

Number: WG28654



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Consultation on Procurement Regulation in Wales

Date of issue: 5 April 2016
Action required: Responses by 28 June 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

The purpose of this consultation is to provide an opportunity for interested stakeholders to contribute views and opinions regarding plans for the introduction of legislation on public procurement activity undertaken by the Welsh Public Sector. The “Welsh Public Sector” are contracting authorities whose functions are wholly or mainly Welsh devolved functions¹.

How to respond

The consultation period commences on **5 April 2016** and closes on **28 June 2016**. Please ensure that your response reaches us before the stipulated closing date.

Please respond by completing the consultation response form and e-mailing or posting your response to the contact details below.

Further information and related documents

Large print, braille, audio CD and alternative language versions of this document can be made available on request.

Contact details

Postal address:

Policy Team
Value Wales
Economy, Science and Natural Resources Group
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ

Email:

procurementconsultation@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

¹“Welsh devolved functions” are functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales as defined in section 108 Government of Wales Act 2006.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, although we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow members of the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published.

The law however, also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Ministerial Foreword

Consultation on Regulation - Ministerial Foreword

This is an exciting time for procurement in Wales. The new powers that Welsh Ministers have secured to regulate on procurement matters in Wales, coupled with the opportunities presented in the Public Contracts Regulations 2015, marks the start of a new chapter for us. It provides fresh opportunity for us to identify areas important to Wales, co-develop effective procurement approaches and work together to embed the principles in the Wales Procurement Policy Statement into our procurement processes.

As Minister for Finance and Government Business, I am committed to driving this forward to ensure we get maximum value on the estimated £5.5bn procurement spend in Wales and realise wider benefits. We have travelled a transformational journey of procurement since the inception of the National Assembly for Wales and we are pleased that on many of the initiatives we have put in place have been acknowledged as leading the way, not just in the UK but also world-wide.

Procurement is now recognised as the important and strategic tool that it is and this is reflected in the Wales Procurement Policy Statement. I know that procurement is central to the delivering of vital public services that people in Wales rely on every day.

Gone are the days of procurement just being about price. Today, there are tremendous examples across the public sector in Wales of how procurement has been used as a lever to achieving wider socio-economic benefits. I have used procurement policy to promote fair and ethical employment practices in Wales and to help stamp out blacklisting; our new Ethical Code of Practice, due to be launched in October, will strengthen our stance on that further. Procurement has also played an important role in helping to tackle poverty and boost the Welsh economy through Community Benefits provisions which have created training and job opportunities for disadvantaged people and ensured that money spent in Wales, is money retained in Wales.

Gone are the days of keeping suppliers at arms' length and imposing onerous bidding requirements upon them. Today, we are listening to and learning from suppliers. Through the new Supplier Feedback Service we can constructively use supplier feedback to help improve public procurement processes in Wales and to inform policy development. Early supplier engagement is also a priority for the National Procurement Service which drives collaboration in Wales and has so far achieved savings of nearly £13m. The SQuID (Supplier Qualification Information Database) approach, combined with the cutting edge advances we have made with e-procurement in Wales, is saving suppliers time and cost in bidding for public sector work. More small and third sector suppliers are doing business in Wales than ever before as a result and successful joint bidding is at an all time high.

These are impressive results but I know that we can do more. Developing procurement regulation will enable that and provide fresh impetus to drive further improvements in Wales. We will not be producing policy in isolation; for it to be

effective and to maximise implementation, we are consulting with stakeholders and businesses to help inform our approach. Today, I am asking you to please take part in this consultation and share your views. Help us develop intelligent and innovative approaches that will help put procurement in Wales even more firmly on the map so we can look back in another twenty years time and be proud of the role we played in shaping and improving public procurement in Wales.

Jane Hutt
Minister for Finance and Government Business

Content

Introduction **Page 6**

Overarching Issues

Annual Procurement Returns **Page 10**

Community Benefits **Page 12**

Reserved Contracts **Page 15**

Breaking down Barriers **Page 16**

Collaboration **Page 20**

Social and other specific services **Page 22**

**Ethical supplier conduct in delivery
of public contracts** **Page 23**

Introduction

Annual Welsh Public Sector procurement expenditure amounts to approximately £5.5bn, representing over a third of the entire Welsh Government budget settlement from the UK Government.

