: As part of the SCCC project, the APIC Guidelines were integrated into all stages of planning, procurement and delivery of the project, providing a very successful model that could be used for other significant construction projects.

> A key objective of this approach was to assist the construction industry to provide significant and meaningful Aboriginal participation on this project, without significantly increasing project costs.

The social objectives sought included:

- > An increase in numbers of Aboriginal people employed on construction projects
- > Provision of meaningful jobs for Aboriginal people
- > Genuine engagement with the Aboriginal community
- > Education of the Aboriginal communities on how Government works
- > Education of the Aboriginal communities on how to access job opportunities
- > Education of the public sector and private industry of challenges facing Aboriginal people in attaining full employment.

This was particularly important in the Shoalhaven area, where there are very high rates of unemployment amongst Aboriginal residents.

Practical steps in the procurement process/cycle: Project management and procurement for the SCCC was undertaken by the NSW Department of Finance and Services — Public Works on behalf of Corrective Services NSW.

- > Tenderers were selected from the Pre-qualification Panel. The evaluation process for suppliers to be on the Panel includes compliance to the APIC, creating an initial incentive for suppliers to be in a position to incorporate aboriginal participation
- > A series of workshops was held with all potential tenderers including visits to the local communities
- > The tenderers were involved when the documents were only about 75% complete, providing them with an opportunity to have input into the final clauses that comprised the Aboriginal Participation plan (APP), providing a sense of ownership for the eventual Contractor.
- > The normal tender clause of 5% was raised to 6% as a minimum target, with an aspirational goal of 8%. The actual result was over 10%. That is, 10% of all staff hours from the beginning to end of project were from Aboriginal people
- > Tenderers were required to commit to the goals of the APP, and to fulfil their obligations under it, or face a financial penalty (5% of all progress payments) until full compliance had been demonstrated.
- > Tender process was conducted as normal.
- > Richard Crookes Constructions was the successful tenderer responsible for delivering the 600 bed jail for \$130m

Presentations undertaken with Sub-contractors emphasised the Aboriginal Participation Plan was just as important as time, cost and quality.

How was the delivery of the social objectives supported?

- > A social change owner was identified and led the process
- > Engagement with the Aboriginal community occurred during the design phase, over 12 months before a contract was due to be awarded. This built trust with the communities and provided time for the identification and training of suitable applicants.
- > Candidate selection involved presentations to the community after which people completed expression of interest documents. Training was organized so that all of the relevant certificates, equipment and tool allowances were gained before the beginning of the project.
- > The Indigenous Employment Panel (IEP) member was engaged early as employment broker for the project, funded by Department of Employment, Education and Workforce Relations (DEEWR). The IEP accepted all job applications, screened the applicants, identified skills shortfalls, organised all of the necessary training and provided mentoring services to all applicants and employees.
- > An Aboriginal Consultative Committee (ACC) was developed to maintain a skill and position register, monitor outcomes, coordinate with the wider community, and report outcomes to the Community Consultative Committee. Stakeholders included local aboriginal community representatives, government bodies and contractors.

No additional funds were spent. The training required was funded by DEEWR as a training opportunity.

Achievements

Achievements in the construction phase

During the construction phase, the same process of engagement was applied to the Corrective Services NSW recruitment for the new Centre. The result from this was that over 20% of the new custodial staff came from the local Aboriginal community, as did over 10% of the new overall staff. This is an important step towards reducing the over-representation of Aboriginal people in Australian jails, as these officers will have the potential to be the most important role models that the Aboriginal inmates have ever had.

cont. →

“Engaging with the local Aboriginal community cannot happen too early. There are several reasons for the long lead time. It takes time and patience to build trust. These communities have been promised change and improvement so often, and for so long, and sadly many of these promises come to nothing. The community also needs time to prepare for the opportunities being offered. The identification of suitable applicants takes time and perseverance, and training for the opportunities can take up to six months. On this project the consultation with the Aboriginal community commenced during the design phase, about 12 months before a contract was due to be awarded. The local Aboriginal community also had significant input into the APP, and took a degree of ownership of the final document” (SCCC document).

“It was important that the quality of what was being delivered to the client was never compromised. “It is not social work, and the Aboriginal community was made quite aware from the beginning that there was not going to be any tokenism. Any Aboriginal workers on these sites were coming into real jobs, rather than jobs just created for them, and they had to earn the right to be there. We were all speaking the same language right from the word go.”

(Lindsay Charles, Senior Project Manager, June 2011).

Targets	Outcomes
At least 6% and an aspirational target of 8% of the workforce had to come from the local Aboriginal community	Achieved over 10% of a workforce that averaged 300 people/day
At least 10 apprenticeships or traineeships had to be provided.	24 first year apprenticeships were offered and accepted
The previous State Plan nominated 15 construction projects that between them were to provide employment for 100 Aboriginal people.	95 Aboriginal people worked on this project alone.

Key Challenges (and how they were addressed):

- > Engagement of the local community needed to occur early and with cultural sensitivity
- > Managing multiple stakeholders from various cultures meant that education was important to all involved.
- > Education of contractors and sub-contractors was important to assist in managing their expectation of workforce readiness and turnover. Social and cultural issues involved may include this being a first job, not job ready, racism in workplace, personal issues, among others.
- > There was initial uncertainty and nervousness from the contractors which was overcome as the project went on.
- > It was difficult to attract DEEWR funding when employment wasn't guaranteed and this funding was critical to the overall success of the project.

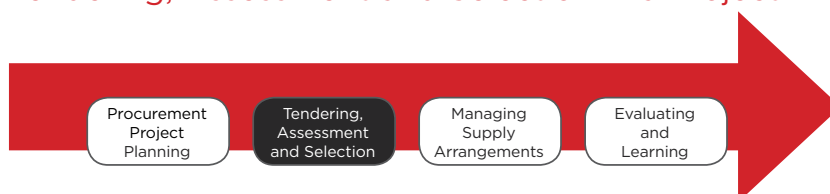
Key findings and success factors:

- > Social procurement is a valuable pathway to change both social outcomes in a community and procurement outcomes in a project.
- > The specific tender requirements, on-going monitoring and reporting, and strong leadership from the Project Manager at DFS helped to drive the success of the project.
- > The size of the Project was big enough to enable direct employment without a significant cost impact.
- > Early consultation with community is essential both to identify local drivers for social change as well as gaining ownership of the community for the solution.
- > Different communities will have different needs. For example, in Nowra, the focus was on improving employment for young people; in Wagga, Wagga the focus was on older unemployed men.
- > Whilst social procurement may look like extra effort, the payoff can be large, including providing an increased labour supply, up skilling the local community and other operational outcomes

Incorporation into other Projects:

- > The same model has now been used for the delivery of the Cessnock Correctional Centre project, with John Holland Group as the Principal Contractor. Cessnock is about 60% of the size of the South Coast Correctional Centre.
- > The rate of APIC on Cessnock is currently over 11.17%, 58 Aboriginal people have worked on the project to date, and there are currently 12 Aboriginal apprentices on site.
- > Further opportunities for application of the model are being explored for a broader range of DFS led Construction projects

Tendering, Assessment and Selection in a Project



Once a public sector organisation establishes that a contract should incorporate social value, this then needs to be translated into the tender and contracting processes. Any social benefits, and resultant specifications and evaluation criteria should be made clear, achievable and transparent in all relevant procurement documents. This is usually done through the inclusion of particular clauses and terms in a contract ensuring that the supplier delivers social benefits in addition to the goods/services that are the subject of the contract.

A social clause can be defined as any *requirement* that is *clearly articulated in both tender documents and contracts* that “allows the contract to provide added social value through fulfilling a particular social aim” (Anthony Collins, 2006). These ‘social requirements’, “provide a method of including social and economic matters into contracts for the supply of goods, services or works that do not conventionally have these requirements as defined or measured outcomes” (Anthony Collins, 2006). It is imperative that any social clauses and requirements are communicated to potential providers and suppliers from the outset of a tendering process. As the legal advice accompanying this guide clearly states:

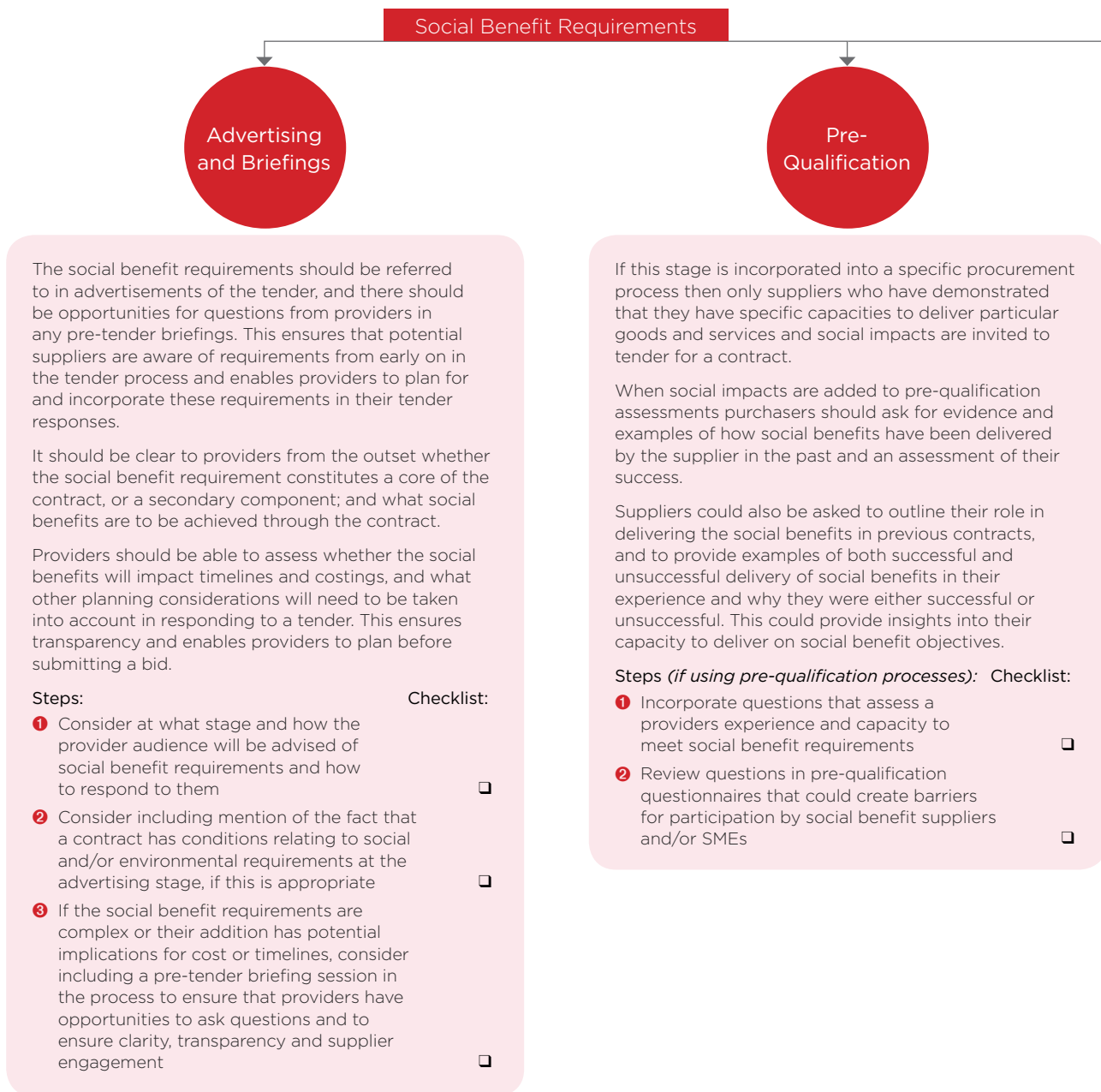
“By looking at these issues deliberately, Governments will need to be conscious ... of disclosing prior to the close of a tender precisely what significance will be placed on what specific types of social outcomes/benefits which might be able to be offered by tenderers” (Legal Advice, 2012; p. 3).

