



Joint response from Social Enterprise UK and Locality to HM Government's consultation on making public sector procurement more accessible to SMEs



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. 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.

About Locality

Locality is the nationwide movement of communities ambitious for change. We have a membership of over 700 community organisations across the UK. Our members are multi-purpose and community-led and include settlements, development trusts, social action centres and community enterprises. We help people to set up locally owned and led organisations. We support existing organisations to work effectively through peer-to-peer exchange of knowledge and best practice on community asset ownership, community enterprise, collaboration, commissioning support, social action, community voice, community rights and regeneration.

This submission

Social Enterprise UK and Locality welcome the opportunity to respond to the government's consultation on making public sector procurement more accessible to SMEs.

Social enterprises are based on the principles of mutualism, co-production and participation. They offer a model where people, be it staff, service users or community members, are given a direct voice in running their organisation; where public assets can be locked into community ownership; and where people are empowered to transform their lives and the lives of those around them. As such, they are well placed to play a key role in the future of public services.

Social Enterprise UK and Locality have consistently welcomed the government's commitment to fostering a plural market of providers and its calls for "mutuals, cooperatives, charities and social enterprises [...] to have a much greater involvement in the running of public services" alongside its aim to ensure a "truly level playing field between the public, private and voluntary sectors". However, as the consultation document states, SMEs have historically been shut out of government business due to the culture and processes involved. We therefore support the government's drive to level the playing field through its proposed reforms.

Scope of the proposed reforms

This said, we believe the proposed reforms, which are intended to act as "a de-regulatory measure to remove excessive burdens on small suppliers and make the procurement process faster, more transparent and less bureaucratic", only address one aspect of the reforms needed to open public services up to SMEs and social enterprises. Indeed, the most significant barriers are more **structural** and **cultural**, and addressing procurement processes alone will be wholly insufficient in terms of ensuring a plural, diverse and sustainable market of providers. There are also issues around the professional procurement capabilities of public officials.

Structural barriers

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 even the most recent announcement from the Ministry of Justice that offender rehabilitation contracts will be separated into only 21 contract package areas, which will preclude the vast majority of smaller organisations from competing. For example, see Locality's response to the Transforming Rehabilitation consultation paper. Equally, as contracts are scaled up, there is a corresponding increase in bureaucracy, levels of management, the length of chains of command and complexity during procurement and management of contracts. For example DWP's current approach to commissioning has resulted in a shift away from focusing on effective delivery of welfare to work programmes and towards a focus on financial capability to cash flow large contracts and the ability to manage supply chains.

Over the summer Locality ran a survey on the VCS' experience of Public Sector Contracting. Barriers to contract delivery were all perceived to be systemic:

- Top was **contract size being too large** (quoted by **53.1%** of respondents)
- Second was **red tape/bureaucracy** (**43.8%**)
- Equal third (**35.4%**) were **excessive risk** in contract terms and **geographical coverage** of contract not matching organisation's own coverage

Social Enterprise UK and Locality have publically highlighted the barriers that social enterprises continue to encounter in procurement. For example, see Social Enterprise UK's consultation response to the government's consultation on the Open Public Services White Paper and their

recent report on the public services industry, the Shadow State. 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 - reducing bureaucracy will do nothing to help SMEs if contracts are too large for them to compete for.

This is not simply a matter of ensuring that smaller organisations are able to compete - it's a matter of ensuring that the public purse cannot be held to ransom by a dominant group of providers who are too large to fail. See Locality's response to the Department for Work and Pension's Commissioning Strategy 2013. Indeed, the [Shadow State](#) found that neither the government nor the public had access to sufficient information about public procurement to hold practices and processes to account and, crucially, to ensure that at a macro level there is sufficient oversight of public procurement to prevent the development of oligopoly providers that are too big to fail. As a result, an oligopoly of providers has developed in public service markets - a matter which must be urgently addressed through far more wide-ranging reforms than are being proposed within this consultation.

Cultural barriers

Risk-averse procurement

There is disproportionate emphasis placed on financial risk by procurement professionals rather than the risk of delivering poor outcomes. Often this approach to financial risk 'management' is disproportionate to the size of the contracts therefore penalising smaller organisations and often under-capitalised social enterprises. This tilts the market against responsible social enterprise models which often have difficulty accessing capital and due to their social mission and legal and governance structures are unable to take the high levels of risk this payment system requires, resulting in public service markets being dominated by a small number of highly capitalised providers, and considerably reducing rather than enhancing competition.

Additionally, past failure to deliver results is currently not considered in risk assessments. We support the idea that 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. We firmly believe that public authorities should be allowed and supported 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 also be given to the development on 'quality of work' indicators that would help public authorities in this process.

Additionally, we see very little in the way of innovative commissioning where services providers, service users and commissioners are able to co-design and procure services. Service providers and frontline professionals are specialists in understanding the services they deliver, their clients' needs and the communities in which they work, and are therefore well placed to offer innovative solutions to entrenched public service issues. However, immature commissioning capabilities often result in very risk-averse commissioning behaviour and an over-reliance on the procurement process, rather than intelligent commissioning, to protect against risk.

