

Cyflwynwyd yr ymateb i ymgynghoriad y [Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol](#) ar [Y Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus \(Cymru\)](#)

This response was submitted to the [Equality and Social Justice Committee](#) consultation on [Social Partnership and Public Procurement \(Wales\) Bill](#)

SPPP 08

Ymateb gan: CIOB | Response from: CIOB



Introduction to the Chartered Institute of Building (CIOB)

The Chartered Institute of Building (CIOB) is the world's largest and most influential professional body for construction management and leadership. We have a Royal Charter to promote the science and practice of building and construction for the benefit of society, and we've been doing that since 1834. We have over 1,500 Welsh members that work in the development, conservation, and improvement of the built environment, and thousands more worldwide.

Y Sefydliad Adeiladu Siartredig (CIOB) yw corff proffesiynol mwyaf a mwyaf dylanwadol y byd ar gyfer rheoli ac arwain adeiladu. Mae gennym Siarter Frenhinol i hyrwyddo'r gwyddoniaeth a'r arfer o adeiladu er budd cymdeithas, ac rydym wedi bod yn gwneud hynny ers 1834. Mae gennym dros 1,500 o aelodau o Gymru sy'n gweithio ym maes datblygu, gwarchod a gwella'r amgylchedd adeiledig, a miloedd yn fwy dros y byd i gyd.

We accredit university degrees – including at Wrexham Glyndwr University, with more institutions and courses in Wales pending accreditation – educational courses, apprenticeships, and training. Our professional and vocational qualifications are a mark of the highest levels of competence and professionalism, providing assurance to clients and authorities who procure built assets.

Rydym yn achredu graddau prifysgol – gan gynnwys ym Mhrifysgol Glyndŵr Wrecsam, gyda mwy o sefydliadau a chysiau yng Nghymru yn aros i gael eu hachredu – cyrsiau addysgol, prentisiaethau a hyfforddiant. Mae ein cymwysterau proffesiynol a galwedigaethol yn arwydd o'r lefelau uchaf o gymhwysedd a phroffesiynoldeb, gan roi sicrwydd i gleientiaid ac awdurdodau sy'n caffael asedau adeiledig.

Our [Welsh Manifesto](#) outlines our policy goals for the construction sector in Wales, and we have a significant programme of work covering an array of policy areas. These include climate change and sustainability; equality, diversity, and inclusion (EDI), and mental health. Much of our policy work supports the aims of *The Wellbeing of Future Generations Act*.

Mae ein [Maniffesto Cymreig](#) yn amlinellu ein nodau polisi ar gyfer y sector adeiladu yng Nghymru, ac mae gennym raglen waith sylweddol sy'n cwmpasu amrywiaeth o feysydd polisi. Mae'r rhain yn cynnwys newid yn yr hinsawdd a chynaliadwyedd; cydraddoldeb, amrywiaeth a chynhwysiant (EDI), ac iechyd meddwl. Mae llawer o'n gwaith polisi yn cefnogi nodau Deddf Llesiant Cenedlaethau'r Dyfodol.

Overview

1. Broadly, CIOB welcomes the introduction of the Social Partnership and Public Procurement (Wales) Bill (henceforth, “the Bill” or the “SPPP Bill”). The Bill links well with the CIOB's existing work, including its [Diversity and Inclusion Charter](#), our [Understanding Mental Health in the Built Environment](#) research, and report [Building a Fairer System: Tackling Modern Slavery in Construction Supply Chains](#). Our shared values mean that CIOB is well placed to work with the Senedd and Welsh

Government to deliver on the aims laid out in the Bill for the construction industry. We furthermore welcome the opportunity to strengthen legislation and integrate the Wellbeing of Future Generations Act's aims into statutory rights. The new social public works clauses may be difficult to enforce to start with, however. Partly due to the momentous shifts in attitude and practices in the construction industry this Bill will require.

2. If successful, the Bill could lead to a culture change among public bodies and the construction industry. In recent years, there has been a growing influence of social value in public sector procurement, and organisations have been encouraged to deliver projects that have positive social and community impact. This is especially true in Wales, as outlined in the *Wales Procurement Policy Statement*.¹ If enforced properly, this Bill can continue that shift and open the field for other construction companies and SMEs to access procurement contracts that typically struggle to compete. In turn, this will allow the industry to flourish and diversify.