Public procurement can have a profound impact on the delivery of front line public services and the communities and economy in Wales.

Therefore, the Welsh Government has long recognised the strategic importance of public procurement and its distinct policy approach, and has sought to deliver broadest added value from this expenditure.

The 2012 John McClelland review into “[Maximising the Impact of Welsh Government Procurement Policy](#)” observed that our public procurement policies, such as Community Benefits, were leading edge. However, the review concluded that the quality of deployment and implementation did not match the quality of the policy and its communication.

Specifically, of the 27 recommendations made in his review, McClelland proposed that:

- Welsh Government policy should be consolidated into a single ‘Policy and Practices’ document;
- Implementation of public procurement policy should be regarded as duty; and
- The Welsh Government strongly consider introducing legislation in the medium term.

Consequently, the Minister for Finance and Government Business published the [Wales Procurement Policy Statement](#) (WPPS) in December 2012, with a [refreshed version](#) being published in June 2015.

The WPPS supplements the flexible framework provided by the [Public Contracts Regulations \(2015\)](#) and clearly communicates the expectations of the Minister for Finance and Government Business, setting out the principles by which the Welsh Public Sector is expected to deliver its public procurement activity.

Integral to the WPPS, the Welsh Government has provided a programme of Procurement Fitness Checks for the Welsh Public Sector to help support the development of capability to adopt Welsh procurement policy and to deliver better outcomes from third party procurement expenditure.

The programme of Procurement Fitness Check reviews that have been completed to date have illustrated that whilst progress has been made, there remains opportunity to further embed Wales Procurement Policy, thereby optimising the value delivered through procurement.

The Welsh Government is therefore seeking to engage the views of interested stakeholders to help inform the development of procurement legislation which will enable the public sector and business to drive further value from the Welsh Public Sectors’ annual procurement expenditure.

Procurement Policy in Wales – the Context

Wales Procurement Policy Statement

The Welsh Government is committed to ensuring that procurement across the Welsh Public Sector is afforded the highest possible profile in order that greatest value can be derived from this expenditure.

The expectations of the Welsh Public Sector are set out in the [Wales Procurement Policy Statement](#), the ten principles of which are:

Strategic – procurement should be recognised and managed as a strategic corporate function that organises and understands expenditure; influencing early planning and service design and involved in decision making to support delivery of overarching objectives.

Professionally resourced – procurement expenditure should be subject to an appropriate level of professional involvement and influence, adopting the initial benchmark of a minimum of one procurement professional per £10m of expenditure across the wider public sector.

Economic, Social and Environmental Impact – value for money should be considered as the optimum combination of whole-of-life costs in terms of not only generating efficiency savings and good quality outcomes for the organisations, but also benefit to society, the economy, and the environment, both now and in the future.

Community Benefits – delivery of social, economic and environmental benefit through effective application of Community Benefits policy must be an integral consideration in procurement.

Open, accessible competition – public bodies should adopt risk based, proportionate approaches to procurement to ensure that contract opportunities are open to all and smaller, local suppliers are not precluded from winning contracts individually, or through roles within the supply chain.

Simplified, standard processes – procurement processes should be open and transparent and based on standard approaches and use of common systems that appropriately minimise complexity, cost, timescales and requirements for suppliers.

Collaboration – areas of common expenditure should be addressed collectively using standardised approaches and specifications managed by the National Procurement Service (NPS) to reduce duplication, to get the best response from the market, to embed the principles of the Wales Procurement Policy Statement for the benefit of Wales and to share resources and expertise.

Supplier Engagement and Innovation – dialogue with suppliers should be improved to help get the best response from the market place, to inform and educate suppliers and to deliver optimum value for money.

Policy Development and Implementation – deployment of policy which supports the achievement of the seven well-being goals for Wales as set out in the Well-being of Future Generations (Wales) Act (2015).

Measurement and Impact – in accordance with good management practice, procurement performance and outcomes should be monitored to support continuous improvement, and examples of good and poor practice openly shared.

Whilst adoption of the principles within the WPPS is not statutory, there is a strong Ministerial expectation they are adopted by the Welsh Public Sector.

Evidence gathered by the Welsh Government through the Procurement Fitness Check programme, and from periodical analysis of procurement expenditure, illustrates that those organisations who have developed progressive approaches in accordance with WPPS are delivering better outcomes.

