

## **Small Business, Enterprise and Employment Bill - Reforms to public procurement**

Consultation response from Social Enterprise UK

### **About Social Enterprise UK**

Social Enterprise UK was established in 2002 as the national body for social enterprise in the UK. We are a membership organisation. We conduct research; develop policy; campaign; build networks; support individual social enterprises; share knowledge and understanding; support private business to become more socially enterprising; and raise awareness of social enterprise and what it can achieve.

Social enterprises are businesses driven by social or environmental objectives whose surpluses are reinvested for that purpose in the business or in the community. They operate across a wide range of industries and sectors from health and social care, to renewable energy, recycling and fair trade and at all scales, from small businesses to large international companies. They take a range of organisational forms from co-operatives and mutuals, to employee owned structures and charitable models.

Our members come from across the social enterprise movement, from local grassroots organisations to multi-million pound businesses that operate across the UK. The UK social enterprise movement is recognised as a world leader and our members are united in their commitment to changing the world through business. The current climate presents the social enterprise movement with a unique opportunity. We know it can solve some of the UK's most pressing problems, promote social justice and help to bring about the more diverse, bottom-up economic growth that we urgently need. In particular, social enterprises are well placed to deliver on the Government's three priorities for civil society: empowering communities, opening up public services and promoting social action.

The Government is now consulting on a new power in the Small Business, Enterprise and Employment (SBEE) Bill to help small businesses gain better access to public sector contract opportunities. The intended enabling power would allow the Government to introduce a range of measures to streamline procurement and reduce barriers as the need arises. We understand that the Government plans to consult later on any secondary legislation proposed which arises from the enabling power

The Government is now consulting on how an enabling power could in particular be used to require procuring authorities to:

**Social Enterprise UK** The Fire Station, 139 Tooley Street, London, SE1 2HZ  
**T:** 020 3589 4950 **E:** info@socialenterprise.org.uk **www.socialenterprise.org.uk**

Company number 4426564. The Social Enterprise Coalition is a company limited by guarantee registered in England and Wales.



# the voice for social enterprise

- run an efficient and timely procurement process;
- make available, free of charge, information or documents, or processes necessary for any potential supplier to bid for a contract opportunity;
- accept electronic invoices.

Please see our response to the consultation questions on behalf of our members below. In summary, we believe the enabling power needs to be wide enough in scope that it can be used to implement recommendations arising from Lord Young's review of the Public Services (Social Value) Act.

Whilst we cannot predict the outcome of the review, its remit is published and it is possible to see that several possible recommendations may require a mechanism to deliver them, for example, if the review leads to a government commitment to, for example, force commissioners to report on their consideration of social value, then it would be sensible for the government to have the ability to implement this through the enabling power. Therefore, this Bill should consider small businesses and social value as it progresses.

**Social Enterprise UK** The Fire Station, 139 Tooley Street, London, SE1 2HZ  
T: 020 3589 4950 E: [info@socialenterprise.org.uk](mailto:info@socialenterprise.org.uk) [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

Company number 4426564. The Social Enterprise Coalition is a company limited by guarantee registered in England and Wales.



**Question 1 - Please explain the key points which you feel are essential for i) ensuring an efficient and timely process for public sector contracts, and ii) ensuring that the considerations of small businesses are integrated into the procurement strategy.**

Our response<sup>1</sup> to the Government's 2013 consultation 'Making public sector procurement more accessible to SMEs' sets out our views with regard to the new measures to increase SME participation in public procurement.

Disappointingly, in many public service areas we are still seeing the increasing trend towards the aggregation of contracts, which is precluding more and more SMEs and VCSEs from bidding. Indeed, there are some very contradictory messages between the Government's commitment to localism and SME participation and recent policy from the Ministry of Justice and the Department of Health, for example. We can provide further evidence if required. This contradiction between policy and practice confuses SMEs and VCSE organisations and compromises policy objectives and their credibility. Strong new powers could make a real difference.

**Question 5 - Can you identify specific areas of the procurement life cycle (including but not limited to pre-market engagement, commercial strategy, sourcing, tender evaluation, contract management) where you think the public sector can improve? How can the proposed measure in the Bill help deliver these improvements?**

We believe this bill and the intended enabling power can create a significant opportunity for the government to not only ensure efficient and timely processes for public sector contracts, and that the considerations of small businesses are integrated into procurement but also to deliver better value for money in public service commissioning and procurement more widely.