Generic or Specific Social Clauses

Purchasers may include broader clauses and special tendering conditions in a contract, indicating that social value will be taken into account in awarding a contract. An example of such a clause is included in the attached Legal Advice document (see page 14), and another example can be seen in the case study on WSROC below. Alternatively purchasers could include specific conditions and Key Performance Indicators (KPIs) of social outcomes in contract clauses, if they wish to specify particular social benefits that suppliers should deliver within the contract. In these cases, though we can learn from and adapt social clauses from other contracts, it should be noted that there are no standard social clauses, and that it is important to:

- > assess the appropriateness of incorporating social clauses;
- > link them clearly to the particular social objectives of the contracting organisation; and
- > develop clear social clauses on a case-by-case basis for each contract (see the legal advice, Appendix 2).

An example of incorporating specific conditions and KPIs in a contract can be seen in the Housing NSW case study below. Whether generic or specific, it is good to remember that it is *better to have fewer achievable targets in a tender than a complex set that cannot be met or monitored*.



Social Benefit Requirements

Specifications

The specifications of a tender set out the mandatory requirements that a supplier must meet in order to be considered in the tender evaluations. The specifications should clearly and accurately detail the specific social benefit requirements sought from the contract. These should be proportionate to the length, value and complexity of the contract, and they should be specific for each contract.

As in other tender specifications, social benefit specifications should be functional and performance-based rather than technical (that is, they should spell out 'what' is required, rather than 'how' it is to be delivered, to allow for maximising innovation and ensure that the focus is on results). Social benefit specifications included in contracts should be developed on a case-by-case basis, but should include the following elements:

- > clear, straightforward and accurate details of the required outputs and outcomes;
- > measurable performance indicators and KPIs
- > reference to any policy and/or legal underpinnings that support the inclusion of social benefit specifications.

It is important to ensure that social benefit specifications do not restrict competition or preclude innovation. Examples are provided in the case studies below.

Steps:

- 1 Ensure that social benefit requirements are:

- clearly drafted ☐
- practical and easy to understand by all stakeholders, including the market and purchasing and procurement staff and providers ☐
- appropriate for the size and associated risk of the project ☐
- sufficiently outcome-based to encourage a range of solutions ☐
- equitable to all potential providers ☐
- sufficiently flexible to allow for innovation ☐
- not too onerous for potential providers ☐
- clear, measurable and practical to ensure that successful providers can readily report back and be evaluated on the social outcomes of the project ☐

- 2 Ensure that social benefit requirements are functional or performance focussed (rather than method-based or technical) and measurable, and are sufficiently flexible to allow for innovation and a range of potential solutions ☐

- 3 Ensure social benefit requirements facilitate fair competition and are equitable to all potential providers ☐

- 4 Ensure social benefit requirements are not too onerous or costly for providers and that they are achievable within the life of the contract ☐

Checklist:

Tender Evaluation Criteria

The selection criteria used to evaluate tenders need to be linked clearly to the subject of a contract. Therefore, to be included in the evaluation of a tender, social benefit requirements must be set out in the specifications.

If social benefits are secondary to the subject of a contract then careful consideration should be given as to whether they should be included in the selection criteria.

Evaluation criteria must be specific and objectively quantifiable and should be consistent with the proposed contract requirements. According to the NSW Tender Guidelines for Councils, evaluation criteria should be included in tender documents, although Councils should consider whether to indicate the weightings for each criterion (see also the legal advice, page 80).

Generally, weighting creates incentives for suppliers to prepare their approaches carefully, and inclusion of weightings can ensure a level of transparency. Careful consideration needs to be given in the planning stage as to what will be weighted in relation to social benefits, and how responses to social clauses will be weighted and assessed. Weightings should be proportionate to the importance given to the social benefit requirements in the contract.

Steps:

- 1 Identify the social benefit requirements as core (part of the substance of the contract) or secondary (not related to the primary purpose of the contract). If it is secondary, provide a clear rationale as to whether the social benefit requirement should be included in selection criteria ☐
- 2 Ensure that selection criteria are clearly articulated, specific, measurable and achievable; and proportionate to the size of the contract ☐
- 3 Ensure that selection criteria and associated weightings are transparent and understandable and are included in all tender documentation ☐

Checklist:

Evaluation Criteria:

Social benefit requirements set out in tenders need to be supported with specific evaluation criteria which outline what is expected from suppliers in their response to a tender. Evaluation criteria should be specific and tangible, and should be clearly and transparently included within tender documents, though the weightings may or may not be included (see checklist below, NSW Local Government Tendering Guidelines and the legal advice in Appendix 2). Clear evaluation criteria flow from clear articulation of social objectives and priorities. If it is proving difficult to establish evaluation criteria, it may be necessary to revisit the objectives at this stage.

Tendering Methods:

In the development of the Sourcing/Procurement Strategy, consideration of the most appropriate tender methods to achieve the project objectives is vital. Methodology may include: open tendering, selective tendering, or consideration of cross-Departmental, cross-Council collaboration. In NSW, Local and State Government have specific rules and policies for when such methods may and may not be used. The legal advice accompanying this guide sets out these rules in relation to social procurement in NSW Local Governments and points to guidelines for State Government tendering methods relevant to social procurement (see legal advice, Appendix 2, pages 81 & 85).

The figure on the previous page outlines the key steps to including social benefit requirements in tendering, assessment and selection processes, and provides a basic checklist for important considerations.

CASE STUDY: WSROC MATTRESS COLLECTION

Social Procurement in Regional Contracts

WSROC undertakes a wide range of collaborative procurement projects on behalf of its 10 member councils.

The removal and recycling of mattresses can represent a costly waste expense for local councils. Around 1.25 million mattresses end up in landfill across Australia each year. Each year WSROC holds an Annual Planning Session to identify new opportunities for collaborative procurement in western Sydney. In 2011, one of the member councils identified an increasing problem with the supply of mattress collection services. Seven councils supported WSROC in investigating the development of a single contract for mattress removal and recycling in Western Sydney: Auburn, Bankstown, Holroyd, Blacktown, Blue Mountains, Liverpool and Penrith.

A feasibility study was undertaken exploring the supply market and the overall mattress volumes. By casting the net wide, possible social enterprise suppliers were identified. A detailed Project Plan was developed and all eight councils committed to participate. Standard procurement clauses were adjusted to incorporate social benefits. In addition to incorporation of employment and training clauses (particularly related to Indigenous employment opportunities), the tender documents included social responsibility clauses such as the following:

- > Provide details of any involvement with Social Enterprises including details of any joint ventures or other business dealings regarding allocation of work or for supply of certain services/materials.
- > Provide details of any other direct involvement regarding your contribution to social benefits/community outcomes.

The social benefit criteria were weighted at just under 10%. These criteria were included in the tender documents, but not the weighting, which was developed and sealed prior to the publication of the tender.

Through an open tender process three suppliers submitted bids, two private enterprises and one social enterprise. The social enterprise supplier won the contract on cost and compliance, committing to significant social outcomes and a 97% recycling rate, substantially higher than the expected 85%.

The contract is worth over \$500,000 per year and is a two year contract, with an option for an additional two years. It is expected that the supplier will collect and recycle around 36,000 mattresses for each year of the the contract, and that 97% of the mattress materials will be recycled. The contract requires the regular reporting of both the environmental outcomes (ie. amount of recycling) and the social outcomes (eg. labour outcomes).

The success of this project has led to a commitment from WSROC to incorporate social criteria in all of its contracts and explore specific opportunities for the achievement of additional social objectives as part of the its procurement planning processes.

CASE STUDY: MISSION AUSTRALIA SOFT LANDINGS

Innovative Service Solutions

Soft Landings is a social enterprise owned and managed by Mission Australia that recycles and refurbishes mattresses. It is based in the Bellambi area of Wollongong, and its aims are: **social** (focussed on training and employment generation with people who have previously been excluded from the workforce); **environmental** (to recover, refurbish and recycle mattresses thereby preventing their disposal in landfill); and **commercial** (offering a cost effective purchase solution of mattresses, and building a self-sustaining social business).

In the beginning, Soft Landings was able to secure purchasing arrangements with a number of mainstream suppliers through the use of MOUs and service agreements. This gave them a base for building their business, and achieving the social outcomes that they had set out to achieve. This also gave them the confidence to competitively tender for a larger contract in their own right. They competed against mainstream suppliers in a commercial contract and competed on both price and quality of service. They were successful in winning a contract of around \$130,000. They were able to deliver not only a better service in this contract, but one that also generates social value, as the business has created 20 jobs in the region.

More recently they successfully won a commercial tender for mattress collection and recycling from WSROC (Western Sydney Regional Organisation of Councils). This was a commercial contract that included a weighted social clause focussed on environmental and social outcomes.

The impacts of winning such contracts is significant as contracts provide certainty of business for a period of time (in this case, up to four years) which in turn enables a social enterprise to gear up their infrastructure, offer longer-term employment certainties for their employees, and ensure that they are going to be able to train and employ a number of people.

Mattresses are recycled and/or refurbished by Soft Landings — steel springs are sold for scrap metal; foam is on-sold and used for carpet underlay; husk is made into hanging baskets, door mats and mulch; felt pads are made into boxing bags; timber is used for kindling or mulch; and fabric is used to make the boxing bags. Refurbished mattresses are cleaned and sanitised and sold at affordable prices through Mission Australia or given to people in need.

CASE STUDY: HOUSING NSW

Social Benefits through Public Housing Estate Contracts

Property maintenance contracts in Housing NSW involve significant spend, with around \$270M spent each year and 600,000 work orders. Housing NSW incorporates specific and mandatory social obligations in contracts related to public housing estates, which outline a contractor's obligations particularly in relation to tenant employment. The legislative and policy obligations that contractors have in relation to tenant employment are specifically highlighted. This often supports the development of partnerships between contractors and social enterprises (such as is the case with, for example, Housing NSW, Spotless and Fair Repairs in Campbelltown; and property maintenance work undertaken by Job Quest, around a contract that has been awarded to Transfield by Housing NSW in the Newcastle and Lake Macquarie area). Below is an extract from the MRP08 Legislative and Policy Conditions of Housing NSW for contracts focused on Housing Estate Property Maintenance, indicating how social value clauses can be successfully integrated into large contracts where there are clear benefits to be derived in relation to social policy objectives of the purchasing organisations. The contract also sets out clearly and specifically what targets are expected within these social obligations and how they will be monitored over the life of the contract. These extracts are provided as an example of the sorts of clauses that have been incorporated in contracts — it should, however, be noted that the MRP08 is currently under review and may be substantially altered by 2013. The table below provides an overview of key extracts from the MRP08 and links them to Housing NSW social objectives and benefits that are accrued through the clauses.