Equally, those organisations that have been unable to fully adopt the WPPS are not necessarily realising the potential of their procurement activity and legislation is considered as a means for helping drive forward continuous improvement in procurement across the Welsh Public Sector.

Whilst all of the major public bodies have committed to adopt the WPPS, available evidence illustrates that application of the principles remains varied. The following section (Overarching Issues) seeks to set out those areas where the Welsh Government is considering options for legislating in order to improve adoption of key principles of the WPPS.

A summary of procurement maturity, as measured by the Procurement Fitness Check programme across the Welsh Public Sector is detailed in table 1 below:

Sector	Maturity Level	No. of Organisations
Local Government	0	1
Local Government	1	12
Local Government	2	3
Local Government	3	6
Local Government	4	0
Higher Education	0	1
Higher Education	1	4
Higher Education	2	2
Higher Education	3	1
Higher Education	4	0
Health	3	1

In August 2015, the Welsh Ministers secured a general designation on public procurement from the UK Government under Section 2(2) of the European Communities Act 1972. This designation provides the Welsh Ministers with new powers to introduce legislation on public procurement as it relates to the Welsh Public Sector.

Having undertaken initial consultation with public sector, business and social partner stakeholders, the Welsh Government is now seeking stakeholder views on a range of potential areas where legislation on public procurement may be utilised.

OVERARCHING ISSUES

The Welsh Government is committed to maximising the value of public procurement across the Welsh Public Sector. We are seeking stakeholder views on the potential scope and options for using the new powers secured in August 2015 which allow Welsh Ministers to introduce legislation on public procurement.

In this section, further information is set out on the areas being considered, which include:

- Annual Procurement Returns;
- Community Benefits;
- Reserved Contracts;
- Breaking down Barriers;
- Collaboration;
- Social and other specific services; and
- Ethical supplier conduct in delivery of public contracts.

Annual Procurement Returns

Context

The Welsh Government coordinates the delivery of the Procurement Fitness Check programme whereby the procurement capability of the Welsh Public Sector is assessed against a procurement maturity model. The procurement maturity model provides a definition of what good procurement looks like and helps the Welsh Public Sector to assess its capability against set criteria and to develop an action plan for improvement.

The first round of Procurement Fitness Checks was delivered up to 2014 and the next round is due to be delivered during 2016/17 financial year.

The outcomes of these Procurement Fitness Check reviews are made public and published on the internet at:

<http://prp.gov.wales>

Publication of the Procurement Fitness Check reports has provided visibility of procurement capability across the Welsh Public Sector.

The main issue

Outside of the Procurement Fitness Check programme, there is limited reporting across the Welsh Public Sector of outcomes achieved through public procurement. Where public bodies do report such outcomes there is no consistent format in which this information is made available. This means that there is no agreed approach to reporting against defined indicators which will help drive forward performance in procurement and increase adoption of the WPPS.

The current position

In accordance with the Wales Procurement Policy Statement, the Welsh Government is committed to producing an agreed standard returns template, which the Welsh Public Sector would complete on an annual basis. The template which will provide the basis for the Annual Procurement Return is planned to be completed and agreed by June 2016. Areas being considered for inclusion in the Annual Procurement Return are:

- Influenceable spend;
- Collaboration;
- Savings;
- Supplier feedback;
- Efficiency of the procurement function;
- Community Benefits;
- eProcurement;
- Sustainability; and
- Procurement capability

The annual reporting regime is planned to commence for the 2016/17 financial year. There is an expectation that returns would be submitted to the Welsh Government from the Welsh Public Sector in the first quarter of the financial year 2017/18.

Evidence for change

There is no standard format in place for the Welsh Public Sector for reporting outcomes achieved through procurement.

As is the case for other procurement information (eg, Community Benefits Measurement Tool, see reference in Overarching Issues section) requested by the Welsh Government from the Welsh Public Sector, it is not routinely provided where there is a no mandate to do so.

Why are we proposing a change?

To complement the information published from the Procurement Fitness Check programme the Welsh Government considers that the publication of an Annual Procurement Return and the visibility of performance across the Welsh Public Sector against an agreed set of indicators will help drive forward improvement in procurement capability, bring greater transparency and ensure maximum value for money. This will help secure better value for money and help maximise the impact of procurement for the communities and economy of Wales, supporting the delivery of better public services.