Social Partnership Council (SPC)

3. We welcome the creation of the Social Partnership Council (SPC). The procurement process can drive social change and ensure community and societal benefits. Indeed, this has become more prominent in procurement processes in recent years, and projects – especially for public bodies – are expected to outline their environmental impact and benefits among other key driving factors.
4. If executed correctly, the SPC can ensure that fair work and social value – and not just financial savings – are central to procurement decisions.² This will also benefit the construction industry in Wales: it will drive change and open the playing field for SMEs and other organisations that pride themselves on their environmental and social justice credentials. In turn, this will allow for more competition for procurement contracts, ensuring that bidding is fair and procurement processes do not incentivise suicide bidding.
5. We are, however, wary of the fact that it is unclear how the SPC will operate in practice. Within six months of being formed and electing its members, the SPC must publish its procedures.³ We would like to see the following recommendations implemented:
 - a. A grace period for construction organisations that are bound to operate within outlined fair work clauses while the SPC defines its procedures. While every effort should be made on the industry's part to ensure that clauses are followed, without proper SPC guidance and procedures in place, these will be

¹ <https://gov.wales/sites/default/files/publications/2021-03/wales-procurement-policy-statement-2021.pdf>

² <https://gov.wales/sites/default/files/publications/2021-03/wales-procurement-policy-statement-2021.pdf> (p. 2)

³ https://gov.wales/sites/default/files/consultations/2021-02/social-partnership-and-public-procurement-wales-bill_0.pdf (para. 37)

difficult to enforce. This grace period will also allow construction companies to ensure that due diligence measures are able to start falling into place.

- b. A commitment from the SPC to ensure that – when fully operational – it takes procurement decisions in a timely manner. We recommend a period of no longer than thirty days to ensure that construction companies are able to start work efficiently, and ensure minimal delays when it comes to resources, labour recruitment, or project materials. Ground conditions, logistics, cost of materials, labour and technology availability are all central to the success of a project. Ensuring a quick turnaround on decisions taken by the SPC will ensure that these risk factors are minimised, and projects can be delivered on time and to a high standard.
6. We would also welcome further clarification of the make-up of the SPC's Procurement subgroup and encourage the inclusion of a construction industry representative on this subgroup. Ensuring the appropriate expertise is sought from the construction industry when making any procurement decision will ensure that decisions can be taken quickly and without adversely affecting the contracted organisation.
 7. This cooperation is typical in many other areas in Wales, and CIOB sits on the Welsh Construction Forum and works alongside Welsh Government. We also sit on the Construction Industry Council and the Northern Ireland Construction Group (NICG), which frequently sees the Department of Finance and the Central Procurement Directorate interact with key construction stakeholders to reform procurement processes in Northern Ireland.

The Procurement Process

8. We also welcome the requirement for public bodies to publish procurement strategies. These procurement strategies should take into account all construction work, and not just projects over £2m as covered by the Bill.
9. New procurement strategies could be a key driver of social benefits. If procurement strategies break work down into smaller, more manageable, affordable packages, this will remove one of the barriers to SMEs being able to bid for contracts. If this is successful, competition will increase, and the Welsh construction industry will be able to flourish and diversify. This will also be a key driver for the creation of new jobs for SMEs across Wales and a boost for local economies. Research shows that every £1 spent with a local SME sees 63p put back into the local economy.⁴
10. These procurement strategies could also be seen as an opportunity to streamline and modernise the Welsh procurement process, allowing fairer access for a wider array of construction organisations thus levelling the playing field.

⁴ <https://www.fsb.org.uk/resources-page/a-fresh-start-for-procurement-.html>

11. We would, however, recommend that the SPC and its procurement subgroup work alongside the construction industry and public bodies to ensure that these procurement strategies are realistic, especially for large construction projects where complex supply chains are more common. Cooperation will also ensure that the Bill continues to operate within the resources of the construction industry and public bodies.
12. We would also like to see more guidance for contracting authorities to ensure that bids are fair, and companies are not pressured into suicide bidding to win contracts. Ensuring that bids are fair and periodically adjusted in line with inflation and fluctuating costs of materials will also ensure that some of the pressure on the sector is alleviated. It will also ensure that some of the risks that can lead to delayed and cancelled projects – including spiralling material costs that lead to significant financial losses for construction organisations - are alleviated. Welsh Government published advice in light of the Covid-19 pandemic and wider supply chain issues and high cost of materials:

