

**SOCIAL ENTERPRISE UK  
RESPONSE TO THE DEPARTMENT FOR  
WORK AND PENSIONS' CONSULTATION  
ON THEIR COMMISSIONING STRATEGY  
2013**

**ABOUT SOCIAL ENTERPRISE UK**

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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. With them we are:

- creating a better environment for social enterprises to do business
- helping the social enterprise movement to grow and become stronger
- building networks to share, learn and create business opportunities

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.

## **THIS SUBMISSION**

Social Enterprise UK welcomes the opportunity to respond to the DWP's consultation on its commissioning strategy. Many of our members work to support employment, job creation and inclusive approaches to enabling people to engage with the labour market. They often work with the long-term unemployed and are driven by a desire to deliver opportunity for all and social justice. Our responses to a number of the questions in the consultation on behalf of our members are provided below.

*Q1: How should DWP balance its responsibility to strategically manage and steward a large, developing market with our desire to maintain and develop the right specialist capability throughout the supply chain? Please consider contracting arrangements in your answer.*

Social enterprises and the wider third sector have many longstanding concerns when it comes to the delivery of public services, such as the terms and timing of payments, the balance of risk and more. For many years, across a wider range of public service, social enterprises and civil society organisations have persuaded government to consider these in their contracting models. Government has responded positively to these, at least in policy if not in practice, recognising the need to maintain and support a healthy and diverse provider landscape. As the role of the private prime provider becomes more significant, it is crucial that these principles – as set out in, for example, the Compact or Treasury’s Guidance to Funders – are cascaded down to prime providers. DWP therefore needs to consider what responsibilities to sub-contractors it wants to impose upon prime providers the sector if it wants to maintain a healthy and diverse market place. If DWP wants social enterprises and wider civil society to play a successful role in delivering services, it will need to adopt an interventionist market stewardship role, by imposing appropriate conditions on primes.

*Q2: How can we make competition more effective? How can we break down the barriers to market entry through our contracting, for both our larger and smaller contracts? How could we increase competition through the procurement process? What role can Open Data play?*

DWP should be mindful of the current process of EU procurement modernisation which looks set to allow public commissioners greater flexibility when it comes encouraging a greater diversity of providers, contract size, the inclusion of social value and taking into account mutual and social enterprises. For the latest update on this process, please see Cabinet Office website.

*Q3: DWP wants to work with the market to improve the effectiveness of subcontractual relationships. What, if any, changes should be made to the Code of Conduct? What are your views on the way the Merlin Standard is used? How can we create supply chains with the inbuilt resilience and flexibility to cope with changing requirements and circumstances?*

Social Enterprise UK’s members have reported mixed experiences of the prime and sub-contracting model across different service areas. Examples of good practice have included primes supporting their VCSE subcontractors to build their capacity, and in some areas where prime contracts are suitably sized, social enterprises have succeeded in winning prime contracts, which has enabled them to draw on their in-depth local knowledge to ensure a diverse VCSE delivery network that meets the needs of local people.

The diversity of experiences with the prime contracting model has been attributed in part to differences in the scale of the contract and the geography it covers, which can determine whether a diversity of providers are able to participate. For example, one organisation reported that “primes covering large areas often don’t have the local knowledge of providers in a particular geography and so don’t procure a diverse range of services”.

In other areas, members have reported strategic issues with the Work Programme as a prime model, including restrictions on transparency and the reporting of outcomes and performance data. For example, sub-contractors can find themselves operating without knowledge of their prime's targets, which makes managing their own performance far more complex.

Often these contracts work best where the prime is responsible for contract management but is not a frontline delivery organisation themselves. This allows for greater transparency in how cases are aligned, and more equal partnerships between primes and subs. Tensions and unfairness commonly arise when both the prime and sub-contractors deliver the services, as in these situations the primes prioritise their own service delivery functions, only passing through complex and costly cases to the sub-contractors.

Social Enterprise UK therefore believes that prime contractor models are most suitable when operated at a level where contracts are small and local enough to attract competition from a wide and diverse pool of potential providers.

*Q4: What steps does DWP need to take, across its commissioning (from large-scale national programmes to small-scale local commissioning), to maintain and promote a level playing-field for providers?*

The Government has consistently encouraged the "creation and expansion of mutuals, co-operatives, charities and social enterprises" and called for "these groups to have a much greater involvement in the running of public services". Social Enterprise UK has welcomed this along with the Government's commitment to ensuring a "truly level playing field between the public, private and voluntary sectors", and we believe that the creation of a mixed market with a level playing field will ensure that the public have a greater choice between diverse, quality providers.

Alongside this, the Government has made strong commitments to develop a broad package of reforms designed to significantly open-up the public sector marketplace to Small and Medium Enterprises (SMEs), which are also relevant to social enterprises.

