

Policy Response



Inquiry into influencing the modernisation of European procurement policy

A response from WCVA

31 October 2011

WCVA
Baltic House
Mount Stuart Square
Cardiff
CF10 5FH

Wales Council for Voluntary Action

A response to the inquiry into influencing the modernisation of European procurement policy

Introduction to WCVA

Wales Council for Voluntary Action (WCVA) represents the interests of voluntary organisations, community groups and volunteers in Wales. It has over 2,400 organisations in direct membership and is in contact with many more through national and regional networks.

WCVA's mission is to make Wales a better place by championing the voluntary, community and citizen action at the heart of Wales' third sector, in order to increase economic, social and environmental participation, inclusion, equality, wellbeing and sustainable activity.

We welcome the opportunity to respond to the inquiry. As an umbrella organisation for the third sector in Wales, the focus of our response is on **third sector organisations**, with a particular interest in **service** contracts, rather than goods or works.

1. How effectively are the current UK procurement Regulations working in Wales, both from a supplier/contractor and from a purchasing authority perspective?

WCVA is concerned about the inappropriate use and over-use of procurement by Welsh public bodies. We acknowledge that procurement, and adherence to the full EU procurement rules, is both legally necessary and appropriate for certain categories of service, but for other categories of service - e.g. services for vulnerable people with complex needs - an overly rigorous or prescriptive procurement exercise may not result in the best outcomes for service users.

In some cases, EU procurement requirements for Part A services are applied unnecessarily to Part B services, resulting in disproportionate procurement exercises and irrelevant requirements for, e.g., social care services. Greater clarity is needed about the requirements of Part B services, to ensure that procurement exercises adhere to the EU Treaty principles but aren't overly complex or disproportionate to the scale and nature of the contract.

A greater emphasis on outcomes-focused procurement, rather than overly prescriptive specifications, would be a welcome move. We would suggest that an advisable approach is that of collaborative commissioning as set out in the Welsh Government's *Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice*.

There is also an issue about the implementation of procurement regulations by Welsh public bodies. The financial regulations or financial standing orders of public bodies (Local Authorities and Local Health Boards) should be flexible enough to allow decisions about how best to secure services to be made on a case-by-case basis.

Collaboration is currently being encouraged across the public sector and amongst suppliers. As third sector organisations are often too small to tender alone, but their contribution to public service delivery has been recognised as valuable, consortium working has been proposed as a useful vehicle for smaller organisations to engage in tendering.

But often the procurement process is too prescriptive for consortia to engage in a meaningful way, as the exercise is predicated on awarding a contract to a single legal entity. There should be greater clarity about the bidding process for consortia of organisations, for example at selection stage - whether separate PQQs are required, or another, less onerous assessment of partner organisations.

Additionally, the division of large contracts into lots can be a way of enabling smaller organisations to deliver particular aspects of a wider service.

Timescales also prohibit consortium development and meaningful collaboration. It is unreasonable to expect organisations to develop a credible service delivery model and good working relationships in the timescales often given for participation in tendering. With timescales being a critical issue, we should suggest that, where appropriate, Prior Information Notices (PINs) be considered for greater use, giving organisations an opportunity to explore collaboration.

2. To what extent is value for money being achieved for purchasing authorities?

The *Community Benefits* guidance from Value Wales is helpful, and there are useful examples of securing community benefits from large construction contracts, but there is room for this to be explored and applied more widely to service contracts.

There is considerable scope for added value to be made more integral to services. It is important that service specifications are sophisticated, taking account of - i.e. assessing and scoring with appropriate weighting - the added social, sustainable and community-based benefits that third sector organisations can bring to services. These might include the added value provided by volunteers; links into other community resources and support networks; service delivery options that are closer to and more directly involve citizens; a focus on preventative and early intervention measures, resulting in a reduction in more severe support needs and a corresponding cost saving for public services.

3. How should the EU procurement Directives be modernised from the perspectives of Welsh suppliers/contractors and purchasing authorities?

We believe that more could be done within the existing directives, if their implementation by Welsh purchasing authorities is improved. More value could be secured through Welsh public bodies being less risk averse - making informed and appropriate decisions about how best to secure services, rather than being governed by fear of legal challenge.

For some organisations, there is the issue of procuring via framework agreements. Some procurement exercises that seek to establish framework agreements, after the initial process, do not appear to permit any additions to the prime contractors or the originally named, hastily assembled, sub contractors. Although technically correct, the 'closed' nature of some frameworks means that further opportunities for involvement are prohibited.

In cases where procurement may not be a legal requirement or appropriate for the service, we would suggest the use of competitive grants. While the application stage of a grants programme can be similar in process to tendering, grants can benefit from greater flexibility and discussions can take place prior to making decisions. And grants can of course be on the basis of a competitive process in order to avoid falling foul of State Aid issues.

GC

WCVA

31 October 2011