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The Public Services (Social Value) Act 2012: additional information

1. Introduction

This note gives some information on recent developments since the passing of the *Public Services (Social Value) Act 2012*, and is a companion piece to the previous RaISe paper on the Act (NIAR 103-12).

2. BDO UK report: *Social Supply: a guide to improving social value through better purchasing*¹

A July 2012 report by the accountancy and financial firm BDO examines the barriers against incorporating social value into public procurement contracts and how they can be overcome. The report is based on a survey of 95 local authorities (and 21 interviews) in England and Wales. The recommendations which the report gives will be of valuable import to local authorities carrying out their obligations with respect to the Act.

¹ BDO (2012) [Social Supply: a guide to improving social value through better purchasing](#)

83% of survey respondents agreed that they did not measure social value considerations through the procurement process. However, around 76% are already engaging with suppliers with the aim of increasing social value, so it is not simply a matter of a lack of awareness of the process amongst local authorities. Most importantly, perhaps, 48% of local authorities said that costs were more important than delivering social value through procurement. Interviews identify that there is a difficulty with some officers of “reconciling social value with the cost-cutting agenda.” Another heavy barrier is the difficulty of measuring the economic, social and environmental impact of a local authority’s supply chain.

The case studies and guidance given in the report specify that it does not have to be the case that social value is gained at the expense of economic value. It presents the idea that value-for-money should include the “whole-life costs” of a public services contract, and that if public procurers had a better measure of social value, they may find that economic outcomes and social value outcomes are often one and the same. It also shows that many private sector suppliers have already realised this; in fact only 7% of local authorities surveyed believed the support of suppliers was a barrier to securing social value.

The guidance makes a point of emphasising the benefits of “collaborative relationships” between suppliers and procurers. A collaborative relationship is one where *“both parties understand each other’s concerns, are open and transparent, agree joint objectives and have a shared commitment to deliver on the strategy of the local authority.”* Working in this way can deliver value-for-money, manage risk and deliver social value outcomes. Opportunities are lost if relationships with suppliers are superficial rather than collaborative.

The report provides evidence that there is plenty of capacity for suppliers to provide social value in the services which they provide to public contracts, and the main barrier is a lack of engagement from procurers. Andy Mahon, head of the BDO local government team, comments:

In our research we found many examples of the public and private sector demanding more from suppliers through engaging up front and building social value considerations into contracts. We know from our daily conversations that suppliers are chomping at the bit to engage in this way.²

3. Scotland: Procurement Reform Bill

In August 2012 the Scottish Government announced that it will be introducing a bill to reform the procurement processes of the public sector bodies which it has responsibility for to the Scottish Parliament in the new parliamentary session (2012-13).³ A consultation has been launched on the proposals (closing 2 November 2012), and will affect the way that the public sector buys goods, works and services.⁴

The Bill will seek to meet these broad aims, defined in the consultation document:

² BDO Press Release, [27 July 2012](#)

³ Scottish Government Press Release, [8 August 2012](#)

⁴ Scottish Government (2012) [Procurement Reform Bill - Consultation](#)

- Ensure that public procurement processes are transparent, streamlined, proportionate, standardised and business-friendly;
- Make it easier for business, particularly newer businesses, SMEs and the third sector, to access public contract opportunities and sub-contracting requirements;
- Smarter use of public procurement to encourage innovation and growth;
- Take account of social and environmental sustainability issues through public procurement;
- Deal with inappropriate conduct and poor performing suppliers;
- Application and compliance measures.

Similar to the *Public Services (Social Value) Act*, the Bill will also aim to increase the use of community-benefit clauses (to use the Scottish Government's term) in higher value contracts. It is hoped that this would increase training and opportunities for the disabled and long-term unemployed in Scotland, and also increase the amount of contracts awarded to SMEs.⁵

The proposed Bill also goes further than the Westminster Act, in that it introduces new procurement processes across the public sector in Scotland, making them more streamlined, efficient and transparent. It also extends to a greater breadth of contracts, as it will relate to the purchase of public goods as well as public services.⁶

Tenders are advertised on Public Contracts Scotland, which hosts a wide range and number of opportunities for contracts with the Scottish Government, Scottish Local Authorities, NHS Scotland, Agencies and NDPBs.⁷ Currently, around 75% of contracts awarded through this portal are to Scottish registered businesses.