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. For instance, when the government wants to contract by results, the balance of interest should be aligned through joint governance arrangements, such as the creation of a community interest joint venture or the inclusion of community-appointed, non-executive directors. This allows for the protection of public funds through appropriate governance mechanisms, which aligns incentives between taxpayer, providers and service users, thereby reducing complexity, transaction cost and perverse incentives. The Government could 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.

Lowest cost vs best social value

The Social Value Act, which came into force in January 2013, requires all public bodies to consider social value in the pre-procurement states of public service commissioning. The Act has the potential to generate a step-change in the culture of commissioning and the efficiencies we achieve from public spending. However, the Government's support for the Social Value Act has not been accompanied by sufficient awareness raising and capacity building for commissioners and procurement officials - coupled with the risk-averse culture of procurement, this has left many unaware and under-equipped to implement the Act effectively.

The Public Services (Social Value) Act currently requires commissioners to consider social value at the pre-procurement phase for public service contracts. We believe that the Act should be strengthened in the following ways:

- public bodies should be *obliged* to include social value in its commissioning and procurement and account for how this is generated;
- the Act should be extended to apply to the purchasing of goods and works and the management of assets as well as services; and
- the Act should be supported with statutory guidance in order to provide better guidance to public officials on how to implement the Act.

Professional procurement

In January 2013, the Public Accounts Select Committee's inquiry into public procurement called for evidence on whether the Government has the right skills and capabilities to procure effectively.

In addition to the barriers outlined above, Social Enterprise UK's and Locality's members report enormous variation in the quality of public bodies' contract management and the communication of their requirements from existing or potential contractors. Where examples of good practice exist and where public bodies are engaging well with social enterprises as deliverers or potential deliverers of services, there are a number of common factors involved.

Often the quality of engagement will be dependent on high level buy-in for working with VCSEs as well as sector champions in commissioning and procurement positions. Given the risk-averse culture that dominates public sector procurement, such high level buy-in can be vital for giving officials the confidence to seek innovative solutions to public needs and engage with a broad and diverse supplier base.

Some of our members also report that they have more success in engaging with public bodies and departments where there is a history of procurement. On the other hand, where there have been rapid and large scale transformations, instances of immature commissioning and procurement are more common and knowledge, relationships and understanding of providers within geographies are at risk of being lost.

Similarly there are some significant gaps in knowledge when it comes to more complex processes such as open book accounting and advanced risk sharing. These skills are essential if we are to ensure that public procurement is both accountable to the public sector and transparent when it comes to fair financial rewards.

Tackling these issues requires clear leadership and improved training to give all commissioning and procurement officials the opportunity to access best practice examples and the confidence to engage in intelligent commissioning.

On the following pages we address the particular questions in the consultation more specifically.

Q1. What mechanisms and incentives would prevent contracting authorities from asking unnecessary and burdensome questions during the procurement process?

We welcome the ambition and aim to create a shared and consistent approach to procurement. We understand the arguments for abolishing PQQs but do not see sufficient evidence that this would be the best way forward, as follows:

- the existence of onerous, excessive or disproportionate requirements is not sufficient reason to remove all requirements;
- NCVO, in partnership with SEUK, NAVCA, CFG and Acevo conducted a survey (herein referred to as the ‘SME survey’) to address the questions posed by this consultation. Of the 192 respondents to this PQQ question, 56 percent (141) did not think PQQs should be automatically scrapped;
- scrapping PQQs could result in the creation of a vacuum in a risk-averse environment which ends up causing more difficulties, confusion and inconsistency. It is unclear that this would result in a “simplified, more consistent approach”; and
- a mechanism would be lost for ensuring clarity at an early stage about what commissioners are seeking and their eligibility requirements.

Rather, we believe the Government should explore the proposal from our colleagues at NCVO that the standardised or ‘core’ PQQ should be made available for use below the EU procurement threshold. This could be more appropriate and this should be explored in the first instance.

As NCVO point out, the consultation fails to address how the planned increase to EU procurement thresholds from £173,934 to circa £600k could impact on the proposed abolishment of PQQs. In fact, the consultation fails to recognise a number of other emerging reforms to EU procurement law, which should be taken into account.

Q2. Should the core PQQ currently used in central government (attached at Annex B) be adopted as standard across the public sector?

Again, we support NCVO arguments that a standardised or ‘core’ PQQ for all public sector procurement could be the most appropriate response, evidenced by the majority of respondents to our survey.

Q3. Which, if any, questions could be removed from the core PQQ? Are there any additional questions or relevant standards that should be included because they are essential to a specific sector (and please explain why they are essential)?

The core PQQ should take into account the Public Services (Social Value) Act and forthcoming changes to EU law and reflect the value for money which can be secured for the taxpayer by taking into account side social value in procurement. This will help to deliver better value for the public pound - by taking into account economic, social and environmental benefits - as opposed to a narrow, more silo-ed approach. As the Government’s own Chief Procurement Officer suggests, public officials should think more from a perspective of ‘The Crown’ than in terms of discrete, dislocated slithers of the state.

