

Enterprise and Business Committee inquiry into the modernisation of European procurement regulations

October 2011

Introduction

The Wales Co-operative Centre welcomes the opportunity to provide evidence to the Enterprise and Business Committee inquiry, which has been set up to influence the modernisation of EU procurement rules.

The Wales Co-operative Centre helps shape and realise aspirations for people and communities. We support co-operatives and social enterprises, we reduce digital exclusion and we advise on financial inclusion policy.

We are the principal provider of specialist business support to social enterprises and co-operatives in Wales. We also support small businesses and social enterprises to come together in co-operative consortia to win new business, reduce costs and market their goods and services.

The following evidence is based on the experiences of our clients, who are a broad range of social enterprise and co-operative businesses across Wales. Procurement is certainly a significant issue for our clients and this was confirmed in the report of a recent survey of social enterprises across the UK entitled 'Fightback Britain.' The survey demonstrated that social enterprises are struggling to access procurement opportunities. This issue was identified by social enterprises as the second greatest barrier to their sustainability.

The most significant issues with regard to public procurement processes for social enterprises and co-operatives (abbreviated to 'social enterprises' for the remainder of this report) are summarised below:

Supporting wider economic, social and environmental outcomes

The 'Fightback Britain' report found that too few public sector organisations appear to recognise the extra added-value that social enterprises can deliver by including social and environmental accounting clauses in public contracts.

The Welsh Government is committed to exploiting the potential for increased job creation, training and community regeneration by encouraging the imaginative use of community benefit and social clauses in procurement. Unfortunately the use of these clauses in procurement is not sufficiently widespread beyond the construction sector. There appears to be a reluctance to employ such clauses on the part of public bodies and it will be useful if the Committee's Inquiry was able to establish why this might be the case.

One likely reason for the poor level of implementation of social clauses is the inadequacy of existing guidance and the lack of relevant sample clauses that could be employed. It appears that many public bodies are unsure about how to proceed. Therefore the Wales Co-operative Centre would be keen that the European Commission's proposals provide clarification and clearer guidance about how social and environmental clauses could be used.

There may also be some misunderstanding about what can be regarded as 'relevant' subject matter. Currently EU rules make clear that the subject matter of the contract is a fundamental condition that has to be taken into account when introducing into the public procurement process any considerations that relate to wider policy objectives.

The Wales Co-operative Centre would support a relaxation of this requirement relating to the link to subject matter. This would enable public bodies to have far greater freedom in influencing the social and environmental practices of businesses and help them to maximise the use of public money in achieving wider policy objectives.

Improving the quality of contracts

There is strong case for involving suppliers at the pre-procurement stage. This enables public bodies to have a better understanding of what is possible technically and financially. In the case of social enterprises, the case for early engagement is even stronger. Social enterprises are set up to serve the community or a specific group. Therefore their involvement at the pre-procurement stage can help ensure that the end user is involved in influencing the services provided.

Whilst early engagement is already possible and even encouraged, particularly in the case of more complex contracts, we would advocate clearer guidance for public bodies about how they might engage with suppliers for contracts of any size or complexity.

This guidance should also draw on experience from Scotland of the Public Service Partnership (PSP) approach to commissioning public services. PSP is a strategic partnering arrangement which involves the third sector earlier and more deeply in the design and commissioning of public services. As part of the process third sector and social enterprises organisations can be involved in a short term piloting stage to refine service delivery parameters. Pilots provide a valuable opportunity for social enterprises to develop a track record and prove their worth.

Occasionally the Wales Co-operative Centre is approached for information about the make-up of the social enterprise sector in Wales when public bodies are planning to procure for the public sector. We would welcome the opportunity to provide this information more frequently so that tender documents can be drafted with a good understanding of the social enterprise market place. There would be value in a more structured programme of work to raise awareness about the social enterprise sector amongst public sector procurers. The Wales Co-operative Centre would be keen to lead or participate in such an initiative.

On a Wales-wide basis we welcome the work initiated by Welsh Government to bring together public bodies and suppliers to identify and eventually fill supply chain voids.

