

Consultation Response on Procurement Regulation in Wales

Increased regulation will take away the freedom and control within Local Government of managing their procurement responsibility and will also add an additional burden to Local Government with the most radical and unwelcome proposal being the imposition of “specific contracts” on all Welsh Public Sector bodies (Question 5 in the Consultation Exercise).

This Proposal represents a major threat to our local economy in South West Wales and how we currently link up with SME’s who are often very well placed to provide a quality service at a competitive price in a highly sustainable way and often with opportunities to deliver genuine valued Community Benefits.

Within Carmarthenshire, we have worked with the Construction Industry to ensure that apprenticeships deliver skilled workers to meet our Capital Programme and the needs of the area. Central Contracts and Central Frameworks would threaten such progress and dismantle local industry and the security of local skilled workers.

There is evidence that Framework Prices in relation to Consultancy under NPS are significantly more expensive than our existing contracts. A requirement to use NPS Contracts is unacceptable and takes away the democratic role of Unitary Authorities and Elected County Councillors. Also, the imposition of an additional 0.45% levy just adds to the unfairness in mandating that NPS contracts would have to be utilised.

When Carmarthenshire County Council agreed to participate in the National Procurement Service, it was a critical issue that the Authority would retain an “opt out” in relation to individual commodities / contracts and this was built in to the NPS Model. Since then the scope of NPS has widened considerably from an estimated 25% of expenditure mainly focused on “Common and Repetitive Spend” to some 40% of expenditure.

Whilst the target areas of NPS grow as NPS looks to achieve savings and payback of its £5.9 million Development Loan, the cashable savings to Carmarthenshire County Council are yet to materialise in any significant way. Savings to date have been insignificant and with the imposition of a 0.45% levy on all spend associated with NPS contracts there is a clear risk that we could damage our local economy and pay higher prices. It is also understood that the levy may need to be reviewed upwards.

We are also very concerned that other partners on NPS do not have an interest or duty towards supporting and developing a sustainable local economy and are therefore driven away from Regional or Local contracts towards National Contracts which ultimately threaten the Local Economy.

Question 1:

Do you think that publication of the Procurement Fitness Check reports provide sufficient information on the performance of procurement across the Welsh Public Sector?

The Fitness Checks together with a number of additional Local Reports and Performance Indicators already provide comparable information on performance and resources of the procurement function as well as the ability to compare with other Authorities or Bodies.

The imposition of additional reporting adds a further administrative burden with no evidence of any potential payback.

Should the Welsh Public Sector be under a statutory duty to publish/submit an Annual Procurement Report annually? Give reasons for your answer.

No.

CCC already prepare regular Procurement Reports which focus on the interests of the Authority and how it works with its Suppliers both nationally and locally and how it addresses the requirements of the Wales Procurement Policy Statement.

An Authority putting out a major 5 year contract may claim significant savings with a new deal when comparing to its previous deal but may not be cheaper or better value than other Authorities. There are significant dangers of false comparisons and false conclusions being drawn.

The costs of investing in eProcurement may outweigh the savings resulting from new arrangements utilising eProcurement.

The additional resource required to complete an imposed template would not be justified.

If yes, what criteria do you think ought to be included in a standardised Annual Procurement Return?

Question 2:

Should the Welsh Public Sector be under a legal duty to apply any guidance issued by the Welsh Ministers in relation to Community Benefits?

No. It has to be recognised that at present, a significant resource is needed to effectively pursue and deliver Community Benefits in an environment that is only now beginning to understand what can be achieved in this field.

It should also be noted that Funding levers are already in place in certain spend areas to ensure that Community Benefits are delivered.

If not, should the Welsh Public Sector be under a legal duty to have regard to any guidance issued by the Welsh Ministers in relation to Community Benefits?

Preferred option would be to ***"have regard to guidance"*** as this would allow 2 things to be considered, firstly, the importance assigned to these matters within that Authority given the specific economic, social, cultural and environmental factors of that area and secondly, the resource that can be made available to deliver these.

We would support this wholeheartedly. Success or failure in this area could form part of the Fitness Check report. The Legislative context for this exists within the Wellbeing of Future Generations Act.

We are of the view that the minimum value of contracts, above which, community benefits should apply should be £1m. Do you agree? Why / Why not?

£1m represents a reasonable Minimum Value where the Authority should have regard to applying a requirement for Community Benefits. We feel that this should not be seen as definitive or prescriptive.

Where the opportunities to deliver Community Benefits presents itself below this figure these should be pursued where the long term benefit outweighs the cost.

