

The impact of Welsh Government procurement policy



Paper for Enterprise and Business Committee

1. Wales Council for Voluntary Action (WCVA) is a registered charity and umbrella body working to support, develop and represent Wales' third sector at UK and national level. We have over 3,350 organisations in direct membership, and are in touch with many more organisations through a wide range of national and local networks. WCVA's mission is to provide excellent support, leadership and an influential voice for the third sector and volunteering in Wales.
2. WCVA is committed to a strong and active third sector building resilient, cohesive and inclusive communities, giving people a stake in their future through their own actions and services, creating a strong, healthy and fair society and demonstrating the value of volunteering and community engagement.

Engagement with the third sector and WCVA's written evidence

3. WCVA welcomes the opportunity to give evidence to the Enterprise and Business Committee about the impact of Welsh Government procurement policy on the third sector in Wales. To help us accurately represent the third sector's views on tendering and procurement, we asked our members for their views, and this paper reflects their responses.

General comments

4. Overall, the perception among third sector organisations in Wales who regularly tender for contracts is that there is a reasonably flexible legal framework now in place (the new Public Contracts Regulations 2015), and useful policies from Welsh Government, but the issue remains implementation of this good practice at a local level – particularly within Local Authorities. There is a lack of consistency and collaboration across the Public Sector.
5. We recognise that there are areas of good practice within Local Authorities in Wales, but many of our members have reported disproportionate and inappropriate procurement processes, timescales and paperwork wholly unrelated to the scale and nature of the contracts, and even outright confusion between grants and contracts.
6. The third sector organisations who contributed their experiences to this paper all tender for service contracts, not goods or works. It is important to emphasise that procuring services for vulnerable people, often with complex needs, is fundamentally different from procuring goods or works. It requires a

different skill set and knowledge base. Those procuring such services need a profound understanding of the needs and capabilities of the service users, as well as the experience and skills of service providers. Moves towards category management in certain areas are a welcome step.

7. One of the contributors to this paper said: "People are not 'commodities' like roads, schools and hospitals, which means the standardised procurement process for buying goods doesn't work. There needs to be a bespoke tendering process that is common across all public sector departments for procuring services that recognises the difference approach required to procure services that support people."

What changes, if any, have your members noticed when seeking to provide goods/services to the public sector in Wales since 2012?

8. Members reported the increased use of Sell2Wales as a useful means of advertising tenders.
9. There has also been a helpful shift towards the use of online portals for tendering, meaning that there is less need for paper copies to be printed off and it relieves some of the pressure to have the bid ready days in advance to allow time for postage. However not all purchasing authorities have embraced this system and some still require documents in triplicate and the full tender on CD Rom.
10. Others reported more support available for learning about tendering and procurement, especially for SMEs.
11. However, many third sector organisations report that prices in their sectors are being driven downwards by an increase in competitive tendering.
12. In some service areas, third sector organisations report the increasing use of procurement solely as a cost saving exercise through, for example, setting a total cost envelope significantly under the current contract value; establishing cost-based competitive tenders without sufficient control over quality; basing the contract value on wage levels significantly under the sector norm; or imposing an artificial unit cost cap prior to the tender process.

Your view of the strengths / weaknesses of Welsh Government procurement policy. Have any initiatives been particularly helpful / unhelpful?

13. The consensus on Community Benefits among third sector organisations seems to be that the policy is welcome, but they are often not scored or looked at as part of the tender (i.e. 'core') but just remain part of the contractual obligations ('non-core'). This means it does not actually benefit organisations that may need to cost their services higher but give more back to the community. The only way that it would be a meaningful addition is to add it to scoring criteria either at a high level, or as a highly scored question within the quality section.

14. Community Benefits could also be extended to different types of contracts, and (proportionately) to lower value contracts. Different types of Community Benefits could also be explored.
15. Moves towards standardising Pre-Qualification Questionnaires (PQQs) across Wales through SQuID (Supplier Qualification Information Database) are also welcome. But the fact that different purchasing authorities use different procurement portals means that the information has to be regularly re-submitted in different formats anyway.
16. Some third sector organisations report that they are starting to see examples of joint commissioning (e.g. across social care and health).
17. There has been a shift towards larger, regional and more generic contracts. While some organisations are well-placed to respond to these opportunities, many smaller third sector organisations are effectively excluded from bidding alone. The *Joint bidding guide* has been an extremely useful tool in supporting organisations to form consortia and bid jointly for contracts.
18. There is too much reliance on historic procurement behaviour and activities. Systems need to be updated to reflect the Public Contracts Regulations 2015 and the reflections and actions required by the Well-being of Future Generations (Wales) Act 2015. They also need to be reviewed for each transaction, instead of relying upon historic decisions for a familiar item. Currently, when repeating a purchase, too often it is a repeat of the historic procurement behaviour and activities, without returning to the system to see what has changed.
19. It is also important that Welsh Government procurement policy enables more sustainable and ethical sourcing, to reflect the strategic intention of the Well-being of Future Generations (Wales) Act 2015.
20. Implementing good procurement practice within the context of reducing budgets has meant that too often the determining factor has been cost. The pressure on Local Government budgets has ensured that cost cutting has taken place over good practice models.