Example of a HNSW Social Objective	How this Objective is reflected in Property Maintenance Contract Obligations	Benefits to Housing NSW and their constituents
<p>--> Improved economic and social participation of social housing tenants</p> <p>Housing NSW Corporate Plan</p>	<p>9 TENANT EMPLOYMENT</p> <p>9.1 Policy Statement: Reducing Social and Economic Disadvantage The Principal is committed to reducing social and economic disadvantage in communities with large numbers of social housing tenants, particularly larger public housing estates. A key element of this disadvantage relates to the high incidence of long-term unemployment, under-employment and discouraged job seekers who lack the skills and attitudes needed to participate in the labour market. The extent and interconnected nature of disadvantage and unemployment means that the Principal needs to focus its response to social and economic disadvantage around core business activities where it can make significant and sustainable improvements. In particular, the Principal is investing substantial capital and operating resources in community regeneration initiatives to improve the amenity and quality of life in communities with large numbers of social housing tenants. The Principal's community regeneration initiatives will have the greatest impact where they interact with the social policy initiatives of other government agencies, community building activities of the non-government sector and economic development opportunities provided by the private sector.</p> <p>9.2 Creating Employment Opportunities The Principal is committed to the promotion of employment opportunities for tenants, primarily through:</p> <p>(a) ensuring social housing tenants have similar access as other disadvantaged jobseekers to specialist employment support services (such as Job Network);</p> <p>(b) facilitating partnerships and agreements with government and non-government service providers at the neighbourhood, regional and state levels to improve the delivery of services needed to build the job readiness of social housing tenants (such as vocational and job readiness training; work experience; Work for the Dole; and Community Development Employment Projects (CDEP)) or other such programs as exist from time to time; and</p>	<p>Tenant employment has been demonstrated to result in significant benefits to HNSW and to tenants:</p> <p>cost savings — if tenants are employed, there are rent increases for HNSW;</p> <p>social benefits — improved community safety, increase tenant satisfaction, increased tenant participation, greater social capital;</p> <p>benefits for tenants — improved health, improved education and skills outcomes, greater levels of employability and increased income.</p>

Example of a HNSW Social Objective	How this Objective is reflected in Property Maintenance Contract Obligations	Benefits to Housing NSW and their constituents
	<p>(c) examining options for changing its policies to address workforce disincentives for social housing tenants (e.g. allowing a 'grace' period when tenants start work before income is counted for calculating rent and offering rent credits for completing job readiness training).</p> <p>As a secondary strategy, the Principal seeks to generate a relatively small number of direct tenant employment opportunities linked to contracts for maintenance work on properties of the Principal. The intent of this strategy is to use these job opportunities:</p> <p>(d) as an incentive to leverage improved linkages with Job Network providers and other government and community support services; and</p> <p>(e) to build community pride and satisfaction with 'one of our own' undertaking the maintenance work.</p> <p>The Principal has adopted a Tenant Employment Framework which seeks to generate employment opportunities by providing specific tenant employment requirements in maintenance contracts. ...</p> <p>The Tenant Employment Framework has 3 key elements:</p> <p>(a) a standard Department of Housing policy concerning tenant employment;</p> <p>(b) a Tenant Employment clause; and</p> <p>(c) Social Obligation Guidelines.</p>	
<p>--> Continue to participate in whole-of-government initiatives to meet State Plan commitments related to: addressing Aboriginal disadvantage, improved education and employment outcomes for young people, reductions in anti-social behavior and promoting prevention and early intervention in services which support young people's wellbeing.</p> <p>HNSW Youth Action Plan 2010-2014</p>	<p>10 COMMUNITY CONTRACTS</p> <p>In order to provide employment for Tenants the Principal is implementing various Tenant Employment initiatives. One of these initiatives is known as Community Contracts. Community Contracts are contracts to perform work, such as maintenance and repairs and lawns and grounds and common area cleaning, which the Principal selectively tenders to Job Network Agencies and, where applicable, to non-profit organisations. These agencies will then employ unemployed residents of public housing to undertake the work under appropriate supervision. Such Services may include maintenance and upgrading Services that would normally be the subject of the Contract. In the event the Principal quarantines such Services for a Community Contract, a Contractor shall have no legal or financial recourse concerning such quarantining. Clauses 10.1-10.4 below provide information on current Community Contracts operating within Divisions. The information contained in clauses 10.1-10.4 in no way limits the discretion of the Principal to implement and establish Community Contracts within Contract Areas, nor does it limit the discretion of the Principal as to the type or nature of Work or Services that are the subject of Community Contracts.</p>	<p>A number of these programs have been evaluated and shown to have significant benefits to both HNSW and tenants, see particularly the Graffiti removal program, which focussed on training and transitional employment of Indigenous young people (see case study on page 61).</p>

Example of a HNSW Social Objective	How this Objective is reflected in Property Maintenance Contract Obligations	Benefits to Housing NSW and their constituents
--> Improved social and physical amenity in estates	<p>11 HANDYPERSON PROGRAM</p> <p>The Principal conducts a Handyperson Program on a number of its Sites. At the request of the Principal, the handyperson carries out minor maintenance and repair tasks as quickly as possible. The Handyperson is engaged under a separate Contract. In general, he or she will:</p> <ul style="list-style-type: none"> (a) not use large amounts of materials (but rely primarily on tools and labour); (b) not build anything new (only repair and maintain existing properties/areas); (c) perform a variety of tasks (mostly involving tightening, easing, adjusting, removing or installing); (d) show or teach residents simple repair and maintenance skills (where this is possible and appropriate). <p>11.1 Handyperson Program Aims</p> <p>The primary goals of the Handyperson Program are to:</p> <ul style="list-style-type: none"> (a) improve quality of life and customer satisfaction for individual Tenants, by responding quickly to their minor housing maintenance and repair needs; (b) improve the look and feel of large housing estates; (c) help protect the value of the Principal's assets by keeping the housing stock in good condition and preventing minor problems from escalating; (d) provide employment for a small number of appropriately skilled unemployed social housing residents; and (e) use the handyperson to teach interested residents how to do small repair and maintenance work for themselves. <p>11.2 Handyperson and the Maintenance Services Contract</p> <p>The Handyperson Program will continue to operate during the Contract. In addition, the Principal may, at its absolute discretion, require the Contractor to provide a Handyperson Service during the term of the Contract.</p>	<p>In addition to some of the above benefits (as tenants are trained and employed under this program), the program also has the benefits of :</p> <ul style="list-style-type: none"> > improving quality of life and customer satisfaction for tenants; > improving the look and feel of large housing areas; and > helping to protect Housing NSW assets.



CASE STUDY: BOYS TOWN BLACKTOWN GRAFFITI REMOVAL ENTERPRISE

Social Benefits AND Savings

Since 2008 BoysTown has operated a social enterprise focussed on graffiti removal in Blacktown, which is part of the Northern Western Sydney region, where youth unemployment rates (24%) are almost five times the national rate (4.9%) (DEEWR, in BoysTown, 2011). This enterprise “aims to provide Aboriginal and Torres Strait Islander people living in social housing with:

- > paid employment in a real-life work environment over a 13 week timeframe for the experiential learning of vocational skills;
- > accredited qualifications in chemical safe handling, occupational health and safety white card and first aid training to reinforce the learning of new skills; and
- > individual case management addressing personal barriers to employment and social inclusion” (BoysTown, 2011).

The social enterprise operates on a fee-for-service basis.

BoysTown has documented the social value generated through this program. They cite that after participating in the program:

- > Young people were four times more likely to avoid illicit drugs and physical altercations;
- > The proportion of young people staying out of trouble with the police doubled;
- > Young people reported feeling less isolated and participated more in organised community group activities; and
- > Young people improved their sense of optimism and future outlook as they progressed through the enterprise (BoysTown, 2011).

A holistic cost benefit analysis of the Graffiti Removal Project has been undertaken by Housing NSW demonstrating cost savings relative to alternative service provision options, as well as a valuation of the social benefits.

This cost-benefit analysis demonstrated that the total benefits of the pilot program in financial terms was \$680,000. The social benefits generated through the project were valued at \$227,000 and the total financial savings to Housing NSW and other government departments was valued at \$453,000.

Because this was a pilot project, HNSW invested in a detailed cost-benefit evaluation and undertook a Social Return on Investment analysis for this project — the results are outlined in Figure 12 below.

PROJECT

Service — remove graffiti from HNSW dwellings

Social Objectives — training and transitional employment for young Indigenous social housing tenants



BENEFITS AND SAVINGS

Financial:

The total cost of the pilot program to HNSW was \$247,000 per annum.

If maintenance contractors were to undertake similar work it would cost around \$608,000 pa.

Other cost savings include:

- > incremental rental income from employing project participants: \$27,000 pa
- > savings of unemployment benefits due to employing participants: \$64,500 pa

Total Savings: \$453,000

Social — Benefits to Participants:

- > Improved education, employment and job skills (more engagement, less idle time)
 - > Improved health (Housing NSW)
- PLUS:
- > Participants were four times more likely to avoid illicit drugs and physical altercations
 - > Proportion of participants staying out of trouble with the police doubled
 - > Participants reported feeling less isolated and had increased community participation
 - > Participants improved their sense of optimism and future outlook (BoysTown 2011).

Social — Benefits to Housing Estate and Local Community:

- > Reduced anti-social behaviour and criminal activities
- > Improved security and safety
- > Increased social cohesion
- > Improved visual amenity
- > Increased occupancy rates
- > Increased level of business activities/investments in the area (long term)
- > Reduced insurance costs
- > Improved resident satisfaction and levels of social interaction activities.

Valued Social Benefits: \$227,000

Total Incremental Benefits in Dollars: \$680,000

Social Return on Investment:

For each \$1 spent on this pilot, \$3.80 in social value was generated

Figure 12: Overview of the Cost-Benefit Analysis of the Graffiti Pilot program undertaken by HNSW
Source: based on the CBA undertaken by the Evaluation Unit of Housing NSW

Managing Supply Arrangements



The management of supply arrangements within a procurement process ensures that suppliers are meeting the required social value targets, and opens opportunities for review of how performance could be strengthened in achieving the social value objectives of a contract.

The management and review of social value objectives should occur alongside the monitoring of other key supply objectives, such as quality, reliability, price and sustainability.

Importantly, social value objectives should, of course be built into Key Performance Indicators, but must also be subject to contract reporting requirements, and should be raised at any regular meetings or discussions with suppliers.

The reporting requirements of a contract should specify the target outcomes, the key performance indicators for achieving these outcomes, the reporting terms and times, and the methods that will be used to review and finally evaluate the contracts. The more seriously a purchaser is about achieving social value in a contract, the more the social objectives should be built into the ongoing management of supply arrangements.

Ways in which this can be achieved over the life of a contract are summarised in the box below, along with important steps and considerations in developing supply management conditions.



Contract Management

Key Performance Indicators (KPIs) are often included in contracts to specify the core outputs and outcomes sought, to monitor and evaluate performance, and to ensure that suppliers meet their responsibilities.

Unmeasurable outcomes significantly diminish the likelihood of success in social procurement.

KPIs therefore need to be clear and specific — so rather than “provide opportunities for employment of people who have experienced long-term unemployment”, a contract may specify a number of people to be employed for each part of the project, or as a percentage of overall employment, or as relative to the overall project value (so, for example, xx number of people for each \$500,000 of project value). Alternatively, rather than stating a general commitment to diversity and equality, a contract may specify how supplier should demonstrate their commitment to these aims by reporting on, for example, the number of minority-owned subcontractors in their supply chains for a particular project.