In order to support these commitments, a number of initiatives have been pursued by Government including improving public procurement transparency and accountability through the contracts finder and mystery shopper service; improving procurement processes by cutting red tape and bureaucracy on smaller contracts; the requirement to develop departmental strategies on SME involvement; supporting the practice of embedding social value in procurement through the Public Services (Social Value) Act; and developing training for commissioners including elements on working with voluntary and community organisations and social enterprises (VCSEs) through the Commissioning Academy and prior to this the National Programme on Third Sector Commissioning (NPTSC).

Whilst these developments are welcome and are designed to address barriers to effective procurement, and anecdotal reports suggest they have raised awareness of social enterprise, we do not believe that they do not yet go far enough.

Indeed, in November 2012 Social Enterprise UK conducted significant research into the public services industry in the UK, the findings of which were reported in the [Shadow State](#). The report found that due to insufficient oversight of public procurement at a macro level, the UK public service market has seen the development of oligopoly providers that are too big to fail.

Crucially, we believe that if the government wishes to realise its ambitions for a mixed market of providers, it is essential to support commissioning that is cognisant of commissioners' role as market shapers and stimulators to support market entry for diverse providers.

A concern raised by many and highlighted in our report the Shadow State, is that in some service areas such as the Work Programme, prime contracts are so large that only a few organisations are large enough to compete for contracts. In addition, mergers are taking place between some of the prime contractors, resulting in even fewer organisations managing these contracts. As a result, we are in danger of creating an oligopoly market where a handful of providers become too big to fail.

A consistent barrier to entry reported by social enterprises, which are often small, community-based organisations, is that the trend towards the aggregation of contracts precludes market entry for small and medium sized organisations. This is a concern shared by the voluntary sector as well as traditional SMEs and runs counter to the Government's commitment to Localism and SME participation.

At the procurement stage, small organisations are often disadvantaged by the level of resources required to participate in the processes surrounding large contracts. For example, one social enterprise with a £1million turnover reported that each tender they complete costs £50,000, which proportionally to their turnover creates an unsustainable burden.

In addition, many contracts are just too large for most VCSEs to compete for. Consortia-building initiatives have been developed in some areas and prime/sub-contracting models have been explored by others – for example, in the North West the sector has been making efforts to build consortia and engage with larger contracts through Converge, which enables medium sized local organisations to deliver collectively or find partners for collaborative bidding. However, such developments require investment and at present are unable to keep pace with the speed at which they are need due to small contracts disappearing.

Social Enterprise UK would therefore caution against any centralisation of procurement that results in further aggregation, as this runs entirely counter to the aim of fostering a plural market of providers that includes VCSEs.

*Q5: How should DWP develop the role of social investment in our commissioning?*

DWP's principal levers are around contract design and management. It is not clear what role DWP should play, if any, in supporting the development of social investment. Social investment, after all, is something which citizens, communities, investors, trusts and foundations might do – in contrast to public investment undertaken by the state.

Nevertheless, the DWP should be conscious of how social enterprises and other providers may struggle to access appropriate finance, particularly since the financial crisis and despite various public interventions to support social sector access to finance. Therefore, DWP should work closely with other departments, the Big Lottery, Big Society Capital and other social investors to ensure social enterprises who wish to play a role in delivering services on behalf of DWP are able to attract appropriate finance. DWP should also consider the potential for collaboration with, for example, large housing associations, large social enterprises providing health and social care, private providers and others who could play a critical role in supporting access to finance given the nascent stage in the development of the so-called social investment market.

*Q6: How should DWP design outcomes and service standards for the hardest-to-help within outcome-focused payment models?*

DWP should be mindful of the perverse incentives created by payment-by-results models, such as the so-called creaming and parking model.

*Q7: How can DWP efficiently and effectively monitor and manage service quality within the wider framework described in this document?*

Monitoring and managing service quality presumes the existence of basic data and information with regard to service provision. As a starting point, Social Enterprise UK argue maintain that it is in the taxpayer's interest that the Department insist upon:

- A public right to information: The Freedom of Information (FOI) Act and the powers that support transparency urgently need reviewing. As outsourcing of public services expands, the public's right to information is shrinking. The Act only applies to information that a public authority holds about a contract or which it can compel a contractor to supply to it, rendering the powers of the Act no longer fit for purpose. FOI powers should be extended to companies delivering public services, but these should be revised to take account of proportional cost burdens on smaller providers, appropriate timeframes for independent contractors, and clear guidelines on information that contractors are required to provide under FOI.

- Rolling out open book accounting: Open book accounting should be rolled out with supportive guidance for all public sector contracts worth more than £250,000. When adopted effectively, open book accounting can mitigate against excessive profiteering, increase transparency, improve the sharing of risk and promote more effective partnerships where all partners are motivated to find the most effective solutions.
- Taking past performance into account: Performance under previous contracts should be explicitly weighed up as part of the decision-making process in procurement decisions. At present, when evaluating tenders public authorities rarely have information on whether bidders have previously breached their commitments in other tenders with other public authorities. Public authorities should be allowed to take into account relevant information 'a priori' (during the selection phase) on bidders, including bidders' prior track record both positive and negative. Consideration should be given to the development on 'quality of work' indicators that would help public authorities in this process.