What are the main barriers your members experience when looking to provide goods and services to the public sector in Wales?

21. Smaller third sector organisations, in particular, report that the tender process is far too resource-intensive, often disproportionate to the contract. Without dedicated tender-writing staff, they are not able to give the time to tendering without severely impacting their direct service delivery.
22. Many organisations report that TUPE is by far the most problematic issue. These have been collated in the Appendix to this paper. Some third sector organisations have had to invest in dedicated TUPE training for their staff, but this is not an option for many organisations.

23. Increasingly, organisations report that they are experiencing long delays in getting clarification questions answered, which stops them being able to move forward with their bids. Often, questions will be in relation to financial, contractual or TUPE arrangements that will affect whether the bid is financially viable and need answering up front, to save organisations from writing a tender and then finding out they can't afford to bid for it.
24. There have been recent examples of a Local Authority agreeing to having questions submitted to them up to the morning that the tender is due to be submitted, meaning that an answer that could affect the whole bid could be published at the 11th hour, not leaving bidding providers time to make appropriate changes to their bid.
25. Often, the turnaround time for tender submissions is also very tight: organisations report 3 weeks bidding time, with insufficient information provided at the outset, or even with mistakes in the tender documents.
26. This is particularly acute when organisations are considering joint bids for services. It takes time to develop a competitive joint bid, and if the rhetoric of 'we welcome bids from consortia' (often seen in contract notices) is to be realised, then a Prior Information Notice (PIN) a few months before the tender is released and a longer timescale would be necessary.
27. Organisations also report disproportionate PQQ requirements. Much more of the PQQ, for example requests to see policies and procedures, could be moved to more of a 'tick box' or self-certification exercise. Then, if successful at winning the tender, the provider could be asked to make copies available to the commissioner. This would save a lot of time and resource.
28. Sometimes tenders are advertised during peak holiday periods when no staff are available in Local Authority offices to respond to questions about the tender.
29. Organisations report that Local Authorities own standing orders on procurement take precedence over any guidance they receive. By and large, this has meant that procurement sections have controlled the commissioning process and led the way on a 'race to the bottom' by heavily weighting all contracts to the lowest price. The result of this has been that service levels are diluted, good providers are excluded and there have been a number of areas in Wales where major contracts have run into difficulties where they have been taken on by providers who significantly under-costed the work.

How successful have Welsh Government initiatives to increase the proportion of third sector organisations winning contracts been? How could these efforts be improved?

30. Greater visibility of contract opportunities (through Sell2Wales) is a welcome step.

31. Achieving more consistency and standardisation of tender approach would be beneficial, e.g. standardising timeframes that tenders are turned around in and standardising deadlines for answering questions on the portal.
32. There needs to be more of a focus on Community Benefits and more encouragement and dedicated facilitation of joint bids. The community benefits focus is especially important in helping more social business to gain contracts – at the moment this is very difficult and will remain so unless there is an obligation on commissioners to take community benefits into account/have a certain amount of the work undertaken by social business.
33. Overall, Welsh Government initiatives have been helpful in intention, and in some cases, in practice, but without any form of enforcement however, they have had little further practical impact.

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Appendix – Issues with TUPE

There are some of the issues reported about TUPE being a problem when tendering for contracts.

- Current provider/employer refuses to provide TUPE information before tender is submitted.
- Staff work part-time on the contract being transferred and part-time on another contract not being transferred.
- Staff on temporary contracts which end when the current contract ends.
- Staff transfer on a permanent contract of employment but the new contract for the service is limited to three years.
- The salary and on-costs for the staff eligible to transfer exceeds the value of the new contract.
- Re-configuring a number of small services into one large service and all the transferees being on different terms and conditions.
- Re-configuring a number of small services into one large service and but being tendered as two or more lots with no way of segregating the group into the two new contracts.
- Terms and conditions of current employer are in contravention of current employment law and a new employer would have to change them to bring them in-line with the law.
- Current employer gives employee a new permanent contract (or contract which ends after the date of a possible transfer) at any point during the process.