Any specific contractual commitments made in relation to social benefit objectives need to be incorporated into a contract and then monitored over the life of the contract.

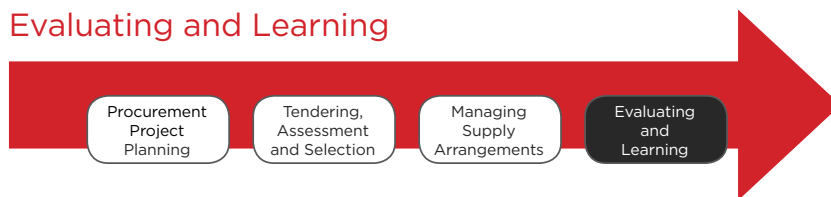
Steps:

- 1 Ensure that KPIs are clear and tangible, and linked to specific targets and outcomes
- 2 Develop a simple and effective monitoring and reporting program, proportionate to the size and importance of the social benefits being delivered
- 3 Make it clear to the provider that the social benefit requirements are taken seriously and are a key priority of the contract, and that KPIs around social benefits are of equal importance to other KPIs
- 4 Ensure that monitoring of social benefits are resourced, and that specific people are responsible for ensuring monitoring and reporting, including a process/plan for data capture on the supplier side
- 5 Take opportunities to raise social benefit performance alongside other performance objectives at meetings with suppliers

Checklist:



Evaluating and Learning



The purpose of evaluation is to measure the social value generated and to assess whether this reaches the expected or targeted social value articulated in a contract. Although in social procurement people often speak about the expected impacts that can be generated through purchasing and procurement, when it comes to measurement and evaluation it is not necessarily the social ‘impact’ of an individual contract that is assessed. ‘Impact’ is actually a technical evaluation term referring to longer-term changes in people, environment or community that can be attributed to a particular intervention and taking into account what would have happened anyway.

Technically speaking, what is measured at the level of an individual contract are the actual outputs that are achieved over the life of the contract, or in some cases, the outcomes that can be attributable to these activities (see the box on the following page for definitions).

While evaluating the social value generated is a critical part of a procurement process, it does not follow that this needs to be difficult, costly or complex. The key is to be very clear about social objectives and to understand what kinds of measurement make most sense at different levels of an organisation and in different parts of a procurement process. It is also very important to clearly articulate who should undertake this measurement — this will differ from organisation to organisation.




At a *contract level* it makes little sense to build in complex or costly impact measurements unless there is a clear strategic reason for doing so. At this level most measurement should be *output* focused, and centered on assessing if suppliers have achieved social value targets through clear, tangible and achievable indicators.

If the contract is large or of particular strategic importance, it may be necessary to also track *outcomes* over the life of a contract, as this may help to build understanding and community support for incorporating social value into the procurement process.

At an *organisational level* (ie. council or government department) there may well be grounds for undertaking more intensive outcome or even impact measurements, but again, this should be done in the context of organisational strategy rather than merely for the sake of doing so.

Figure 13 outlines the different levels at which different measurement of social value may fit.

The focus on and development of means for measuring social value is a growing field of investigation and research. In relation to social procurement, measurement of social value needs to be commensurate with the overall value of a contract, and be relative to the evaluation demanded of other project deliverables. Usually this means that evaluation of social value focusses on outputs or and sometimes outcomes.

Measuring Social Value In Procurement			
Contract Level	Outputs: The direct results of activities undertaken over the life of the contract.	 Can be measured through the inclusion of indicators within a contract that provide an indication of how a supplier is tracking towards achieving an objective.	Output indicators in a contract should be clear, tangible and achievable: > for example, Housing NSW tracks the number of tenants employed in particular contracts undertaken on housing estates.
Contract or Organisational Level	Outcomes: Changes in people, environment and/or the community resulting across an organisation's procurement activities.	 Can be measured through the inclusion of indicators within a contract if there is strategic value in doing so, or outputs from across activities in an organisation can be aggregated to measure outcomes at an organisational level and this can be done beyond the procurement process by a department more aligned with overall measurement of social outcomes.	Outcomes could be measured across a number of contracts in an organisation, or in relation to a particularly strategic contract: > for example, Housing NSW could aggregate the changes in tenant participation and employment over all its maintenance contracts over the course of the redevelopment of an estate such as Bonnyrigg.
Organisational, Place or Sector Level	Impacts: Longer-term changes in people, environment and/or the community that can be tracked back to purchasing and procurement activities across a sector or in relation to a particular place.	 Can be measured at organisational, place or sector level aggregating output and outcome data from a variety of activities or a set of related activities (eg. across an organisation's purchasing and procurement activities). Best done outside the procurement process but using data collected as part of these processes.	Impacts could be tracked to build evidence about longer-term changes through social procurement: > for example, a council may seek to undertake a Social Return on Investment analysis so that it can share with constituents some overall impacts of incorporating social value into their procurement processes.

Some Key Concepts in Measuring Social Value

Inputs: The resources (tangible and intangible) needed and available to achieve the objectives.

Activities: What is undertaken over the life of a contract in order to achieve the objectives.

Outputs: The direct results of the activities undertaken over the life of the contract (eg. the number of jobs or training opportunities generated).

Outcomes: The changes to people, environment or community that have resulted from an intervention (eg. people becoming more employable, more sustainable social enterprises, decreased crime rates).

Impacts: The longer-term changes resulting from an intervention, taking into account what would have happened anyway, plus the contribution of others and an assessment of the length of time from an intervention.

Source: Westall, 2011

More complex or costly evaluations using methods such as Social Return on Investment (SROI) can certainly be explored in the context of social procurement, but in the main, these should be limited to broader organisational or sector level evaluations rather than being used within contracts (unless there is a particularly strategic reason for doing so). An example of where such an evaluation may be appropriate is in the case of very large contracts that have the potential to generate significant public savings.

Evaluating social value within contracts requires action across the procurement cycle: The opportunities for evaluating the social value accrued through a contract should be built into the whole procurement process, starting from outlining the social objectives in the planning stages, and extending through how this social value is specified in a contract; how it is monitored and made clear in contract KPIs and reporting requirements; and then finally, how it is evaluated at the end of a contract period.

Evaluation of whether and how social value is achieved in relation to a particular contract flows from how it is incorporated over the course of the procurement lifecycle. It can be helpful to track this flow by completing table 6 as part of the evaluation process. This can help with the articulation of what social value was achieved in a particular contract, and how it was assessed.

Planning	Tendering and Assessment		Monitoring and Management		Evaluation	
Social Value Objective	Specifications in contract	Target outputs	Activities undertaken to achieve outputs	Key Social Value Performance Indicators	Actual Social Value Outputs	Attributable Social Value Outcomes: (ie. what outcomes can be attributed to interventions that occurred as a result of the contract?)
Training of unemployed youth	Target number of trainees	28 over life of contract	Appointment of trainees;	<ul style="list-style-type: none"> > Number of trainees: target > Total trainee spend; > Trainee demographics 	<ul style="list-style-type: none"> > 23 traineeships offered to unemployed youth from target area; > 48% employment success 	<ul style="list-style-type: none"> > Increased skills > Increased employability > Increase employment outcomes
Local Economic Development in specific region	Target spend on materials and subcontractors in specific region	\$ or proportion of total spend	Market analysis; Tracking local spend.	<ul style="list-style-type: none"> > Total supplier spend; > Proportion of supplier spend in region; > Supplier spend with social benefit suppliers 	<ul style="list-style-type: none"> > 24% of total spend spent in the region; > 8% spend with social benefit suppliers. 	<ul style="list-style-type: none"> > 4 local businesses subcontracted, employing 12 local people; > 1 social enterprise subcontracted, employing 18 people with disabilities; > \$1.2M injected into regional economy

Table 6: Tracking social value across the lifecycle as a foundation for evaluating the actual outputs with two example social value objectives included

Learning and improving social procurement

As social procurement develops and evolves in NSW, it is important that some of the key examples, learnings and reflections are documented and shared to encourage greater innovation and to ensure that the field progressively evolves across the sectors. This is particularly important given that some public sector purchasers are still fearful of engaging in social procurement. The sharing of a growing number of examples of social procurement and an articulation of the benefits of incorporating social value into procurement processes (both to public sector organisations and their constituents) will help to normalise social procurement and encourage innovation.

In practice, this means:

- > sharing documents, case studies, evaluations and reports;
- > incorporating a budget into planning to write up case studies;
- > finding ways to share social procurement case studies at workshops and conferences;
- > communicating within and across public sector organisations about learnings and successes in social procurement.

Evaluation and Learning

Evaluation and learning in social procurement can occur across the project lifecycle and not merely at the end of a contract.

Indeed evaluation should be planned across the lifecycle with:

- > the objectives of incorporating social value into a contract forming the foundation in the planning stages (and it is this that forms the foundation for any evaluation);
- > the specifications and target outputs forming the goals against which the success of the social procurement is measured;
- > the activities and key performance indicators providing insights into performance during the contract; and
- > the outputs and outcomes finally providing the basis for evaluation and learning.

Evaluation should be commensurate with the size, strategic importance and relative worth of the procurement project, and should be kept as simple and clear as possible.

Learnings from social procurement should be made available for other public sector organisations in order that key learnings are shared and the process of social procurement is normalised over time.

Steps:

Checklist:

- 1 At the outset of the project, determine the mechanism you intend to utilise to evaluate the social benefits of the project ☐
- 2 Ensure that social objectives are linked through to specifications, targets, activities, KPIs and then to outputs and outcomes ☐
- 3 At the project level concentrate on evaluating outputs and outcomes ☐
- 4 Draft the findings of the social procurement project into a "lessons learned" case study ☐
- 5 Develop a register of social procurement projects, including a summary of the findings, to provide key information to units new to the area and to inform the development of social procurement policies and practices across government ☐

“Before the Koori Job Ready hospitality course, I was doing nothing, bludging around. Then I saw the opportunity to do something different. When I was training I could see that being a chef could open up opportunities here and around the world...now I am working in one of the best hotels in Sydney. I am proud of being an Aboriginal person working in such a great hotel. You need a start, someone to show you, Koori Job Ready gives you the start.”

Brendon Carr,
Apprentice chef, Sheraton
Four Points, Darling Harbour



CASE STUDY: KOORI JOB READY

Sustained social procurement outcomes

Koori Job Ready (KJR) has supported the creation of over 1000 employment opportunities for aboriginal men and women since it began in 2006. It has developed a proven and practical model delivering high quality outcomes in the construction and hospitality industries. KJR acts a broker helping to stimulate demand by encouraging and facilitating social procurement practice and supporting supply through training, mentoring and recruitment of aboriginal men and women.

Background

KJR began with the establishment of the Redfern Waterloo Authority (RWA) in 2006, and now forms part of the Australian Technology Park Sydney. A key role of the RWA was to support the revitalisation of the community through the development of vacant land. KJR was established to help ensure that the local and regional community directly benefited from development and wealth creation opportunities opening up in the area.

The Aboriginal Participation in Construction Guidelines require Government agencies to identify construction projects that have the potential to deliver improved employment outcomes for Aboriginal people and enterprises. Given the large Aboriginal population in the region, the RWA took the approach that all projects in the area would be defined as Category 1 under the Guidelines. This requires all tenderers to develop an Aboriginal Participation Plan explaining how they will deliver on Aboriginal participation objectives.