If not, what do you think the minimum value should be and why?

The £1m minimum guidance could be expanded to say that this figure is indicative and Community Benefits ought to be sought where the function of the contract allows and where long term benefit outweighs the cost of inclusion.

We are of the view that the Welsh Public Sector should be under a legal duty to

complete the Community Benefits Measurement Tool for all contracts with a total value over £1m and return this information to the Welsh Government. Do you agree? Why / Why not?

Currently, the Community Benefits Measurement Tool has two weaknesses, it is rather cumbersome to use and those contractors / suppliers completing the tool need additional support. The development of the tool has not kept pace with the expanded use of Community Benefits outside the Construction sector. The Measurement Tool is focused primarily on the impact of the Welsh £ and does not factor in local and / or regional priorities. It also misses opportunities to capture wider Community Benefits achieved in Education and Communities, which are equally important. Particularly in areas where grass roots engagement is vital in ensuring longer term promotion for sustainable recruitment. For example within the Social Care sector.

Imposition of a legal duty to complete would emphasise the importance of the application of Community Benefits but would add burden to an already over stretched procurement function. On balance, information gathered on achieving broader aims under the Wellbeing of Future Generations Act could include this aspect and the requirement to submit this information independently could reduce recognition of the role Community Benefits can play in the achieving broader objectives.

If not, what do you think the minimum value should be and why?

Value should not be seen as the only factor to determine the use of Community Benefits.

Are there any other ways in which the Welsh Public Sector could be encouraged to increase its adoption of Community Benefits policy?

The benefits brought through the application of Community Benefits are becoming clearer and more widely known. Elected Members are engaged with the approach and keen to see progress reported in relation to local issues and projects. As the various Case Studies and Awards continue to highlight the benefits, expectation amongst members for the increased use of Community Benefits will become the norm. This is likely to lead to delivery of Community Benefits playing an increasingly significant role in Local Authority Procurement Strategy policy development. This, linked to increasing demands from funding projects to link Community Benefit outcomes with project delivery will make the case for investment in this area.

Whilst the inclusion of Community Benefits in grant conditions has seen a greater emphasis in focus on the reporting of Community Benefits, more needs to be done in supporting the Public Sector in developing meaningful clauses / targets that will add the greatest value and be sustainable long past contract end dates.

Question 3:

Do you think that the Welsh public sector should be under a legal duty to have regard to any guidance issued by the Welsh Ministers on the scope for reserving procurement contracts in its procurement activities?

Limitations in the supply base and in managing the potential conflicts that may arise makes this a difficult area in which to enforce policy. The legal duty “to have regard” allows organisations to take account of each of the issues that may affect the use of reserved contracts in a particular area and is therefore considered appropriate.

The often contentious nature of these contracts suggests that larger, central purchasing organisations are best placed to deliver appropriate contracts which become exemplars for the rest of the Welsh public sector.

If so, do you think that the Welsh public sector should be under a legal duty to confirm the discharge of that duty in the Annual Procurement Return identified in Question 1 above?

No. The proposed Annual Procurement Return is seen as an additional bureaucratic burden (see Question 1)

If not, what other measures do you think could be used to encourage the use of reserved contracts?

The delivery of demonstrably successful and compliant contracts from central purchasing organisations such as the National Procurement Service.

Question 4:

4 (a) Use of sell2wales website

Should the Welsh Public Sector be under a legal duty to advertise all contracts over £25,000 on www.sell2wales.gov.wales , except for call off contracts from pre-competed framework agreements?

OR

Should the Welsh Public Sector be under a legal duty to have regard to any guidance issued by the Welsh Ministers in relation to advertising of all contracts over £25,000 on www.sell2wales.gov.wales, except for call of contracts from pre-competed framework agreements?

Option 2, 'to have regard' is appropriate.

Given the diversity of product purchased and the supplier diversity across the market the final cost / benefit of advertising on sell2wales must come down to the professional view of the buying organisation having due regard to the effect on the supply market. In some instances, the resource required to manage the response to an advert could far outweigh the benefit of wider advertising of the opportunity.

If yes, do you think that the threshold of £25,000 is appropriate? If not, what do you think it should be and why?

Any quoted financial threshold should be indicative with the presumption being that requirements over this figure will (where appropriate) be advertised although requirements below this figure that clearly lend themselves to this wider advertising approach must be considered. This would allow each organisation to tailor an approach that was appropriate in the given circumstances.

4 (b) SQulD approach to supplier selection

Do you think that the Welsh Public Sector should be under a legal duty to use the SQulD approach to supplier selection?