Social Enterprise believes that the Public Services (Social Value) Act needs statutory guidance. Alternative to, or complementing such guidance, the enabling power may be an appropriate vehicle to:

---

1

[http://www.socialenterprise.org.uk/uploads/editor/files/SME\\_procurement\\_consultation\\_S\\_EUK\\_and\\_Locality\\_1.pdf](http://www.socialenterprise.org.uk/uploads/editor/files/SME_procurement_consultation_S_EUK_and_Locality_1.pdf)

**Social Enterprise UK** The Fire Station, 139 Tooley Street, London, SE1 2HZ  
**T:** 020 3589 4950 **E:** info@socialenterprise.org.uk **www.socialenterprise.org.uk**

Company number 4426564. The Social Enterprise Coalition is a company limited by guarantee registered in England and Wales.



# the voice for social enterprise

- oblige public bodies to publish their social value priorities and ensure that contracts are weighted towards them
- weigh performance under previous contracts as part of the decision-making process in procurement decisions.
- ensure that public bodies account for how social value is generated in commissioning and procurement
- make sure that bidders for public sector contracts are transparent about their tax arrangements, meets Fair Tax Mark standards, pays the Living Wage and meets appropriate targets on apprenticeships.
- Guarantee that no single supplier should be allowed to take up more than 20% of a public body's budget, or have more than a 20% share of an important public service market. This would include services delivered in supply chains.

In addition to how the enabling power could be used, we want to see a properly resourced training and guidance programme for contracting authorities that includes a specific focus on encouraging small organisations to realise their potential as shapers and providers of public services. This should highlight the advantages of dividing contracts into smaller lots, and encourage procurers to provide support for consortia formation. We also want the Government to monitor and evaluate the size of the contracts being awarded with a view to ensuring future markets include a sufficiently diverse range of providers. Encouraging a diverse range of providers is essential for the health of future markets in public service provision.

We agree with the Government in their recent consultation on the transposition of new EU procurement law that division of contracts can encourage SME access and that the decision on whether or not to divide into lots, and if so the number and types of lots, should be left to the discretion of each contracting authority or entity case-by-case. But there should be greater emphasis placed on the principle of subsidiarity and ensuring that the default principle should be that public services are designed, commissioned and procured at a level as close to the citizens as possible, unless there is a case otherwise. So while we welcome the Government's decision to allow contracting authorities discretion over whether to split large contracts into smaller lots, and where applicable explain their reasons for not doing so, we believe this approach is rather upside down. Instead, contracting authorities should have discretion over whether to combine smaller contracts into larger lots and where applicable explain their reasons for doing so.

We also believe that the Social Value Act should be extended to apply to the purchasing of goods and works and the management of assets, including investments and disposals of capital, land and other assets;

**Social Enterprise UK** The Fire Station, 139 Tooley Street, London, SE1 2HZ  
T: 020 3589 4950 E: [info@socialenterprise.org.uk](mailto:info@socialenterprise.org.uk) [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

Company number 4426564. The Social Enterprise Coalition is a company limited by guarantee registered in England and Wales.



**Question 7 - How can the Government ensure that procurement pipelines showing future business opportunities are made more accessible and relevant?**

We support the Government's decision to mandate that all public procurement opportunities and award notices for public contracts over £25,000 be accessible from Contracts Finder, but believe that much more must be done to make this outlet user-friendly for social enterprises and SMEs.

**Question 8 - Could additional transparency measures, such as rights for public sector organisations to publish pricing data and contract documents, help deliver efficient and timely procurement processes across the public sector? Please explain further.**

FoI powers should be extended to companies delivering public services (taking into account proportionality and appropriate timeframes) and open book accounting should be rolled out for all public- sector contracts worth more than £250,000.

Contracting authorities should ask bidders to indicate in their proposals any share of the contract they may intend to subcontract to third parties and any proposed subcontractors. This should be a basic requirement of transparency and openness in public services.

Prime contractors should be required to publish timely data on referral volumes and work flows throughout their supply chain and subcontractors should provide comparable performance data. When submitting a bid for a public service contract it is essential that a prime contractor clearly indicates the composition of their supply chain and which organisations will deliver the various components of the service. For a prime contractor to be held to account for any commitment made, there needs to be full transparency throughout the supply chain. The government should also make it compulsory that contracting authorities ensure their prime contractors publish timely data on referral volumes and work flows in £ value throughout their supply chain.

Public bodies should release data on contracts, coverage of services including places and beneficiaries covered, terms of contracts, unit costs, Key Performance Indicators, and outcome data.

**Social Enterprise UK** The Fire Station, 139 Tooley Street, London, SE1 2HZ  
T: 020 3589 4950 E: [info@socialenterprise.org.uk](mailto:info@socialenterprise.org.uk) [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

Company number 4426564. The Social Enterprise Coalition is a company limited by guarantee registered in England and Wales.