Role

KJR plays a dual role in project development and delivery, supporting the establishment of the tender documentation and Aboriginal Participation Plans and delivery of employment and training outcomes by the successful tenderer. The KJR role can include the following elements:

- > Work with the responsible State or Local Government agency using an analytical tool to establish appropriate targets based on an a calculation of direct labour and supply chain labour opportunities. Targets are also set with an understanding of what is available in the supply market including labour supply and SMEs and social enterprises. The targets are then incorporated in the tender documentation as mandatory criteria.
- > Undertake supplier briefing and education sessions.



“It was only 8 weeks, but it changed my life forever. You get a whole lot out of it — you take it with you everywhere you go.”

Viv Pio, 34, former Koori Job Ready graduate, full-time employee GROCON, single mother of 6

“We’ve dealt with quite a few dozen Koori Job Ready graduates in the last couple of years. We’ve found the qualifications and training they get out of the course make them really employable. We’ve had quite a few success stories — carpenters, brick-layers, just normal general labourers. We’ve found that the guys are eager to work, they get along with the other employees really well...

We’re really looking forward to working with Koori Job Ready in the future. We’ve got a lot of work up and coming and we really hope there’s a number of graduates that can meet our needs.”

Nick Limbry, WATPAC

- > Work with the successful tenderer to complete a detailed Aboriginal Participation Plan that is then included in the final contract documentation.

KJR supports the successful tenderer in meeting the requirements of their Aboriginal Participation Plan including:

- > Training and labour supply
- > Run a Training Centre including the provision of 8 week full-time Construction and Hospitality Training Courses to support job readiness.
- > Provide a recruitment and placement service
- > Provide a mentoring program and on the job support
- > Tenderer and Project Manager support in delivering on the Aboriginal Participation Plan requirements
- > Monthly management meetings with clients and head contractors
- > Support for subcontractors
- > Evaluation and Contract monitoring
- > Business Support services to help Aboriginal SMEs and Social Enterprises grow and be better positioned to meet demand
- > Helping enterprises grow

Outcomes

KJR has worked with a range of Government agencies, corporate bodies and educational institutions including current projects with the University of Technology Sydney (UTS), Channel 7 (73 positions created) and the City of Sydney.

The success of the program in part relies on its ability to operate as a continual place-based model that is not run project by project, but can provide on-going training and placement to a range of projects.

The completion of the 8 week full time course (usually resulting in Certificate II qualifications) supports the job readiness of participants and the flexibility of the hospitality and construction courses provides for broad gender participation and work opportunities.

The program has been highly successful in supporting often highly disadvantaged people into the workforce. Numbers to date include:

- > 1104 employment opportunities created and 300 people placed into jobs
- > 183 people graduated from the training with 65% of graduates placed directly in workforce

The impact of the program is far broader than job creation — it creates better outcomes for families and communities including school attendance, community and participation, self-respect and economic independence.

While a few tenderers come on board with the Program only because they have to, the experience has been that most clients and companies become active and enthusiastic participants, and many now include Aboriginal employment in all of their projects, even when not required.

The Manager of the Aboriginal Employment Program, Denny Hall believes that there is an “enormous amount of untapped goodwill in the Australian community”. Including social objectives into procurement processes and then providing the right support to help tenderers meet these requirements helps to tap into that goodwill and provide for the achievement of powerful and sustainable social outcomes.



Appendix 1: Resources

Glossary of Terms and Acronyms

AIMSC: Australian Indigenous Minority Suppliers Council	AIMSC is an independent minority supplier council modeled on similar organisations in North America, which have the aim of linking corporate and government buyers with minority suppliers such as Indigenous businesses.
ADE: Australian Disability Enterprise	Australian Disability Enterprises employ people with a disability who find it difficult to work or maintain employment in the open labour market or who choose to work in an Australian Disability Enterprise. They have a dual focus of providing employment for people with a disability and operating a commercial business. Having evolved from Sheltered Workshops, Australian Disability Enterprises have their legislative basis and broad role defined in the Disability Services Act 1986 (NDS, 2010).
Indigenous Business	The Australian Indigenous Minority Supplier Council (AIMSC) certifies Indigenous Businesses using certain criteria. To be eligible for AIMSC certification, applicant suppliers must meet the following six criteria: ownership — at least 51 per cent ownership of the company by an Indigenous Australian(s); management — the company is led/managed by a Principal Executive Officer who is an Indigenous Australian; control — the key business decisions regarding the company’s finances, operations, personnel and strategy are made by an Indigenous Australian(s); for profit — the company is able to distribute its equity to members or others; trading as a business — that is, the company has goods, services and/or products to sell; business is located in Australia.
Shared Value	A term developed by Michael Porter and Mark Kramer “the concept of shared value can be defined as policies and operating practices that enhance the competitiveness of a company while simultaneously advancing the economic and social conditions in the communities in which it operates” (see: hbr.org/2011/01/the-big-idea-creating-shared-value/ar/1)
Social Business	Like a social enterprise, a social business has social objectives at its core. A social business is focussed on commercial activities, so all its income is derived from commercial undertakings rather than from grants or gifts. The focus is building a proven, sustainable business model. It may, however, undertake activities that are non-commercial in nature (or approach issues from a ‘more-than-commercial frame of reference) or conduct itself as a hybrid between the commercial and social spheres. What distinguishes a social business from a social enterprise is often the emphasis on commercial activity and the intent to generate social value from this commercial activity.

Social Benefit Supplier	Suppliers who, through their organisational purpose or by the nature of their structure, are focussed on generating social value. They include organisations and businesses whose mission is centred on a social purpose (eg. social enterprises) and those who are owned by groups or people who are considered disadvantaged and who therefore, by virtue of their ownership structures channel economic and social resources into marginalised communities (such as Indigenous businesses, minority owned businesses or women owned businesses).
Social Enterprise	<p>A social enterprise has three defining features:</p> <ul style="list-style-type: none"> > A social (environmental or cultural) purpose that is core to its focus, business and structure; > An orientation towards enterprise as a key activity and income source, with a significant proportion of income coming from enterprising and business activities (as opposed to grants or philanthropy) (some definitions say at least 50% of income should be from trading); > A profit distribution that aligns with and/or supports the impacts that are driven out of the social purpose — whether it is structured as a non-profit or for-profit entity it must be for the benefit of something beyond private wealth creation.
Social Impact	The longer term changes resulting from an intervention, taking into account what would have happened anyway, plus the contribution of others and an assessment of the length of time from an intervention. Should be distinguished from other concepts used in measuring social value such as outputs and outcomes (see page 65) (Westall, 2011).
Social Procurement	Generating social benefits and social value within procurement and purchasing processes. Public sector social procurement focusses particularly on “goods services and works that do not ordinarily have such requirements as defined outcomes” (Anthony Collins, 2006; p.5), but where adding social value can provide directly or indirectly to the future sustainability of communities and/or improvement of the quality of life of constituents. In this way public sector organisations are adding social value into their purchases of goods, services and works, aligning their procurement processes with their social objectives and maximizing the overall outputs of their contracts.
Social Value	The added social impacts and benefits that are generated through a purchasing or procurement process over and above the direct purchase of goods or services.
Supply Chain	The chain of people and organisations that are involved in the supply of goods and services (directly and indirectly) from their source to the end customer including manufacturers, purchasers, transporters, warehousers, planners and managers.
Triple-Bottom Line	An accounting or value creation framework that includes three dimensions of performance: financial, environment and social.

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Social Procurement Resources

Australian Resources:

- Victorian Guide to Social Procurement — available at: www.dpcd.vic.gov.au/localgovernment/social-procurement/social-procurement-toolkit-introduction
- Victorian Government Toolkit for Social Procurement — online at: www.dpcd.vic.gov.au/localgovernment/social-procurement/social-procurement-toolkit-introduction
- Social Procurement in Australia Report: — www.csi.edu.au/project/Social_Procurement_in_Australia.aspx
- Social Traders also has a range of case studies on its website: www.socialtraders.com.au/social-procurement

International Resources:

- Resources about the Social Value Act in the UK: www.navca.org.uk/social-value-bille; www.socialenterprise.org.uk/policy-campaigns/campaigns/public-services-social-value-act
- Social Enterprise Purchasing Toolkit — Canada: www.enterprisingnonprofits.ca/se-purchasing-toolkit



Appendix 2: Legal Advice on Social Procurement in NSW

Provided by Salvos Legal

www.salvoslegal.org.au

Salvos Legal is a world first not-for-profit law firm owned and run by The Salvation Army. We specialise in property and transactional commercial law to assist individuals, businesses and corporates by providing professional legal advice and assistance with a difference. The difference is that the costs paid by those clients for their legal services fund the operation of another firm, Salvos Legal Humanitarian, which operates to provide free legal advice and assistance to those most in need without any fee. Fees received by Salvos Legal for the provision of this advice directly benefit the work of Salvos Legal Humanitarian.

Overview

'Social procurement' is the process by which goods and services are obtained with value being given to either the direct or indirect contributions to the future sustainability of communities and/or improvement of the quality of life of their constituents.

In addition to the considerations on which sectors seek to focus a triple bottom line strategy such as social procurement, there are significant legal aspects across several distinct areas of the law that governments must consider when adopting a social procurement framework. It is important to note that social procurement is in keeping with broader procurement strategies and does not imply unacceptable risk or the need to operate outside existing legal structures established by federal, state or local legislation, or the common law.

It is recognised that each Council/State Department will have their own specific policies on procurement and financial delegations. This advice should be read in conjunction with those procurement guidelines and procedures and employees/officers should ensure full compliance with same; where there is uncertainty as to compliance, specific legal advice should be sought.

Procurement process and social procurement

Procurement processes that involve the expenditure of public monies rely on a number of basic principles. It is important to note these principles are equally applicable to social procurement:

- > **Open, transparent and accountable dealings** — there is a consistent approach to informing and treating suppliers as well as to the procurement framework, policies and procedures adopted by government. Processes are conducted in an open and honest manner in the best interest of the public;
- > **Dealings promote fairness and competition in the supplier market** — all suppliers are treated fairly and have the same opportunity to be the successful bidder; and,
- > **Dealings result in best value for money** — the benefits of the purchase are optimised against the allocated budget and costs required to achieve the best result for the local community. This does not mean that the cheapest option is necessarily the best value for money.

These processes are captured in a variety of formats to assist government to manage risk, establish valid governance protocols and comply with their obligations to higher levels of government as well as their local constituents.

Legal considerations

Government organisations may legally conduct social procurement provided their obligations under the following relevant areas of the law are met:

- a) Legislation and accompanying regulations that govern Local Government bodies including the *Local Government Act 1993* (NSW) (the 'LGA') and the *Local Government (General) Regulation 2005* (NSW) (the 'Regulation');
- b) Legislation and accompanying policies that govern State Government including the *Public Sector Employment and Management Act 2002* (NSW) and the *Public Sector Employment and Management (Goods and Services) Regulation 2010* (NSW), as well as the *Public Finance and Audit Act 1983* (NSW), the NSW Government Code of Practice for Procurement and the NSW Government Tendering Guidelines;
- c) Federal trade practices legislation including the *Competition and Consumer Act 2010* (Cth) and accompanying state legislation including the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (NSW) which effectively replaces the *Fair Trading Act 1987* (NSW) with the provisions of the recently federalised Australian Consumer Law; and
- d) Common law relating to contracts, in particular commercial (procurement) contracts.