It will be difficult for contractors and their supply chains to hold tendered prices open for acceptance for long period after the tender submissions date. Contracting authorities could consider including a price adjustment for inflation mechanism in the works and maintenance contracts.⁵
13. These measures should form part of public bodies' new procurement strategies. Failure to do will mean the practices that currently limit the procurement sector and exclude SMEs and other companies will remain. Flexible budgets also allow the contracted organisations to realise the full potential of the project. Conversations in the early stages of the project around what the contracting authority wants and how these objectives can be achieved will also be central to this.
14. Procurement practices based solely on tendering for lowest cost and race to the bottom models often result in poor quality builds and businesses relying on cheap labour costs. This is also where incidents of human trafficking, slave labour, and unsafe working practices are most common. There must be incentives in place for both contracting authorities and the construction company to procure for better value.
15. The industry is already using mechanisms such as the *Value Toolkit* and the [Framework for Defining Social Value](#) to understand what value means in the context of both public and private sector projects.
16. The [Value Toolkit](#) is a project in which CIOB continues to be involved. It takes a four capitals approach to value based decision making for clients in the industry. CIOB developed the Human Capital which involved improving the knowledge, skills and competencies embedded in individuals as well as their physical and mental

⁵ <https://gov.wales/wppn-09-21-sourcing-building-materials-for-construction-projects-in-wales-html> (para. 4.3.3)

wellbeing. This toolkit looks at social value through each stage of the project and how it can be measured. Often clients have ambitions to add value, but these are not always realised due to not measuring it correctly at the crucial stages. We therefore think it is important that Welsh Government look at existing industry-led mechanisms in place to further strengthen the intentions of this Bill and see the outcomes set-out in the procurement process achieved.

Financial Barriers

17. One major barrier to the success of this Bill is the financial side of it. While larger construction companies are likely to be able to take steps to ensure due diligence in their supply chains, this is less likely to be the case for smaller construction enterprises in Wales.⁶ As such, larger companies may be more likely to tick more boxes, satisfy social public works clauses, and be seen as the default option for contracting authorities.
18. One way to counteract this is to ensure that the SPC is able to make decisions on quick turnarounds: if an organisation bids for a procurement contract, but is unable to tick all the social public works clauses, the contracting authority may be forced – due to time or financial constraints – to give the contract to another organisation that is able to tick all the clauses instead of waiting for the SPC’s decision. We have already suggested a period of thirty days for a decision to be taken.
19. In a scrutiny session with the Equality and Social Justice Committee on the topic of the Bill, Welsh Government representatives said that:

[Contract management] will be a resource-intensive activity and not something that you can just use IT systems... to do. So... there will be the need for [public bodies] to divert more attention, perhaps, from some things, but into focusing on ensuring that due diligence through those supply chains. But... when you spread that out amongst the different organisations we're talking about and some of the sizes of their construction budgets... it doesn't seem [unreasonable].⁷

While this is an admirable step to take, it may have the adverse effect of meaning that less money will be made available for construction organisations to actually do the project. Again, this runs the risk of making bids unreflective of the actual cost of a project, and jeopardising the fairness of the bidding process. Larger companies may be more willing to bid for projects that may result in real-terms financial losses than SMEs.

20. Research from the Federation of Small Businesses (FSB) suggests that 60 percent of SMEs find that there are barriers to bidding for public contracts, and 28% of SMEs

⁶ Our report [Building a Fairer System: Tackling Modern Slavery in Construction Supply Chains](#) deals with ethical supply chains in procurement processes (pp. 38 – 50)

⁷ <https://record.senedd.wales/Committee/12861> (para. 32)

feel unable to compete with bigger suppliers.⁸ This Bill has the potential to change this, or at the very least ensure that these barriers are identified and can start to be overcome.

Summary

21. In short, this bill has the potential to drive social change and facilitate a shift to modernise the procurement process in Wales. On the other hand, care needs to be taken to ensure that SMEs are treated fairly and proportionally so that they do not continue being excluded from procurement processes.

⁸ <https://www.fsb.org.uk/resources-page/a-fresh-start-for-procurement-.html>