Otherwise, we recommend taking guidance from NCVO’s response to this question which is informed by our joint SME survey.

Q4. How would a single online platform for managing, submitting and verifying PQQ responses provide advantages to bidders and contracting authorities over and above the PQQ reforms already described? Would suppliers be prepared to pay a small fee for using this system (assuming the option of manually submitting a PQQ without any charge is also still available)?

We are not convinced by the merits of a single online platform. While in principle it could reduce duplication, time, effort and transaction cost, on the other hand:

- the Government's track record (under the previous or the current administration) in securing value for money in the establishment of IT projects is not hugely impressive;
- 74.2% of respondents in our survey would not pay for the service;
- this would only be valuable if it *replaced* existing platforms rather than duplicated them; and
- if it costs to register, this would create a new barrier to entry to the public services markets at a time where we are trying to break down such barriers

Q5. Do you agree that all public procurement opportunities over £10,000 should be accessible from Contracts Finder? How can this be achieved simply and effectively? If you do not agree, why not?

Yes. 80.6% of respondents to our survey said that all public procurement opportunities and award notices for public contracts over £10,000 should be accessible from Contracts Finder.

We would like to point out, however, a failure with the current Contracts Finder arrangements. The system has a facility to flag contracts as being suitable for VCSE organisations, which is a laudable aim. However, when this information is translated across to other websites such as www.publictenders.net or www.tendersdirect.co.uk, if this box was not ticked, these websites flag the opportunity as "Not suitable for voluntary, community and social enterprise organisations", which is highly misleading. This is just one of the ways in which Contract Finder and similar services need to be improved, including issues around search and notification.

Q6. Do you agree that all award notices for public contracts over £10,000 should be accessible from Contracts Finder? How can this be achieved simply and effectively? If you do not agree, why not?

Yes. This proposal was also supported by over 80 percent (145) of respondents to our SME survey.

Q7. Do you agree that all public bodies should publish data on their procurement spend with SMES in one place? How can this be achieved simply and effectively?

Yes. Public bodies should publish data on their procurement spend (by percentage of contract and by value) to VCSEs. This would be more cost effective for the taxpayer than current mechanisms for tracking this which NCVO deriving estimates for public spending with VCSEs from charity accounts data and Compact Voice submitting hundreds of FOI requests annually.

Q9. Do you agree that public bodies should publish data on their use of centrally negotiated deals, together with pricing data, to demonstrate value for money? How can this be achieved simply and effectively?

Yes. The government's commitment to transparency regarding public sector spend is welcomed. We would welcome any move towards greater transparency in this regard, except commercially sensitive considerations absolutely do not allow it.

Q10. How can we ensure that standard payment terms are passed down through the supply chain for all public contracts?

Social enterprises and the wider third sector have many longstanding concerns in this regard around 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. Government 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 the Government 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.

Payment terms for the supply chain should therefore be detailed in initial bids and contract terms. Where contracts have been awarded on the basis of the ability of the main contract's holders to finance contracts and cash flow the supply-chain, then then this should be detailed in the payment terms and main contract holder should be audited against these terms. Strong Codes of Conduct for the treatment of supply chains should be developed and direct relationships between supply chains and the relevant Department's Contract Manager should be established. Lessons need to be learned from weakness with The Work Programme's Code of Conduct and Merlin Standard.

Q11. Should public authorities and their supply chains publish performance data on their prompt payment to suppliers? How can this be achieved simply and effectively?

Yes

Q12. Do you consider that requirements for performance bonds are disproportionate and creating barriers for SMES aiming to win public contracts? How is this happening and what reforms could help alleviate this?

There is a perception that emergent social enterprises delivering health and social care, for example, can have problems securing performance bonds required by the commissioning body - or in order to gain access to the Local Government Pension Scheme - since it was reported that the spin-out Central Surrey Health failed to do so when bidding for a new contract. Cabinet Office itself suggests that "it may be difficult for the new body... particularly if it is a start-up without a financial track record or assets to secure the bond against."

However, whether commissioners should use such bonds is contested. The Health Minister, Lord Howe, wrote in 2012¹³ that "Central Surrey's inability to provide a Bond was not a factor in it being unsuccessful". He suggests that while the commissioners in the Surrey case initially requested a £10 million performance bond, departmental officials had intervened and this requirement was subsequently dropped.

Cabinet Office have issued guidance which suggests that such bonds are only used in “exceptional circumstances”. Nevertheless, these agreements appear to remain an issue. As one spin-out reports “We are finding a lot of commissioners saying they want a bond for anything from a million quid to five million quid...Commercial banks don’t just say yes...” Another describes how “One of the biggest challenges facing public sector mutuals in competing for contracts is the ability to demonstrate financial robustness in a downturn scenario. This requires access to up to 10% of the contract sum which means either a Parent Co guarantee, significant reserves or access to an unsecured loan - all a challenge for a new organisation.”

For further information on this response, please contact Social Enterprise UK's policy team on 020 3589 4953 or Louise Winterburn, Policy and Research Manager at Locality on 0845 458 8336