

# ECONOMY AND FAIR WORK COMMITTEE

**7<sup>th</sup> Meeting, 2024 (Session 6), Wednesday  
28 February 2024**

## **Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014**

### **Note by the Clerk**

#### **Background**

1. Under the [Procurement Reform \(Scotland\) Act 2014](#) (“the Act”), public bodies are required to consider how their procurement activities can be used to improve the economic, social and environmental wellbeing of their area and how they will facilitate the involvement of SMEs, third sector and supported businesses, and support innovation. The Act places some administrative requirements on higher spending public bodies to publish procurement strategies and annual procurement reports.
2. The legacy report of the previous session committee noted work in this area had started but was curtailed due to the pandemic. It drew attention to a summary of evidence it had gathered which could be used as a foundation for future work.
3. This Committee noted that procurement issues had come up in its work and agreed it would be useful to undertake post-legislative scrutiny of the Act. At its meeting on 21 June, a thematic approach was agreed and call for views was issued. At the meeting on 13 December, the Committee considered responses to the nine questions asked in the call for views and noted key emerging themes. The Committee then agreed the structure, themes, and witnesses for the oral evidence sessions.

#### **Inquiry Structure**

4. The call for written views ran from 29 June to 3 October. Written responses [can be accessed online](#). The inquiry will be held over five sessions. Session 1 - the experience of businesses with procurement in Scotland. Session 2 – the third sector and social enterprise experience, week 3 – contracting authorities, week 4 – support for business and contracting authorities and week 5 – Scottish Government.

5. The Committee agreed to hold an online informal engagement event to hear directly from a local authority and suppliers to get a local snapshot of good practice. Arrangements will be shared in due course.

## Today's Witnesses

6. This is the second evidence session. The Committee will hear from—
  - Pauline Gordon, Partnership Manager, TSI Scotland Network;
  - David Livey, Policy and Public Affairs Manager, Scottish Council for Voluntary Organisations; and
  - Duncan Thorp, Policy and Public Affairs Manager, Social Enterprise Scotland.

And then from—

- Lindsey Millen, Head of Policy and Development, Close the Gap;
  - Martin Rhodes, Chief Executive, Scottish Fair Trade Forum; and
  - Dave Moxham, Deputy General Secretary, Scottish Trades Union Congress.
7. The [Scottish Council for Voluntary Organisations](#), [Social Enterprise Scotland](#) and the [Scottish Fair Trade Forum](#) have provided written evidence ahead of today's session. These can be found at **Annexe A**.

**Economy and Fair Work Committee Clerks  
February 2024**

# Written submission from the Scottish Council for Voluntary Organisations (SCVO)

## About our submission

We have undertaken substantial scoping work and engagement with voluntary organisations to inform our position on procurement reform in Scotland, which includes:

- Reviewing and analysing existing research and responses and submissions to previous consultations.
- Commissioning interviews with voluntary organisations about funding and procurement.
- Conducting a joint survey on accessing public procurement with Social Enterprise Scotland.
- Hosting a small focus group to test SCVO's position on procurement reform with charity leaders.

SCVO would be pleased to expand on our submission during an oral evidence session.

## Our position

Contract income from the public sector constitutes a significant portion of the voluntary sector's income, accounting for a quarter of the sector's income in 2021, approximately £1.8bn. Regrettably, Scotland's approach to public procurement not only hampers the potential of voluntary organisations to innovate and deliver new solutions as part of broader public service reform, but also intensifies the challenges faced by people and communities in Scotland.

The Procurement Reform (Scotland) Act 2014 was viewed as promising legislation. SCVO recognises its potential in enhancing public procurement in Scotland. Still, implementation of reform has lagged well- meaning policy. Instead of the Act serving as a catalyst for broader reforms, contracting authorities are still grappling with procurement changes agreed upon nearly a decade ago. While some progress is evident, the pace of change remains frustratingly slow.