Proposals

It is proposed that legislation is introduced which requires the Welsh Public Sector to complete an Annual Procurement Return (in the format which is planned to be agreed by June 2016) for submission to the Welsh Government. Under this proposal, the requirement to complete such a report will commence in financial year 2017/18, reporting on the previous financial year, 2016/17.

Following receipt, the Welsh Ministers will publish the Reports that have been submitted.

We are interested to understand whether stakeholders consider that the Welsh Public Sector should be required to submit an Annual Procurement Report to the Welsh Government.

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?

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

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

Community Benefits

Context

The Wales Procurement Policy Statement sets out the expectation that the Welsh Public Sector should apply:

- A Community Benefits approach to all public sector procurements; and
- A measurement tool for all such contracts over £1m.

Community Benefits policy (www.prp.gov.wales) does not prescribe the nature of added value that should be delivered, but provides the Welsh public sector with a framework for utilising public procurement to deliver a wide range of added value:

- Employment and training opportunities;
- Opening up supply chain opportunities;
- Mitigating adverse environmental impacts.
- Recruitment & training of economically inactive people
- Promoting equality in the workplace
- Opening up opportunities for small organisations in Wales, such as SME, Third Sector Organisations and Supported Factories & Businesses

- Ensuring that disadvantaged groups are represented in the supply chain through working with these smaller organisations
- Making a positive impact on the environment
- Contributing to local community in terms of education, regeneration & community engagement

Main Issue

Although the Community Benefits is a cornerstone principle of the WPPS, to which the Welsh Public Sector is committed, evidence illustrates that this commitment is not resulting in the approach being applied to all relevant contracts.

Consequently, there is the likelihood that the wider value that can be attained through public procurement expenditure is not being achieved in all instances.

The Current Position

Since the first publication of the WPPS in 2012, which introduced an expectation that the Welsh Public Sector would apply Community Benefits policy and measure its impact across contracts.

The Community Benefits Measurement Tool was introduced in 2012 to help measure the impact of this policy approach. Since its introduction, 180 projects have submitted returns using this Tool.

Results from the first 180 projects measured using the Community Benefits Measurement Tool worth £1 billion, have resulted in 1,595 job opportunities and over 35,000 weeks of training, with 83% of the expenditure being reinvested in Wales on business and salaries.

Evidence for Change

The current position illustrated above indicates that there are 158 contracts with a value of £1m or more which have been advertised on www.sell2wales.gov.wales over the period 2015/16.

Therefore, this evidence suggests that there is still further scope to apply Community Benefits policy across the Welsh Public Sector and therefore deliver greater value from public procurement expenditure.

Why are we proposing a change?

As illustrated by the data gathered from the 180 projects that have reported outcomes using the Community Benefits Measurement Tool, application of this policy results in high levels of added value being delivered to the communities and economy of Wales.

Typically for every £1m contract spend there is the opportunity to see up to 52 weeks of employment and training delivered for economically inactive persons.

Evidence illustrates however that the Community Benefits policy does not appear to be applied to all relevant contracts as set out in the WPPS.

The wider application of Community Benefits policy will help the Welsh Public Sector achieve the goals set out in the Well-Being of Future Generations Act.

The introduction of legislation could provide the means for the Welsh Public sector to either be under a duty to apply, or a duty to have regard to, Community Benefits policy and the reporting of outcomes achieved through its application.

Proposals

Given the impact of Community Benefits through procurement, it is the Welsh Government's view that the Welsh Public Sector should have a duty to either apply or have regard to guidance issued by the Welsh Ministers in relation to Community Benefits for all contracts with a total value of £1m or more, as required by the Wales Procurement Policy Statement, and to report the outcomes achieved to the Welsh Government, using the Community Benefits Measurement Tool.

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?

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?

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?

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

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?

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

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

Reserved Contracts

Context

The Public Contracts Regulations (2015) make provision for the Welsh Public Sector to reserve the right to participate in a procurement process to sheltered workshops or suppliers whose main aim is the social and professional integration of disabled or disadvantaged persons, where 30% or more of their employees are disabled or disadvantaged.

The main issue

Where suitable contracts can be reserved, the successful suppliers provide routes to meaningful employment for people who may otherwise have difficulty in accessing work opportunities.