The concept of social procurement of itself does not offend any of the legal considerations mentioned above, so long as it is conducted in a manner appropriate for the relevant tendering process and with appropriate observation given to the legal requirements for tendering.

LOCAL GOVERNMENT LEGAL CONSIDERATIONS

Local government legislation considerations

The concept of social procurement is already accounted for within existing laws. There is nothing within the laws applicable to local government which prevents procurement processes considering issues of social benefit – the legal framework facilitating this occurring already exists.

When conducting social procurement, local governments must comply with the general requirements and principles that relate to all forms of procurement. In the context of social procurement the key areas of the *Local Government Act* ('LGA') that require careful consideration are as follows:

Chapter 5

Section 23A of the LGA provides that the Director-General may prepare, adopt or vary guidelines relating to the exercise by a Council of any of its functions. A Council must take any relevant guidelines issued under section 23A(3) into consideration before exercising any of its functions.

The Tendering Guidelines for NSW Local Government (the 'Guidelines') issued in October 2009 by the NSW Department of Premier and Cabinet Division of Local Government provides complimentary advice to the LGA and the Regulation that Councils must take into consideration before exercising any of their functions in relation to procurement and tendering. The Guidelines were devised to assist with risk mitigation for Councils engaged in procurement and tendering processes and should be used within the context of the LGA and the Regulation.

Chapter 6 Part 3 Division 1

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned.

Procurement of goods and services by local Councils above a certain value must be put out to tender. The legislative requirements for tendering by Councils are prescribed by section 55 of the LGA and by Part 7 of the Regulation. In accordance with clause 163 at Part 7 of the Regulation that value is currently set at \$150,000 excl. GST.

Section 55(1) of the LGA provides details of the types of contracts that require Councils to invite tenders prior to procuring goods and services. In addition to the types of contracts outlined in this section, the Guidelines recommend Councils use the tendering process outlined in the Regulation for a number of specific instances. The most relevant of these recommendations in the context of social procurement are:

- > if the estimated expenditure is close to the tendering threshold;
- > where the sale or purchase of goods or services may be considered controversial, contentious or politically motivated;
- > where there is a risk that 'would be' tenderers could claim that Council has 'preferential' arrangements with a single supplier; and
- > where there is a risk that 'would be' tenderers could claim that they would have tendered for the work if a public tendering process had been undertaken.

Section 55(3) of the LGA outlines the types of contracts that are exempt from the tendering process. These are many and varied, and need to be considered in the individual circumstances of any procurement process.

Concepts of social procurement do not always necessarily fit one or the other of the types of contracts that require a tendering process or those which are exempt under the LGA. Each instance of procurement in a social context must still therefore be considered according to ss. 55(1) or 55(3) of the LGA on the merits of each case.

Chapter 12

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned.

Chapter 12 of the LGA enables a Council to delegate its functions, with the exception of those duties such as the making of a rate or charge, the borrowing of money, the compulsory acquisition of land, the adoption of financial statements and the classification of public land as operational land. Functions may be delegated to the General Manager and to specified persons and bodies but may not be delegated directly by the Council to Council employees other than the General Manager.

Section 355 of the LGA details the extent to which the functions of a Council may be exercised. In procuring for and delivering a social outcome, Councils may need to consider and clearly state in contracts for supply of services the extent to which providers have or do not have authority to exercise Council functions.

In commencing a social procurement process, Councils should consider whether or not public notice is required as per the requirements of section 356 of the LGA. Whilst section 356(3) provides that public notice is not required if the provision of financial assistance is part of a specific program that is included in the Council's draft operational plan, is funded according to the approved annual budget and applies either uniformly or to a significant group within the community, it is recommended during a pilot or introduction of a social procurement program that a Council provides public notice in order to avoid any unnecessary criticism.

In commencing a social procurement initiative, a Council may join with other Councils to leverage their joint purchasing power. Under section 357 a Council may exercise its functions within or outside its area, provided it does not exercise its regulatory functions outside of its area. Councils should however be aware that potential issues may arise under Australian Consumer Law and this issue will be discussed in a later section of this advice.

In seeking to join with other Councils or organisations for social procurement initiatives, Councils should also be aware that in accordance with section 358 there are a number of restrictions that apply to the formation of corporations with other entities. Any partnership, trust, joint venture, syndicate or agreement to act in concert with another body will require ministerial approval and is likely to be subject to a number of conditions to manage the risks and to establish adequate governance of such an agreement due to the expenditure of public monies to fund its operations.

Chapter 13 — How are Councils made accountable for their actions?

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned.

Each local government area must have a community strategic plan developed by the Council for the future of the local community covering a period of at least 10 years. To support the community strategic plan, a Council must have a long-term resourcing strategy that includes long-term financial planning, workforce management planning and asset management planning. Desired social outcomes and procurement required to fulfil those outcomes should be included in the strategic plan and resourcing strategy.

Councils have a custodial role in developing and monitoring the community strategic plan for the local government area on behalf of their communities. Achieving the strategic objectives in the community strategic plan may involve other partners including state government agencies, non-government organisations and other community groups and individuals.

A Council must have a delivery program that details the principal activities to be undertaken by the Council in order to achieve the objectives established by the community strategic plan. A Council must establish a new delivery program after each ordinary election.

Before the beginning of each year a Council must adopt an operational plan that includes a statement of the Council's revenue policy and the activities to be engaged in by the Council during the year. Public notice is to be given by the Council of its operational plan.

Each year a Council is required to prepare an annual report to its community on its work and activities. This is the ideal forum to shape social initiative and garner community support for future procurement objectives.

Members of the general public are entitled to inspect a wide range of Council documents. Members of the general public are also entitled, under the *Government Information (Public Access) Act 2009*, to be given access to certain other documents held by a Council. They are also entitled, under the *Privacy and Personal Information Protection Act 1998*, to require the correction of certain kinds of information in the event that the information is incomplete, incorrect, out of date or misleading.

Section 10A of the LGA provides that Council or Council committee meetings may be closed to the public if they are likely to, amongst other things:

- a) disclose information that could confer a commercial advantage on a person or group with whom the Council is conducting or proposes to conduct business with,
- b) prejudice the commercial position of the person who supplied it,
- c) confer a commercial advantage on a competitor of the Council, or
- d) reveal a trade secret.

Whilst the underlying philosophy of the LGA, Regulation and Guidelines is to promote openness and transparency in the procurement decision making process, Councils must consider whether any information provided in the social procurement context is intellectual property, proprietary, commercial-in-confidence or otherwise confidential before considering closing a session to the public. Councils must also balance this obligation along with the strategic aim of undertaking a social procurement program, as well as their responsibilities under the *Privacy and Personal Information Protection Act 1998* (NSW).

Chapter 14 — Honesty and disclosure of interests

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned.

This Chapter places express obligations on Councillors, Council delegates and staff of Councils to act honestly and responsibly in carrying out their functions. It also makes provision for the adoption of codes of conduct for Councillors, staff and other persons and agencies associated with the functions of Councils. Delivery programs will need to consider the integration of the Council's codes of conduct for service providers and their employees engaged in establishing and running programs that deliver a social outcome.

Councils need to be conscious also of their obligations under their relevant Code of Conduct entered into pursuant to s.440 LGA. The relevant Code sets out the paramount considerations with respect to ethics, honesty and fair dealing. The role that Council employees play in tendering processes must be consistent with the provisions of the Code at all times.

The Chapter does not affect any other duties imposed by other laws or any offences created by other laws and requires that pecuniary interests of Councillors, Council delegates and other persons involved in making decisions or giving advice on Council matters be publicly recorded and requires Councillors and staff to refrain from taking part in decisions on Council matters in which they have a pecuniary interest.

Section 441 of the LGA states *designated persons* who have duties of disclosure for pecuniary and non-pecuniary interests are:

- > the General Manager
- > other senior staff of the Council
- > a person (other than a member of the senior staff of the Council) who is a member of staff of the Council or a delegate of the Council and who holds a position identified by the Council as the position of a designated person because it involves the exercise of functions under the LGA or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
- > a person (other than a member of the senior staff of the Council) who is a member of a committee of the Council identified by the Council as a committee whose members are designated persons because the functions of the committee involve the exercise of the Council's functions under the LGA or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

Pecuniary interests are defined in section 442 of the LGA as an interest that a person has in a matter because of a likelihood or expectation of appreciable financial gain or loss to the person. This interest may arise as a result of relationships with a spouse, de facto partner, relative, business partner, employer, company or other body of which the person is a member, delegate, nominee, partner or employer or otherwise has a pecuniary interest in the matter. This expanded view is captured by section 443 of the LGA.

A non-pecuniary interest is not specifically defined in the LGA but is commented upon in the Guidelines and is defined there to include a private or personal interest the Council official has that does not amount to a pecuniary interest as defined by the LGA. For example a non-pecuniary interest could be a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature.

Section 448 of the LGA details a number of interests that do not have to be disclosed. Section 448(e) includes an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not). Section 448(f) pertains to an interest of a member of a Council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee. From a social procurement perspective this does not prevent members of Councils using or suggesting social enterprises or clubs engaged in raising money and providing social outcomes of which they may be a member or closely affiliated with a member, however early disclosure is recommended, particularly if operating in the management of the club or organisation to avoid any concerns over probity or breach of the public interest.

Further detail on honesty and the disclosure of interests is contained in Part 8 of the Regulation and the Guidelines, as well as in the relevant Code of Conduct for Local Councils entered into pursuant to s.440 of the LGA.

Australian Consumer Law and Trade Practices Considerations for Local Government Organisations

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned.

The Australian Consumer Law ('ACL') commenced on 1 January 2011 as a law of the Commonwealth and of each State and Territory. It applies in the same way to all Australian consumers and businesses. At the same time, the name of the *Trade Practices Act 1974* (Cth) changed to the *Competition and Consumer Act 2010* (Cth) (the 'CCA').

The ACL was enacted as a law of New South Wales through the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (NSW), effectively replacing the *Fair Trading Act 1987* (NSW) with the provisions of Australian Consumer Law.

Compliance with the ACL should be monitored by the relevant local government authority in relation to all procurement. Any commercial activity that can be classified as 'the carrying out of a function of government in the interests of the community' will not be regarded as 'trade' in the context of the ACL and the CCA. However any activities undertaken by a local government organisation where a fee is charged for an activity or service to which procurement relates may be regarded as trade and therefore the ACL may apply to that procurement activity.

Under section 2BA of the CCA Part IV of the CCA applies in relation to a local government body only to the extent that it carries on a business, either directly or by an incorporated company in which it has a controlling interest. For the purposes of the CCA, *local government body* means a body established by or under a law of a State or Territory for the purposes of local government, other than a body established solely or primarily for the purposes of providing a particular service, such as the supply of electricity or water. This definition includes all local Councils in NSW.

Section 2C lists a number of activities that are not considered 'carrying on a business'. This includes relevant municipal Council activities such as imposing or collection levies or fees for licenses, granting, refusing to grant, revoking, suspending or varying licenses, transactions involving persons who are all acting for the Crown or same authority of the Commonwealth, a State or Territory or local government body. It also includes the acquisition of primary products by a government body under legislation, unless the acquisition occurs because the body chooses to acquire the products or the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the product.

The distinction between governmental activities and those associated with carrying on a business was made in the case of *Mid Density Development Pty Ltd v Rockdale Municipal Council* (1992) 39 FCR 579 by Davies J where His Honour said at page 585:

"The carrying out of a function of government in the interests of the community is not a trading activity."