Voluntary organisations, whether directly involved in public procurement or considering their involvement from side-lines, must confront complex systems and processes, insufficient contract funding, and a short- term bidding and retendering cycle that undermines long-term impact. These organisations have been left questioning: does the public sector genuinely understand our operations, ethos, and the value we could bring if viewed as trusted partners in the delivery of public services?

The ideals of community wealth building, sustainable procurement, and a wellbeing economy risk being reduced to mere rhetoric without a procurement system centred on outcomes and impact. Reform of public service delivery must align funding with strategies, policies, and the latest in a long list of taskforce recommendations, and in a way that maximises all our talents. While public procurement was brought about through good intentions, its present state saps resources, morale, and innovation.

## Our response

SCVO is pleased to provide written evidence for the ['Assessing the impact of the Procurement Reform Act'](#) consultation, which builds on the former Economy, Energy, and Fair Work Committee's inquiry into the Act in 2021.

### 2021 Scottish Parliament consultation

SCVO, along with other voluntary organisations, participated in the 2021 consultation. We recommend that the Committee reviews these past responses alongside new submissions, as many voluntary organisations feel overloaded with consultations so may not respond afresh. If response rates are low, the Committee should not interpret it as a lack of interest in procurement reform. Many voluntary organisations are put off engaging on procurement because of perceptions of complexity, which we detail in our response.

### Technical definitions – commissioning and procurement

From the outset, it is important to distinguish between two often-confused terms used interchangeably:

- **Commissioning:** This is the strategic planning done by public bodies for services. Ideally, it should be a joint effort with other sectors, including the voluntary sector. Its aim is to develop a strategic view of how to get the best outcomes and impact from public money.
- **Procurement:** This refers to the actual contracting based on commissioning. However, commissioning doesn't always need to lead to procurement; done well, it could result in a grant, either direct or competitive, or some other approach. Procurement should only be used if it is the right fit, not as default.

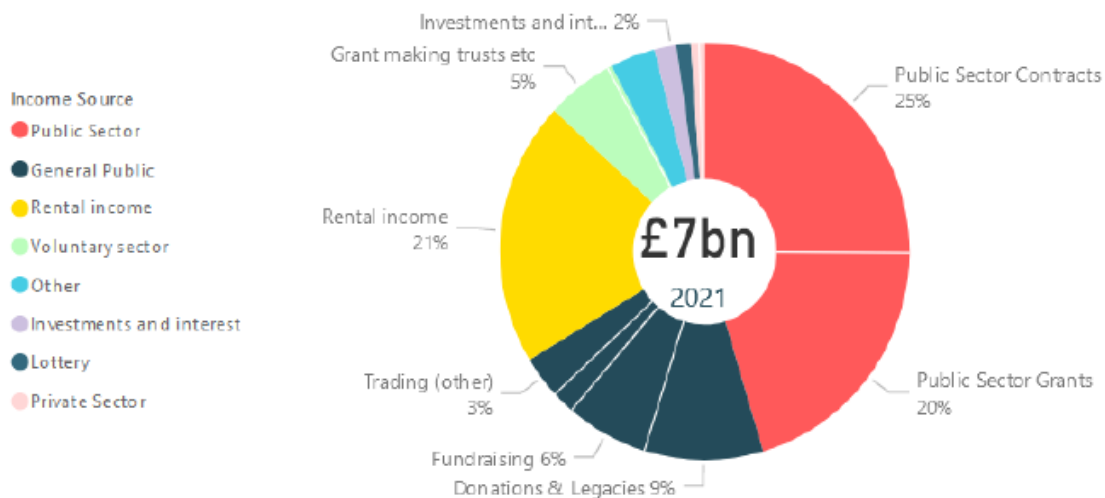
We discuss this in more detail in our response to Question One.