In addition, there is opportunity to reserve certain contracts for competition by newly formed co-operatives or mutuals.

Current position

The WPPS also sets out the expectation that the Welsh Public Sector will identify areas of expenditure which can be reserved for suppliers with a workforce of 30% or more disadvantaged employees or Identify areas of expenditure which can be reserved for suppliers with a social ethos, e.g. Co operatives and Mutuals, at first tender.

Evidence for change

Application of the provisions for reserving contracts has been very limited across the Welsh Public Sector and where it has been utilised, engagement with the subsequent contracts has been disappointing.

Since the introduction of the Public Contracts Regulations 2015, there has been little evidence via <http://www.sell2wales.gov.wales> of the use of the new provisions for reserving contracts.

Why are we proposing a change?

In support of the Welsh Government's Community Benefits policy, we are of the view that there is greater scope to use the provisions to reserve contracts and thereby deliver additional social value from the Welsh Public Sector's collective procurement expenditure.

Proposals

Therefore it is the Welsh Government's view that the Welsh Public Sector ought to be encouraged to use these provisions to a greater extent. We have considered several options to increase use of reserved contracts, for example placing a statutory duty on the Welsh Public Sector requiring them to consider the scope for reserving

contracts. However, it is the Welsh Government's view that the Welsh Public Sector should be legally required to have regard to policy guidance on the scope for reserving contracts.

We would like to understand stakeholder views on options for increasing the Welsh public sector's use of these provisions.

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?

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?

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

Breaking down Barriers

Context

The Wales Procurement Policy Statement contains a wide range of commitments which supports the Welsh Public Sector in reducing barriers for suppliers wishing to access public contracts in Wales.

These commitments include:

- Advertisement of all contracts over £25,000 on www.sell2wales.gov.wales;
- Publication of forward contract programmes;
- Breaking contracts into smaller 'lots';
- Use of the Supplier Qualification Information (SQuID) approach to supplier selection;
- Publication of contract award notices on www.sell2wales.gov.wales;
- Application of Joint Bidding guidance to encourage collaborative tenders; and
- Adoption of fair payment practices.

The main issue

There are three main area of focus for this consultation – contract advertisement, the SQuID approach and joint bidding which are dealt with in the following paragraphs.

Since the inception of www.sell2wales.gov.wales, major public bodies have used the platform to advertise their public contracts and there has been a steady increase in the visibility of lower value contracts. This has enabled smaller and more local suppliers to increase their share of Welsh Public Sector contracts.

The Welsh Public Sector has committed to using the SQuID approach to supplier selection and where it has been used, evidence illustrates that smaller and more local suppliers are able to progress through the pre-qualification phase of procurement and stand better chance of winning contracts. The SQuID approach to supplier selection supports the new European Single Procurement Document introduced by way of the Public Contracts Regulations 2015.

The Joint Bidding Guide (www.prp.gov.wales) was launched in 2013 and provides the Welsh Public Sector with policy guidance and practical measures which encourage bids from consortia made up of smaller suppliers. The Guide also provides advice to those suppliers who are considering forming joint ventures in order to bid for Welsh Public Sector contracts. The Guide has been applied to a range of pathfinder projects. Evidence from these pathfinders illustrates that application of the Guide has enabled smaller suppliers to form consortia and win contracts which would otherwise have been out of reach. Application of the Guide can support increased competition and drive economic growth. We are keen to see increased use of the Guide.

The Current Position

Application of all of these initiatives is on a voluntary basis and the Welsh Public Sector is currently under no obligation to use these approaches.

In the current financial year, approximately 3,700 contract notices have been published on www.sell2wales.gov.wales.

Of these totals, 2,700 contract notices were for contracts which fell below the threshold above which the Welsh Public Sector is obliged to advertise opportunities in accordance with the Public Contracts Regulations 2015.

The SQuID approach has been applied to less than 500 of the contracts advertised during this financial year on www.sellwales.gov.wales. This means that the approach does not appear to have been applied to 3,200 of these contracts.

Evidence for change

Since its launch in 2003, there has been a steady increase in the number of lower value contracts which have been advertised on www.sellwales.gov.wales. When taken as an average however, the current number of lower value contract opportunities advertised on www.sell2wales.gov.wales comes to around 50 for each Welsh Public Sector organisation which appears to be quite low, suggesting that not all contracts over £25k are actually being advertised.