This comment was in relation to an assertion that the provision of a contracted garbage collection service to rate payers was sufficient to constitute the Council as a trading entity. It was held by the Court however that there are activities undertaken by Councils which will clearly be regarded as carrying on a business. Some of these activities may include general recurring sale or purchasing activities, operation of facilities such as swimming pools, leisure centres and child care facilities or recycling centres where a fee is charged for the use of the facilities or services provided by the Council.

Under Part IV of the CCA numerous commercial practices are prohibited either entirely or to the point where they have the effect of substantially lessening competition in a particular market. Broadly the prohibited conduct includes:

- a) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK — Cartel activities where at least two parties that are in competition with each other engage in price fixing, output restrictions, allocating customers, suppliers or territory and bid rigging;
- b) Section 45 — Prohibition of contracts, arrangements or understandings between at least two that are in competition with each other where the aim of the contracts, arrangements or understanding is to restrict dealings or substantially affect competition in a market;
- c) Sections 45B and 45C — Prohibition of covenants that affect competition or pricing where the covenant confers rights or benefits or imposes duties or obligations on a corporation or person associated with a corporation, if the covenant has or is likely to have, the effect of substantially lessening competition in any

market where the corporation or person associated with the corporation supplies or acquires or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services;

- d) Section 46 — Misuse of market power. There is a prohibition on a corporation that has a substantial degree of power in a market misusing that power to eliminate or substantially damage the business of a competitor, prevent the entry of another person or deter or prevent a person from engaging in competitive conduct in that or any other market;
- e) Section 47 — Engaging in exclusive dealing including supply of goods and services on conditional engagement of a third party or refusal to supply because the purchaser will not agree to this condition or by restrictions or obligations on supply or resupply of goods and services where these have the effect, or are likely to have the effect, of substantially lessening competition in a market;
- f) Section 48 — Prohibition of resale price maintenance; and,
- g) Section 50 — Prohibition of mergers and acquisitions that would result in a substantial lessening of competition in a market.

Section 51 of the CCA authorises exceptions to the Part IV provisions that are supported by either federal, state or territory legislation and/or accompanying regulations, provided the exceptions refer expressly to the conduct that is authorised and they specify the relevant section or part of the CCA that is being excluded.

If Councils elect to use selective tendering or collective acquisition strategies (such as with Regional Organisations of Councils or even with two or more Councils procuring collectively) to enhance purchasing power in social procurement activities, they must give consideration to how these strategies comply with Part IV of the CCA, particularly with regard to provisions relating to collusive conduct, cartels and lessening of competition in the relevant market.

These risks are not unique to social procurement and are addressed extensively in the LGA, Regulation and Guidelines. However these risks may be increased if a procurement strategy involves joint tendering by several Councils to collectively acquire services from a single supplier such that the agreement covers a large geographical area. To overcome this risk it will be necessary to consider the effect of the joint purchasing activities prior to commencing the procurement process and it is recommended the finding of such considerations be made available in tender documentation and outlined again in written reasons for decisions when the tender is awarded. It is noted that many Councils are already doing this.

A similar consideration and risk management strategy is recommended in the context of whether or not Councils joining together to exercise market power as consumers of services they would not be able to as individual organisations amounts to price fixing. In their considerations Councils should review how the supply side of the market is configured and evaluate the potential of vendors to manipulate the market and balance this against the desired outcome as well as informing the prospective vendors of their intentions and decision making process in this regard.

Practical Considerations

1. When is a tender required?

Under section 55(1) of the LGA Councils must adopt the tendering method set out in the Regulation before entering the types of contracts that are specified in that section. Regardless of whether or not the LGA requires, in order to provide an open and transparent process of selection and to avoid suggestion of impropriety, the use of a tender process is usually considered best practice. This includes contracts that are likely to be close to or below the current specified expenditure threshold of \$150,000 excl. GST.

Social procurement does not necessarily mean that the tender itself is focussed on asking specific target entities to tender. Social procurement should be considered business as usual in the tendering process but a process which also acknowledges the value that certain social benefits might have on the relevant community. Such benefits are weighted appropriately as part of the tendering process in much the same way that other, more tangible considerations are weighted.

With that being said however, Councils should go out of their way to avoid controversy on these types of practices so as to reinforce the openness and transparency of the process. The use of the tendering process set out in the Regulation is therefore recommended irrespective of the cost involved, so long as to do so would still be practicable.

2. Planning

Section 405 of the LGA requires Councils to have an operational plan. It is critical to any procurement process that the purchase of goods and services and/or the disposal of property is accurately identified, scoped and included in the operational plan at the earliest opportunity to ensure all parties' expectations can be managed and value for money is achieved.

It is therefore essential that the identification of a range of social benefits of value to Council and the planning for acquisition of goods and services occur in concert, and that the processes used adds value to the Council's operations, programs, projects and purchases by ensuring:

- > Goods and services are fit for purpose;
- > Fairness of process for all vendors with clear timelines and deliverables;
- > Planning includes background scoping and benchmarking of relevant service levels and these are clearly defined in the sourcing and procurement documents; and,
- > Planning for tendering and procurement includes planning of probity checks and other anti-corruption measures such as establishment of a tender review or evaluation panel comprising personnel that are not conflicted by their interests or have professional affiliations prior to calling for tenders.

Procurement officers will appreciate that all valuable procurement requires planning. In this regard, Councils should be open minded to the traditional procurement measures and limitations. The potential benefits of social procurement will not be neat and tidy, easily measurable items and as such, will require careful thought and assessment depending upon their individual merit.

3. Identification of Requirements

Although germane to all procurement and projects, it is critical to ensure that properly defined requirements are gathered in the initial planning stages. These requirements must clearly articulate the particular social benefit that is sought to be highlighted as part of the ordinary procurement process and this must be replicated in all procurement and tender documents. These requirements will also serve as the basis for the selection criteria and reasons for decision to select one provider over all others. Consistency and clarity is therefore essential.

The Guidelines provide useful information on the differences between functional and user requirements. Generally speaking functional requirements are broad and highlight deliverables or outcomes expected in the process whereas user requirements specify how an end user will use a product or service and can be quite specific if supply of a particular piece of technology, process or equipment is envisaged.

Councils might wish to encourage alternative solutions that do not fully meet prescriptive conditions of tendering but provide innovative, sustainable solutions that are better value for money; a practical means of achieving such an outcome might be through the use of Method Statements to facilitate innovation. However in doing so they must ensure the circumstances in which they will accept an alternative submission are clearly articulated in the tender documents and similarly that the confidentiality of the alternative tenderer is not breached by using information contained in the alternative as a basis for calling for subsequent tenders. Alternative tenders should comply with the key requirements set out in the tender documents.

4. Evaluation Criteria

As discussed above, it is strongly recommended the evaluation methodology and criteria are developed together with specifications and requirements ideally to the point that they form an integrated information and evaluation package that can be released with tender documents. Evaluation criteria and weighting should be established at the same time.

Evaluation criteria should contain factors critical to the Council being able to make the proper selection of goods and services.

In the social procurement context, a relative weighting might be assigned to achievement of the desired social outcome or general social outcomes and associated tangible measures of success that can be offered as part of the product or project. Full disclosure of this weighting is strongly advised prior to the commencement of the tendering process. The purpose of this is to ensure a level of transparency of the significance of the various criteria (specifically as regards non-traditional measures such as through the consideration of the desired social outcome or general social outcomes).

5. Tendering Methods

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned.

Councils have the option of using either open or selective tendering methods under clause 166 of the Regulation. Open tendering is commenced through public advertisements inviting interested suppliers to submit a tender response, whereas selective tendering is a process of either advertising for suppliers to provide expressions of interest and then inviting tenders from a refined list of suitable respondents or by inviting tenders from a catalogue or panel of known providers.

In selecting the most appropriate tendering process Councils must balance the following considerations:

- > using a framework that emphasises probity and fair dealing to all potential providers, whilst promoting open and effective competition;
- > a SWOT analysis of each approach in the context of the proposed procurement;
- > the capabilities available in the market to service any prescribed social outcome or more generally, any social outcome;
- > the method which optimises the best value for money across the entire procurement program and is pitched at the appropriate risk level; and,
- > the method which represents the lowest possible cost driver for suppliers' responses and also maintains the security and confidentiality of their intellectual property.

When commencing social procurement programs, Councils may consider that selective tendering is the better method initially as it allows Councils the opportunity to conduct a two stage, open and fair process. It also gives Councils the opportunity to form a panel of providers at the same time as it is developing its operational plan.

When using selective tendering, Councils are advised to follow section 55(4) of the LGA, the Regulation and the Guidelines closely as well as ensuring the process complies with Part IV of the CCA. This is unlikely to be problematic unless the activities can be shown to significantly reduce competition in the relevant marketplace.

S.55(1) of the LGA sets out the specific types of contracts that must be the subject of tenders before being entered into and s.55(3) indicates which types of contracts need not be the subject of a tender process at all. Furthermore, s.55(4) LGA sets out the manner in which certain selective tendering practices can be used, namely through the use of public advertisement for expressions of interest, or through the public advertisement for the creation of a panel of recognised contractors in a particular field. Council may determine whether it wishes to conduct an open tendering or a selective tendering process, taking into account the considerations set out above.

6. Development of Tender Documents

Clause 170 of the Regulation provides Councils with adequate guidance for the development of tender documents. This clause is supported by the discussion on pages 37–40 of the Guidelines.

7. Contract Clauses

It should be kept in mind that in this regard, the procurement of goods and services *in a social benefit context* is considered Business As Usual in so far as the law is concerned. Transparency and disclosure are therefore key elements in formulating relevant contractual provisions.

In the cases of *Hughes Aircraft Systems International v Air Services Australia* (1997) 76 FCR 151 and *Cubic Transportation System Inc v State of New South Wales & 2 Ors* [2002] NSWSC 656, the courts have found that where a government entity presents terms to the market as the basis on which it will make a procurement decision, it must comply with those terms. If it does not, unsuccessful tenderers may be able to successfully challenge the resulting contract between government and the successful provider.

With this in mind Councils need to carefully consider how they will review tenders and how they communicate that to respondents.

The following are clauses which can be used as examples for tendering conditions:

SPECIAL TENDERING CONDITIONS

1.1 In evaluating responses the Council may take into account the extent to which the Respondent demonstrates that their solution will or may provide any or all of the following benefits:

- a. sustainable use of resources and provision of services that represent best value for money in meeting the needs of the local community;*
- b. improvement of overall quality of life of people in the community;*
- c. promotion of appropriate business and employment opportunities in the local community/or to a specified group in the community;*
- d. provision of services and facilities that are accessible and equitable to all members of the local community; and/or*
- e. promotion of any other desired social outcome in the community within the Council's local government area.*

In the event a Council wishes to invite solutions from tenderers but wishes to be able to consider a solution that provides best value for money but may not necessarily address all social benefits sought, then Councils might consider including the following in addition to the above:

1.2 Council is not obliged to select a Respondent's offering on the basis of all criteria outlined above

If Council does wish for the solution to include social benefits in the preferred solution, then the following example should be considered to follow sample condition 1.1 above:

1.3 Respondent's offerings that do not demonstrate any of the above benefits to the local community are unlikely to be successful

It would be very helpful if in addition to clause 1.1(e), words to the following effect were included such as to give specificity to what sorts of things Council considers to be 'desired social outcomes':

For the purposes of subclause (e) above, the following are some examples of desired social outcomes in the community within the Council's local government area, namely:

[list the additional desired social outcomes]

This list is not exhaustive and other social outcomes identified by the Respondent as part of their response may be considered.