OR

Do you think that the Welsh Public Sector should be under a legal duty to have regard to any guidance issued by the Welsh Ministers to the SQulD approach to supplier selection?

The approach of having “regard to” the use of a SQulD approach has proved to be very successful with widespread adoption throughout the public sector.

On-going support is required to support Suppliers in tendering for Public Sector opportunities, to enable them to break down any barriers that might exist in preventing them bid for Work.

Further development is required to ensure SQulD allows Public Sector Organisations to easily meet their obligations under the Welsh Language Standards to ensure compliance.

4 (c) Joint Bidding Guide

Should the Welsh Public Sector be under a legal duty to apply any guidance issued by the Welsh Ministers in relation to Joint Bidding to help identify those contracts which are suitable for consortia bids?

OR

Should the Welsh Public Sector be under a duty to have regard to any guidance issued by the Welsh Ministers in relation to Joint Bidding to help identify those contracts which are suitable for consortia bids?

Carmarthenshire County Council views joint bidding as a significant opportunity to promote collaboration amongst smaller bidders and is committed to the current approach. Our Procurement Manger sits on the All Wales Joint Bidding Steering Group and Carmarthenshire was the first Authority in Wales to advertise opportunities with specific reference to the encouragement of joint bidding as part of the advert wording.

Are there any other steps that you think would help reduce barriers and cost which may prevent suppliers from accessing Welsh public sector contracts?

The Joint Bidding Guide provides an excellent base but bidding opportunities require much longer lead in times and better facilitation. This element is key to the success of the joint bidding initiative. As is supplier early engagement, and in our experience 3rd party assistance in assisting organisations to bid collaboratively (Wales Co-operative and Business Wales for example).

Question 5:

Should the Welsh Public Sector be under a legal duty to utilise specific contracts, which will be determined on a case by case basis, which have been

let by Central Purchasing Bodies?

No.

Such an approach would remove the right of Elected Members to determine through the Council's Procurement Policy how money should be spent in the supply base. This removes the right for local authorities to determine the most appropriate best value solution taking into account the local economy and the prevailing budget conditions.

The proposal limits scope for alternative solutions or service standards and stifles innovation.

The NPS is a very new organisation which has yet to demonstrate that it can deliver the right goods at the right price in the right way across all Categories. It has yet to work its way through a full cycle of procuring all categories so it is premature to create a legal duty for all procurement to be channelled via NPS.

In the case of the National Procurement Service (NPS), such a change would be a fundamental shift to the approach outlined in the original Business Case on which the Authority made the decision to support the creation of the NPS and would not be in keeping with the spirit of free co-operation that led to Carmarthenshire County Council's agreement to participate.

All NPS arrangements are framed in a "**compromise**" based on the input of participants through the Category Forum process. For the most part, such compromise arrangements can be accommodated, however, in some cases this may not be the case. The current Business Case "opt out" allows for an alternative approach where this can be evidenced as legitimate to the satisfaction of the participating authority. This was a fundamental founding principle and the reason why no exclusions were cited by Carmarthenshire at the outset.

The quality, suitability and appropriateness of any contract or framework arrangement will determine the value of that arrangement to the organisations and its Council Tax Payers taking on board local procurement priorities. It ought to be the right of each organisation to make that decision and the responsibility of that organisation to justify it if to stakeholders.

Question 6:

Do you agree that contracts for the services listed in Schedule 3 to the Public Contracts Regulations 2015 should only be awarded by the Welsh Public Sector on the basis of most economically advantageous tender? If not, why not?

No (it should be acknowledged that there may rare instances where price only is appropriate and where there is clarity about the minimum quality).

The intention of Schedule 3 under the Public Contracts Regulation 2015 was to afford maximum flexibility in this area. Professional determination on a case by case basis is the most appropriate way forward.

If yes to the question above, should it be a legal duty for the Welsh Public Sector to award contracts for those services listed in Schedule 3 to the Public Contracts Regulations 2015 should only on the basis of most economically advantageous tender?

Question 7:

Should the Welsh Public Sector be under a legal duty to apply any guidance issued by the Welsh Ministers relating to collective agreements regarding environmental, social and/or labour law?

OR

Do you think that the Welsh Public Sector should be under a legal duty to have regard to any guidance issued by the Welsh Ministers relating to collective agreements regarding environmental, social and/or labour law?

At present, organisations are under an obligation to have due regard to guidance issued by Welsh Ministers and are under an obligation to implement or amend that guidance given the particular circumstances or environment in which they are operating. This seems to be a simple, practical and deliverable approach that does not require change.