

Council for Economic Renewal

Public Procurement – Designation and Joint Bidding

Background

1. Further to the general procurement update tabled at the May meeting of the Council, it was agreed that a paper would be produced to provide information on opportunities presented as a result of securing a general designation on public procurement and an update on the deployment of joint bidding guidance.
2. I am also pleased to have been in communication with Wales TUC regarding reserved contracts and the paper also addresses this important matter.

Designation Order

3. The UK Government agreed in March 2015 that the Welsh Government would be granted a general designation order on public procurement under section 2(2) of the European Communities Act 1972.
4. The designation was agreed by Privy Council on 15 July and came into effect on 13 August by way of Statutory Instrument (SI) 2015/1530. The SI sets out that “The Welsh Ministers are designated in relation to public procurement by contracting authorities whose functions are wholly or mainly Welsh devolved functions”.
5. I have pursued these additional powers to drive forward adoption of the Wales Procurement Policy Statement (WPPS) and to also take advantage of the new developments within the modernised EU Public Procurement Directive.
6. Securing these powers is an important milestone for procurement policy in Wales.
7. The powers allow Welsh Ministers to:
 - Consider any aspects of the EU Public Procurement Directive not transposed by the UK Government which the Welsh Government may wish to regulate upon; and
 - Make regulatory provision to support deployment of Wales’ Procurement Policy where such policy deals with matters arising out of or related to any obligations within the EU Public Procurement Directive.
8. The powers allow Welsh Ministers to introduce secondary legislation and will be used to further reduce barriers to business engaging in public procurement and to support delivery of efficient public services.
9. I have announced that one of the first areas where I will seek to use these new powers will be in support of community benefits policy. I anticipate that, in addition to community benefits, regulation will also support adoption of standardised approaches such as the SQuID, e-procurement and application of important ethical guidance on matters such as blacklisting and employment practices.

10. My Value Wales officials are working with Legal Services to map out the process and scope regulation which will enhance the WPPS and have maximum, early impact in delivering economic, social and environmental benefit to Wales.
11. In developing Welsh procurement regulation, we will explore how this can maximise the potential of provisions within the EU Directive including:
 - Positive discrimination of businesses with a workforce comprising 30% or more disabled or disadvantaged workforce;
 - Better dialogue with suppliers to encourage more innovative proposals; and
 - Support for mutual and cooperatives to enable them to become established before experiencing the full EU procurement regime.
12. As with policy, effective regulation will depend on the input of key stakeholders and the social partners will be fully consulted to help inform our approach.
13. I anticipate that our first procurement regulation will be finalised and introduced during 2016. I will provide a statement on progress in December.
14. Whilst we work on developing our procurement regulation, we will continue to focus on growing capability in Wales to take early advantage of the positive developments and enabling framework that the EU Directive provides.

Joint Bidding Procurement Policy

15. Due to the value and complexity of some of the contracts let across the public sector, they can sometimes be out of reach for some of our smaller suppliers in Wales to bid for on their own.
16. In addition, new models of delivery can provide better value for money to the tax payer through providing more responsive, innovative solutions to service requirements.
17. The WPPS makes it clear that all contracts should be open and accessible to all suppliers and therefore, the approach to procuring these larger contracts is critical to achieving this objective.
18. In support of this, I launched the Joint Bidding guide in October 2013 to provide public sector buyers and suppliers with practical guidance for shaping procurement opportunities so that they are open to collaborative bids and for suppliers to help form the appropriate agreements to come together to try and win this work.
19. The guide was developed in collaboration between Wales Co-operative Centre, WCVA and Value Wales.
20. On launching the guidance, I announced that a series of around twelve demonstration projects would be supported to test this guidance, promulgate its application and share lessons learned.

21. Implementation of the guidance has been overseen by a Steering Group, jointly chaired by Cardiff University and Value Wales and membership comprises social partners, local authorities and academics.
22. Support for delivering these pilot projects has been provided to buyers through my Value Wales team and suppliers have been assisted by the Wales Co-operative Centre and Business Wales.
23. Success criteria for the pilot projects were defined, including:
 - New consortia were formed to submit bids;
 - Every project involved early market dialogue to allow sufficient time to form joint teams;
 - Process was deemed to be fair;
 - The pilots covered a range of markets, contract values and inclusion of the third sector; and
 - It was hoped that some of the projects would be won by consortia bids.
24. The pilot projects are now all drawing to a close and evidence illustrates that all of the defined success criteria have been met.
25. Pilot projects have included the £1.4m Families First programme in Carmarthenshire; £21m housing works framework in Caerphilly; £400m schools construction framework let by Rhondda Cynon Taf; £16m Accelerated Growth Programme awarded by Welsh Government; and a series of contracts let by the National Procurement Service.
26. As of July, five of the demonstration projects had seen appointment of consortia as successful bidders, including the Allied Construction Consortium who won a place on Caerphilly's £21m housing works framework. At least two of these consortia are new collaborations. A number of pilot projects remain underway.
27. Early evidence illustrates that the consortia which have succeeded in winning the business are performing well in contract delivery.
28. A comprehensive lessons learned report will be completed by October. I will be delivering a keynote speech at an event in November to communicate the outcomes from the pilot projects.
29. I am pleased that the Wales Co-operative Centre has secured funding and is working in tandem with the Welsh Government's Business Wales team to provide support to business to adopt this approach.
30. A range of channels will be utilised to raise awareness of the approach and the positive impact of the pilot projects so that public bodies embrace the guidance and embed it within their processes.
31. I will continue to monitor adoption and impact of the Joint Bidding guide so that it becomes embedded and used as standard across Wales.

Reserved Contracts

32. The 2004 EU Public Procurement Directive contained provision for contracts to be reserved for sheltered workshops with a workforce of 50% or more disabled employees.
33. The modernised Procurement Directive which was finalised in 2014, and transposed into UK law in February 2015, provides greater scope to reserve contracts:
 - For businesses with a workforce comprising 30% disabled or disadvantaged employees; and
 - For specific services which may be provided by co-operatives and mutuals.
34. The inclusion of the term 'disadvantaged' is significant and offers wide ranging interpretation. It is a development that we have identified for exploiting for the benefit of Wales.
35. We have shown through our Community Benefits programme that we will develop policy that pushes legislation to its farthest boundary. We will take the same approach with these new provisions so as to use public procurement as a strategic enabler to help support the provision of gainful employment for people across Wales who may otherwise not have had such opportunity.
36. I welcome the Wales TUC campaign and I am discussing this further to establish the full potential that can be delivered working across Government and in collaboration with social partners.
37. It will be important that we develop approaches that do not adversely impact or create displacement to parts of the Welsh economy. We will require that contracting authorities deploy procurement strategies that are informed by the capability and capacity of the market so that the best value for money delivery model is selected.