It is also possible to include specific Conditions or KPIs of social outcomes in contract clauses, depending upon how specific a Council/Department might wish to get. These types of Conditions might be one of two kinds, namely generic or specific.

An example of a generic type of Condition or KPI might be:

In the course of performing its obligations under the Contract, the Contractor will ensure that it meets the social objectives set out in the Tender documentation.

Every X months, the Contractor must provide a written report containing statistical data on the social benefits provided by it to date under the Contract. That data must directly reference the ways in which the Contractor indicated that it would provide social outcomes in the course of carrying out the Contract, in relation to the stated social objectives in the original Tender documentation.

An example of a specific type of Condition or KPI might be:

The Contractor agrees to employ for the purposes of carrying out the Contract works, at least X persons who have been classified as long term unemployed within the past 2 years.

Conclusion

There is nothing in the governing legislation, Regulation or Guidelines to restrict Councils from what is procured, in a social or any other context. Rather it is for Councils to ensure their processes impute openness and fairness into their plans, strategic goals, objectives and dealings with suppliers in the relevant marketplace.

Procurement in the triple bottom line or social outcome based context does not represent a departure from the established legislation, Regulation or Guidelines. Problems are only likely to arise if prospective suppliers have not been clearly and fairly advised of the benefits their offerings need to address and the relative weight that is assigned to various specifications within the goods or services to be procured.

Indeed, it is likely that a procurement program that adopts social outcomes as its basis will develop the market of potential tenderers with a view to providing better outcomes for the community, as a failure to adapt to social outcomes as the focus of their tenders may prevent the gaining of business from local government by traditional commercial enterprises. In a competitive marketplace, it is hard to see otherwise.

In order to successfully commence a social procurement program, Councils must comply with all requirements under the CCA, LGA, Regulation and Guidelines whilst ensuring that:

1. the operational plan and supporting procurement policy specifically provide for the inclusion of social benefits considerations;
2. the tender documents and supporting process clearly articulate the desired social outcome (or any general other social outcomes) with express details of what specifications or features of an offering will or may be considered and relative weighting assigned to each; and,
3. the basis for selection and how it links into the Council's operational plan for benefit to the local community.
4. This approach along with the practical considerations in this advice addresses the legislative requirements and minimises the risk of challenges to the procurement process under common law.

Compliance with the ACL and CCA should be monitored by Councils in relation to all procurement, particularly when using the selective tendering process or collective acquisition strategies with neighbouring Councils. The main issue for Councils to monitor in this regard is the effect of the process they follow may have of competitiveness in the relevant marketplace. Councils should also be aware this issue may still arise even if all obligations under the LGA, Regulation and the Guidelines are observed.

STATE GOVERNMENT LEGAL CONSIDERATIONS

New South Wales Government and Social Procurement

The New South Wales Government has an established Procurement Policy (the 'Policy') that is managed by the State Treasury. The Policy is an overarching framework for all government procurement, and is consistent with the NSW Government's total asset management, infrastructure, planning and delivery framework.

The Policy links with the State Budget process and should be read in conjunction with the Premier's Departments' *Strategic Management Framework*, which is designed to assist agencies navigate their way through the range of key planning, budgeting and reporting requirements.

From a legal perspective, procurement and the accompanying policy is primarily derived from Chapter 7 of the *Public Sector Employment and Management Act 2002* (NSW). That Act was very significantly overhauled by an amending Act (the *Public Sector Employment and Management Amendment (Procurement of Goods and Services) Act 2012*) which received assent on 22 June 2012.

In the Second Reading speech for the amending Act, the Minister for Finance and Services, the Hon. Greg Pearce described the amendments as the “centrepiece of the Government’s procurement reforms.”

The effect of the amendments is to completely abolish the State Contracts Control Board and in place create a new Procurement Board, whose objectives and functions are set out as follows:

Objectives: set out in s.144 of the Public Sector Employment and Management Act 2002 (NSW)

- (a) to develop and implement a Government-wide strategic approach to procurement;*
- (b) to ensure best value for money in the procurement of goods and services by and for government agencies;*
- (c) to improve competition and facilitate access to Government procurement business by the private sector, especially by small and medium enterprises and regional enterprises;*
- (d) to reduce administrative costs for government agencies associated with procurement;*
- (e) to simplify procurement processes while ensuring probity and fairness.*

Functions: set out in s.145 of the Public Sector Employment and Management Act 2002 (NSW)

- (a) to oversee the procurement of goods and services by and for government agencies;*
- (b) to develop and implement procurement policies;*
- (c) to issue directions to government agencies under section 148;*
- (d) to monitor compliance by government agencies with the requirements of this Chapter (including Board directions);*
- (e) to investigate and deal with complaints about the procurement activities of government agencies;*
- (f) to develop appropriate procurement and business intelligence systems for use by government agencies;*
- (g) to collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies;*
- (h) such other functions as are conferred or imposed on the Board by or under this or any other Act.*

Under s.148 of the Act, the Procurement Board may issue directions to government agencies regarding the procurement of goods and services by and for government agencies. Except in limited circumstances (such as justified emergency periods), the government agencies the subject of directions are obliged to comply with such directions (s.149). The directions that the Procurement Board can issue under s.148 include in respect of the following matters:

- (a) the methods used for procuring goods and services; and*
- (b) contracts for the procurement of specified goods and services; and*
- (c) the kinds of contracts for the procurement of goods and services for which tenders are required; and*
- (d) the limits on duration of contracts; and*
- (e) any matters relating to procurement procedures arising from a complaint about the procurement activities of a government agency.*

Under Chapter 7, ‘government agency’ means a public sector agency, a NSW Government agency, any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation), or any State owned corporation that is prescribed by the regulations. For the purposes of Chapter 7, the term ‘government agency’ does not include a local council or other local authority, or the Parliament of New South Wales.

Additionally, the *Public Finance and Audit Act 1983* (NSW) directs that agencies are required to be accountable and to use monies efficiently and effectively.

The combined effect of this legislation has driven the creation of the Policy and supporting Code of Conduct which promotes:

- a. Open, transparent and accountable dealings;
- b. Fairness and competition in the supplier market; and,
- c. Sustainable costs to the NSW Government

These outcomes are relevant to all forms of public acquisition of goods and services and would apply equally to social procurement.

NSW Government Code of Practice for Procurement (the 'Code')

This single Code of Practice covers all types of government procurement and outlines the philosophy, obligations and standards of behaviour applicable to all parties in the supply chain during the procurement process. It is assessed that it would apply equally to social procurement and few changes would be required to the Code if and when the NSW Government undertakes a formal social procurement policy.

The Code includes fairly clear evaluation criteria that already address social procurement in a general way. The Code states:

Evaluation Criteria

In addition to prices tendered, evaluation criteria shall contain the critical factors to be used in the evaluation of tenders. These factors typically include, but are not limited to:

- *Tenderer's community relations practices and performance;*
- *Value adding components such as economic, social and development initiatives, if appropriate and relative to the procurement; ...*

NSW Government Tendering Guidelines (the 'Guidelines')

The Guidelines provide agencies with a structured approach to planning and implementing tendering and associated processes. The Guidelines also provide industry with an understanding of the processes undertaken by NSW Government agencies to ensure fairness and probity in tendering.

The Guidelines are derived from a number of the outcomes of the Independent Commission Against Corruption and they stress probity principles throughout. The application of probity principles, generally require that:

- > all tenderers are treated fairly and equitably, consistent with the rules of natural justice and procedural fairness;
- > a transparent and appropriately planned and documented tender process is established, including a robust evaluation methodology;
- > all confidential information is protected;
- > strategies are in place to maintain the integrity of the tendering process when in-house bids may be involved;
- > potential and/or actual conflicts of interest are identified and dealt with.

The *Guidelines* identify three generic main categories, being 'open tendering', 'multi-stage tendering' and 'limited tendering' and provide agencies with a structured approach to planning and implementing tendering and associated processes to complement those in the NSW Government Code of Practice for Procurement. Agencies may need and thus be required to have more detailed procedures for specific agency tendering activities.

A six step process for the purchase and disposal of all goods including Information and Communications Technology and the acquiring of services including consultancies:

- > Needs analysis — Determine the need to be met and whether procurement provides the optimal solution;
- > Funding approval — Determine the scope of the required project and develop the business case or investment justification to obtain necessary funding to proceed;
- > Project procurement plan — Determine the strategy for approaching the market and prepare a procurement plan to ensure a viable acquisition outcome;

- > Service provider selection — Produce request for tender documents and seek offers from the market. Select the service provider(s) that provides best value for money;
- > Contract management — Ensure Service Provider(s) delivers the asset, goods or services in accordance with contractual obligations;
- > Procurement evaluations — Review the outcomes of the project and disseminate any learning.

In addition, this process is intended to provide industry with an appreciation of the processes required to be undertaken by NSW Government agencies to ensure fairness and probity in tendering.

The Guidelines apply to procurement undertaken by all agencies, including government departments, statutory authorities, trusts and other government entities. State Owned Corporations under the State Owned Corporations Act are exempt although they are encouraged to use the Guidelines.

These processes are well established and would apply directly to social procurement.

In addition to the overarching procurement requirements that apply to all procurement categories and steps, including social procurement, there are a number of other considerations for agencies considering goods and services procurements only.

Local Jobs First Plan

Goods and Services Procurement are subject to the Local Jobs First Plan which seeks to support jobs by enhancing opportunities for Australian and New Zealand Small and Medium Enterprises to win government contracts for the supply of goods and services. Compliance with the Plan is required by all agencies, including State Owned Corporations (SOCs) that are directed to comply by their portfolio minister.

All agencies, including SOCs (as directed), should begin measuring how their procurement is achieving the objectives of the Plan. A reporting framework that outlines the minimum information required to be reported can be found at www.nswprocurement.com.au/Government-Procurement-Frameworks/Goods---Services/Framework.aspx

This information should be reported annually on the websites of all NSW Government agencies, including SOCs (as directed).

In addition to the NSW Government legislation and procurement policy and governance documents, compliance with the ACL and CCA should be monitored by agencies in relation to all procurement, particularly when using the selective tendering process or collective acquisition strategies with other agencies, departments or SOCs. The main issue to monitor in this regard is the effect of the process they follow may have of competitiveness in the relevant marketplace.

Conclusions for State Government

Policies and framework are well established for NSW Government procurement strategies.

The Code already contemplates assessment of tenders partly on the basis of the value add benefits available on the basis of social, economic and development initiatives. It is precisely these things which social procurement is concerned.

The implementation of social procurement as a strategy is nothing which would be inconsistent with the existing framework. The same very general principles apply to NSW Government as applies to local government agencies, namely the principles of openness, fairness and transparency in tendering.

Whilst this advice attempts to encompass a large area of legislation and policy in the context of a new way of doing business, there is no substitute for specific advice relevant to the circumstances at hand. Accordingly, this advice should be considered merely instructive in a very general way and not specific to any circumstances of a particular government agency.

Where government agencies are concerned to make sure their procurement activities are compliant, legal advice specific to the relevant situation is strongly recommended.

That being said, we would be more than pleased to advise or assist any particular local or state government agency on the issues covered by or related to this advice, at any time.