Reducing the size of contracts

If public bodies have a good understanding of the market place, they are better able to split contracts into smaller lots that are suitable for social enterprises. Currently the complexity of the rules combined with the pressures to generate efficiency savings are resulting in larger contracts. These large contracts are out of the reach of many social enterprises.

The Wales Co-operative Centre recognises that large contracts are sometimes desirable and we are running a project to support small businesses and social enterprises to come together to form consortia to bid for large contracts. Nonetheless we would support changes to rules and guidance that facilitated smaller contracts or the dividing of larger contracts into lots when appropriate.

Reducing the complexity of procurement processes

Social enterprises often cite the complexity of procurement processes as a barrier to their engaging or succeeding with public contracts. Short timeframes can be an additional problem. Social enterprises are often small in size and do not have the same resources to dedicate to a tender that a large private sector organisation might have.

As a result we would support efforts by the European Commission to simplify processes as much as possible and to reduce the need to provide information. For the same reason we welcome the Welsh Government's efforts to make the qualification process across Wales more efficient for the public sector and businesses through the SQuID initiative— Supplier Qualification Information Database.

The case for increasing thresholds

The EU procurement thresholds are fairly low and apparently have not kept pace with inflation. This means that many small contracts, for which there is unlikely to be interest from other countries, are obliged to follow EU procurement rules. The Wales Co-operative Centre would support the case made by the UK Government to raise the existing thresholds significantly, which would reduce the complexity of tendering for some smaller contracts.

A fairer assessment process

Social enterprises and small businesses more generally are often hindered by requirements from bidders to have a certain amount of experience or a specified level of turnover. For obvious reasons this can prevent new and smaller social enterprises from growing or even entering the market place.

The Wales Co-operative Centre would support better guidance that helped public bodies to provide a level playing field for social enterprises and small businesses whilst enabling them to gain any necessary and appropriate assurances that they might require.

The Wales Co-operative Centre, with financial support from the EU and the Welsh Government, is currently supporting small businesses and social enterprises to form co-operative consortia in order to share resources, bid for contracts and market their products. The consortia model is a proven method of supporting businesses to thrive and to grow.

Whilst there is significant interest among businesses in Wales to work co-operatively, one barrier for these co-operative consortia is the requirement of public procurers to provide evidence of experience or a track record. For instance it is common for public procurers to request three years audited accounts.

Some public bodies are taking an inflexible approach and rather than taking account of the combined track record of the whole consortia they will only consider the track record of the lead body, which in the case of a co-operative consortia is a new legal entity set up to bring the organisations together. Therefore the new structure might not have the necessary three years of audited accounts but the individual members of the consortia often would have the appropriate experience. The result is that these consortia miss out on contracts and the public bodies miss out on the added value of procuring goods and services from a group of organisations.

Improving awareness amongst social enterprises

There are currently different requirements to publicise contracts depending on the value of these contracts, which is a sensible, proportionate approach. It would certainly not be appropriate to advertise all contracts, whatever their size, on OJEU.

However social enterprises can miss out on opportunities when contracts are only advertised in a partial way. Social enterprises are often small or micro businesses that do not have the capacity to maintain direct contact with a large number of public bodies. The Welsh Government has committed itself to opening up public sector procurement opportunities to social enterprises in Wales. Unfortunately it is not yet the case that all public bodies in Wales are following best practice to optimise the participation of social enterprises in bidding for public contracts by ensuring transparent and open processes. As a result we would ask that all public bodies are encouraged to make their procurement processes as open and transparent as possible and to publicise opportunities on websites like Sell2Wales.

Target for the Welsh public sector

The forthcoming European Commission procurement proposals are unlikely to set targets for the proportion of public contracts that should be awarded to small businesses or social enterprises. Nonetheless there is a legitimate case for Welsh public bodies to aim to increase the market share of social enterprises and small businesses because of the direct economic and social benefits for Wales. At the very least public bodies should keep track of how well small businesses and social enterprises are doing in the public procurement market to ensure that the implementation of procurement rules is not unfairly discriminating against them. For these reasons the Wales Co-operative Centre would support the setting of a target for the proportion of public contracts awarded to social enterprises.

Further information:

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