Evidence has shown that in one sector where the SQuID has been applied, the approach has helped increase the participation of smaller more local suppliers in delivery of Welsh Public Sector contracts. For construction contracts valued in excess of £750k which have been awarded via www.sell2wales.gov.wales, indigenous contractors now win almost 70% of these awards, compared with just 30% prior to the introduction of the SQuID approach to supplier selection.

The piloting of the Joint Bidding Guide over twelve major frameworks and contracts resulted in consortia comprising smaller suppliers winning 6 awards.

Why are we proposing a change?

Suppliers based in Wales have increased their share of Welsh Public Sector procurement expenditure from 35%, to 52% over the period 2004 - 2012. The Welsh Government considers that the use of legislation to require adoption of policy initiatives which break down barriers and reduce the cost of procurement will enable smaller, more local suppliers to access and compete for Welsh Public Sector contracts.

Proposals

To help better embed Wales Procurement Policy which breaks down barriers for smaller suppliers, the Welsh Government considers that the Welsh Public Sector should:

- Have a duty to publish advertisement of all contracts over £25,000 on www.sell2wales.gov.wales, except for call-off contracts from pre-competed framework agreements;
- Have a duty to apply the SQuID approach to supplier selection for all contracts which require competition; and
- Have a duty to have regard to any guidance issued by the Welsh Ministers in relation to joint bidding when formulating procurement strategies.

We are interested to receive stakeholder views as to how some of these commitments may be strengthened through legislation, thereby improving visibility and access to Welsh public sector contracts.

Question 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?

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

(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?

(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?

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

Collaboration

Context

The National Procurement Service was established in 2012 with the objective of coordinating the procurement of common and repetitive expenditure across the Welsh Public Sector.

In doing so, the National Procurement Service is intended to be an important vehicle in driving forward the principles of the Wales Procurement Policy Statement by incorporating all of its requirements in to delivery of a collaborative procurement programme.

The National Procurement Service is one of a number of Central Purchasing Bodies from whom the Welsh Public Sector may access pre-competed contracts and framework agreements for the supply of common and repetitive expenditure.

The main issue

A significant majority of Welsh Public Sector organisations have committed to use the contracts and agreements put in place by the National Procurement Service. This commitment is considered on a case-by-case basis and individual Welsh Public Sector organisations may present a case for opting out of specific contracts.

Cases for opt-out of National Procurement Service contracts have been put forward on the basis that large, national frameworks are considered to rule out the involvement of some organisations' local supply base and that the products available via the arrangements are not consistent with local user preferences.

Current position

Where organisations choose not to engage with contracts let by the National Procurement Service or utilise agreements let by other Central Purchasing Bodies, this can increase the cost of procurement for business and can take away from the benefit of organising all Wales, all public sector contracts.

Although there is an opt-out process to consider cases for not engaging with NPS contracts, the Welsh Public Sector is not obliged to agree with any decisions in this respect.

Evidence for change

Collaborative expenditure and associated savings cannot be maximised and local procurement teams end up having to duplicate effort by seeking to manage activity which is also being coordinated by the National Procurement Service, or other Central Purchasing Bodies.

To overcome this, it is an option to require that Welsh Public Sector organisations utilise specific collaborative contracts or framework agreements which have been let by Central Purchasing Bodies where these contracts can demonstrate that they

represent best value for money. Such a step has been taken in other parts of the UK, where the Home Office has mandated the use of specific contracts for the Police sector.

Why are we proposing the change?

We consider that the use of specific contracts and/or framework agreements let by Central Purchasing Bodies, supported by strong engagement from the Welsh Public Sector provides a great opportunity to maximise the value of the collective procurement activity across the areas of common and repetitive expenditure.

Such arrangements can deliver against important aspects of the Wales Procurement Policy Statement and also allow local procurement teams to focus their scarce resources on driving value from expenditure not managed by Central Purchasing Bodies, such as construction and social care.

We would be interested to hear stakeholder views on whether legislation should be used to require that the Welsh Public Sector should have a duty to utilise specific contracts let by Central Purchasing Bodies?

Proposals

The Welsh Government is of the view that there should be a process by which specific contracts are identified to which the Welsh Public Sector should be legally required to use.