Public sector spending on goods and services in Scotland amounts to around £9 billion each year (though the true figure may be closer to £11 billion), over 45% of which was with the SME group (though they represent 78% of contract awardees). This puts Scotland above EU thresholds for SME access to public procurement, and at a much greater level than the UK as a whole.⁸ The proposed Bill fits into the Scottish Government's Public Procurement Reform Programme, which includes the work of a Public Procurement Reform Board, Advisory Group and Delivery Group.⁹ The Programme also pursues efficiency savings, delivering £800 million between 2006 and 2010.¹⁰

⁵ PublicService.co.uk [Scottish government to increase SME contracts](#) 14 August 2012

⁶ Goods and services as defined in EU Public Procurement Directives, which are implemented by the *Public Contracts (Scotland) Regulations 2012* and the *Utilities Contracts (Scotland) Regulations 2012*.

⁷ Public Contracts Scotland: <http://www.publiccontractsscotland.gov.uk/>

⁸ Scottish Government (2012) paras 22 and 91-2. For further info, see GHK (2010) [Evaluation of SMEs' Access to Public Procurement Markets in the EU: Final Report](#) p 21

⁹ Scottish Government [Public Procurement Reform Programme](#)

¹⁰ Scottish Government (2010) [Efficiencies from Procurement](#)

4. Local Government Information Unit: Policy Briefing

The Local Government Information Unit (LGIU) is a think-tank and membership organisation, working in the area of local democracy and supporting councils. It publishes around 300 policy briefings a year, of which a recent paper (20 August 2012) was on the subject of the *Public Services (Social Value) Act*.¹¹

The briefing touches on many of the same areas as the RalSe paper in discussing the passing of the legislation, its aims and operation, and its potential difficulties in meeting its full intention. This briefing sufficiently critiques the *Act* for perceived missed opportunities, and offers a useful discussion of many of the misinterpretations of the *Act*, all of which may be useful to the Committee.

One of the points that the paper stresses is that the requirements of the *Act* are that public bodies must merely consider how procurement should promote social value, but does not compel the authority to act on these considerations. Nor are relevant public bodies required to demonstrate that they have considered or achieved social value (i.e. write reports), though they should be able to prove that they do this, for legal reasons. The author is aiming to clear up the misinterpretation that the *Act* compels procurement officers to commission for social value.

The briefing also reiterates the point that social value is not the sole domain of social enterprises in the voluntary and community sector – private businesses may be able to demonstrate social value, and in many cases to a greater degree or ability than non-profit organisations.

In examining weaknesses in the legislation, the author argues that the Bill made “*one compromise too many*” in limiting itself to apply to service contracts only (i.e. goods and works contracts are excluded). The Government’s claim that services are where the greatest contact is made with communities is called a “*false premise*” which ignores the reality of contracting. For example, the £250 billion investment of the National Infrastructure Plan 2011 will mostly be concerned with goods and works (roads, railways, broadband, etc.) but there is no guarantee that social and environmental issues will be considered in the over 500 procurement projects (the Treasury guidance gives very little mention of social value).¹²

The paper also addresses the concern of costs issues: the widely-held belief that commissioning for social value (though, of course, the issue is only the consideration of social value) will lead to increases in contract costs for local authorities. Instead, the approach that the contract will be made to the cheapest contractor who can deliver the social value specified is put forward.

While accepting that it is more likely than not that there will be cost implications, the author takes the optimistic perspective that best value will provide social and economic benefits in the long run, and being aware of this in the procurement of public contracts will help to meet other objectives of local authorities. At a basic level, commissioners should make a best

¹¹ Local Government Information Unit (2012) [Public Services \(Social Value\) Act 2012: Policy Briefing](#)

¹² HM Treasury (2011) [Valuing Infrastructure Spend: Treasury Guidance](#)

value judgment when any additional cost is presented: is the additional cost likely to equate to a better social return compared to meeting these outcomes through other means. A particularly insightful (though perhaps verbose) comment is:

Therefore in approaching these additional costs commissioners should compare the right things and make the best value judgement on the social value being leverage not on the totality of the contract price (i.e. the service plus the social value requirements), but whether the additional cost represents value for money for what it buys in social value terms judged against other options for securing those same social requirements through other means.¹³

In overall comments, this briefing considers the *Act* to be a “welcome” piece of legislation, though a sub-optimal approach to commissioning for social value which fails to meet best practices already established by local government. One outcome of this could be that it is not necessarily social enterprises and the civil society that will benefit from the *Act*; they are under as much obligation to demonstrate social value as any other bidder. The author sees the source of this compromised outcome as a result of the current Government’s conflict between a drive to deliver savings with their communitarian (“Big Society”) aspirations, and the exclusion of the supply of goods and works from the terms of the *Act* sends out mixed messages to commissioners.

¹³ LGiU, p 15