*Q9: How, when assessing bids, should we balance price and quality?*

*Q10: How can DWP incentivise innovation in future welfare-to-work commissioning? How can we capture and share practice derived from successful innovations? What are the barriers?*

*and*

*Q12: Working within the high-level framework articulated in this document, how could DWP become a more flexible partner, nationally and locally – what are the barriers to more effective partnerships?*

In order to utilise the knowledge and expertise that professional service deliverers have and foster innovation, government must counter unconfident commissioners resorting to what is perceived as 'safe commissioning' rather than commissioning for outcomes that can truly transform people's lives, to ensure that new entrants with innovative solutions are able to enter the market.

Best practice commissioning should be sufficiently flexible within service specifications to allow for innovation and should develop mechanisms to share risk rather than rely on heavy procurement. It should further engage with social enterprises and civil society organisations at the service design stage to access their specialist knowledge of local communities and service users, as well as incorporating service users' feedback in evaluation processes.

In line with this, a culture change is required which moves public procurement beyond viewing risk as a purely financial matter. Risk calculations must be broadened to take

delivery outcomes and market plurality issues into account in order to ensure that maximum benefits are delivered to the public.

There will always be a role for grants and innovation funding across any area of public services. The forthcoming EU procurement reforms identify a role for so-called Innovation Partnerships. A similar model is already being trialed in Scotland, known as Public Social Partnerships. The DWP should learn from these models and reserve a proportion of their funding to support the development of such models, learning from experience.

*Q13: What are the current barriers to co-commissioning?*

The principal barrier to co-commissioning is the silo-ed nature of the state, in contrast to a mind-set which considers the wider taxpayer perspective or 'The Crown'. Departments, local authorities and others consider only outcomes particular to them rather than to the public finances or society as a whole. The tone of the wording to question 14 of this consultation is an example of how a narrow departmental perspective acts a barrier to co-commissioning.

*Q14: DWP recognises the importance of the Social Value Act, but also has a clear remit to deliver sustainable employment outcomes which offer good value-for-money to taxpayers. How can DWP best consider Social Value through its commissioning?*

The wording of the question (the use of 'but' in particular) is concerning and suggests both a scepticism about the Department's obligations under the Act and a misunderstanding about how commissioning for social value actually reinforces value for money for taxpayers.

At a time when there are considerable constraints on public spending, it is more important than ever that public spending is recognised not just as a purchasing tool but also as a public policy lever in order to address the needs of the public intelligently and maximise efficiencies and outcomes.

Embedding a culture of social or best value should not be seen as an anathema to good value. Indeed as well as delivering benefits for the community beyond the immediate focus of a contract, by tackling multiple needs this approach can also give rise to cross-departmental or cross-organisational efficiencies – savings that feed directly back into the public purse and provide an intelligent approach to achieving efficiencies.

As the Cabinet Office's Public Policy Note on the Social Value Act states, "In these tight economic times it is particularly important that maximum value in public spending is achieved. However currently some commissioners miss opportunities to secure both the best price and meet the wider social, economic and environmental needs of the community. Commissioners and procurers should be taking a value for money approach - not lowest cost - to assessing contracts and the Act complements that approach."<sup>1</sup>

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This is in line with other departmental guidance. For example, it sits alongside the Department for Communities and Local Government's statutory guidance on the Best Value Duty. Contrary to common perceptions, the Best Value Duty is not just about keeping costs down: rather, it requires best value authorities to make "arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."

The Department for Communities and Local Government's new guidance is "more explicit about the scope for authorities to consider social value in their functions" and the Best Value package "supports [...] the Government-supported Private Members (Social Value) Bill". It states "Under the Duty of Best Value [...] authorities should consider overall value, including economic, environmental and social value, when reviewing service provision."

Similarly, the European Commission's 'Guide to Taking Account of Social Considerations in Public Procurement'<sup>2</sup> states that socially-responsible procurement "can illustrate how social and economic considerations can be mutually reinforcing". This compliments a 2011 European Parliament Green Paper on public procurement states that:

"In order to develop the full potential of public procurement, the criterion of lowest price should no longer be the determining one for the award of contracts, and that it should, in general, be replaced by the criterion of most economically advantageous tender, in terms of economic, social and environmental benefits – taking into account the entire life-cycle costs of the relevant goods, services or works"

See part 2 of our guide in response to "How can DWP best consider Social Value through its commissioning?":

[http://www.socialenterprise.org.uk/uploads/files/2012/12/social\\_value\\_guide.pdf](http://www.socialenterprise.org.uk/uploads/files/2012/12/social_value_guide.pdf)

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<sup>2</sup> available here [http://ec.europa.eu/internal\\_market/publicprocurement/other\\_aspects/](http://ec.europa.eu/internal_market/publicprocurement/other_aspects/)