The process for identifying these contracts will take value for money factors into account including but not limited to the impact on the Welsh Public Sector's purchasing leverage if there is not 100% commitment from the Welsh Public Sector; the availability of other purchasing arrangements which have been let by other Central Purchasing Bodies; and the impact on supply chains and markets.

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?

Social and other specific services

Context

Regulations 74-77 of the Public Contracts Regulations 2015 set out the basis on which Welsh public sector contracting authorities should procure a range of social and other specific services.

The range of services covered by this provision is listed in Schedule 3 to the Public Contracts Regulations 2015.

The main issue

Article 76 of the Public Procurement Directive (2014/24/EU) provided for a member state to put in rules for the award of contracts covering these services. The Directive as transposed into UK law through the Public Contracts Regulations 2015 is silent on this matter and does not mandate either of the available options on which contracts for these services may be awarded – most economically advantageous tender, or lowest price.

The current position

In the absence of specific rules, the Welsh Public Sector is free to choose the criteria for awarding contracts for the range of services listed in Schedule 3 to the Public Contracts Regulations 2015.

This may result in inappropriate criteria being selected for award of these contracts.

Evidence for change

Evidence illustrates that the best outcomes from procurement are generally driven by a combination of quality and price criteria.

Why are we proposing a change?

Given that the sort of services listed in Schedule 3 to the Public Contracts Regulations 2015 involve delivery of front line public services to vulnerable members of the public, the Welsh Government considers that there should be limited scope for awarding contracts of this nature on the basis of lowest price.

Proposals

We are interested in receiving stakeholder views as to whether the Welsh public sector should award contracts for the services listed in Schedule 3 to the Public Contracts Regulations 2015 in accordance with specific rules relating to contract award criteria.

We are of the view that we should mandate the use of most economically advantageous tender criteria as the only basis for awarding contracts under regulations 74-77.

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?

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?

Ethical supplier conduct in delivery of public contracts**Context**

The Welsh Government is committed to ensuring that suppliers engaged in the delivery of Welsh Public Sector contracts observe high standards of ethical conduct.

Employees of businesses, and their supply chains, engaged in delivering our contracts are entitled to fair employment conditions. Furthermore, sub-contractors deserve to be treated fairly and with respect, particularly in respect of payment terms down the supply chain.

From time to time, the Minister for Finance and Government Business has published Procurement Advice Notes (PANs) and these have been issued to the Welsh Public Sector by the Welsh Government, requesting that unfair business practices (for example, blacklisting and employment practices in public projects) are managed through public procurement. Welsh Public Sector organisations are responsible for cascading this information to all relevant parts of their respective organisations.

The main issue

The PANs currently carry no statutory weight and the Welsh Public Sector can choose whether or not to apply all of the requirements of the notes.

Application of the PANs is a requirement of the Wales Procurement Policy Statement. However, evidence illustrates that their deployment is not as widespread as is required and consequently, opportunities are being lost for using public procurement as a strategic lever for driving ethical conduct and practices by main contractors and their supply chains.

Current Position

Article 18(2) of the EU Public Procurement Directive sets out that

Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

This article was not transposed into the Public Contracts Regulations 2015.

Evidence for change

The PANs carry no legal status in their own right and therefore, the Welsh Public Sector has the freedom to determine whether to apply all of the requirements of the notes.

This is limiting the impact of certain policies and diminishing the value of procurement expenditure in its widest sense. For example, evidence has recently emerged that the PAN on Employment Practices on Public Funded Projects, issued in May 2015) is not being deployed to best effect. This means that workers have been engaged on public projects and been subjected to exploitative conditions of employment.

Why are we proposing a change?

The Welsh Government is committed to ensuring that suppliers engaged in the delivery of public contracts observe the highest standards of ethical conduct and business practice.

These standards should be driven by the Welsh Public Sector and wider application of PANs will help effect this change. The Welsh Public Sector is not currently compelled to comply with the PANs and their application will be improved if there is a legal obligation to so.

Proposals

The Welsh Government is considering the most effective approach for strengthening the deployment of the PANs by the Welsh Public Sector, and considers that the Welsh Public Sector should be under a legal duty to either apply or have regard to guidance issued by the Welsh Ministers in relation to collective agreements regarding environmental, social and/or labour law.

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?