### Latest findings from SCVO's State of the Sector statistics

Contract income from the public sector is a significant part of the voluntary sector's income and accounted for a quarter of the sector's income in 2021, around £1.8bn. SCVO's own analysis of charity accounts shows that income from public sector contracts and other non-grant public sector income has more than doubled since 2007 and increased by almost £0.5bn between 2018 and 2021 (Chart 1).

Chart 1. Sector income by source, 2021

## % of sector income by Source



### Q1: What are the main barriers to businesses accessing public procurement contracts in Scotland, and how have these barriers changed since the Procurement Reform Act (Scotland) 2014 was implemented?

Findings from a recent (September 2023) joint survey of voluntary organisations by SCVO and Social Enterprise Scotland support much of what we already know from a plethora of evidence that is publicly available; Scotland's procurement system is falling far short of expectations and of where people, communities and voluntary organisations need it to be. Despite some organisations reporting a good success rate in winning public contracts, the overwhelming sentiment is one of dissatisfaction. The majority of those surveyed that have bid for contracts in recent years described their experience as "poor," with "neither good nor bad" as the next most frequent response.

Of 40 respondents, only three felt that it has become easier for voluntary organisations to secure contracts in recent years. Just four believed there had been any improvement in the procurement process at all. These findings echo concerns that SCVO has consistently heard from the voluntary sector, reinforcing the urgent need for reform. Evidence provided to the former Economy, Energy, and Fair Work Committee by organisations outwith the voluntary sector show a similar sentiment with the slow pace of improvement to the public procurement system since 2014. Those issues felt across sectors are only amplified for a voluntary sector that is stretched and has little time and resources to devote to complex tender processes. To build a more equitable and effective procurement ecosystem, we need to focus on several key areas:

#### **Streamline bureaucratic requirements for organisations bidding for contracts**

SCVO has consistently heard that Scotland's procurement system needs to be simplified. A key step toward simplification would be to minimise bureaucratic obstacles, such as the cumbersome and intricate forms. Often, tender documents

include questions that are not relevant, due to the reliance on one-size-fits-all templates; this unnecessarily complicates the application process. It would be more effective to begin by narrowing tenders to only the essential information, eliminating unnecessary questions – for example, questions about accreditations that are irrelevant to the contract in question. Contracting authorities should write Invitations to Tender (ITTs) in clear, straightforward language, and tendering portals should meet accessibility standards, so that they are easily navigable for all users.

Another area for improvement is the consistency in procedures across local authorities. Despite all using the same procurement guidance, each local authority has a different contracting and reporting mechanism. As one organisation pointed out, "In some areas, the level of detailed reporting and scrutiny is excessive — do these local authorities apply the same level of scrutiny to their own services?" For further details, please refer to our response to Question 7.

### **Equitable access for smaller, specialist voluntary organisations**

Expert services are often provided by small, specialist charities. Current procurement models frequently neglect the unique challenges facing those small, expert organisations and favour larger entities, particularly those in the private sector, who benefit from economies of scale in a competitive and cost-driven landscape. Procurement officers are reluctant to subdivide their programmes into smaller, more manageable lots that would be more suitable for these smaller organisations and would provide the best service to individuals. Even when such lotting occurs, there is still a range of obstacles, such as timeframes, effectively excluding the organisations that could provide the best outcome for the service users.

One organisation told SCVO, "Procurement is a business function well-suited to larger commercial entities that have dedicated resources for it, something many voluntary organisations lack." Even a larger voluntary organisation shares similar concerns despite having more resources. One told SCVO, "massive private sector providers are increasingly snapping up employability contracts, but these are focused on high-volume, low-impact services. A significant concern is an unfair 'pricing war'." For more details, please refer to our response to Question 6.

### **Shift from short-term to fair and sustainable multi-year contracts**

One-year contracts pose significant challenges for long-term planning and often result in expensive redundancy processes and financial risk shifting onto voluntary organisations. For instance, social care organisations in the voluntary sector have had to exit public contracts due to the unmanageable cycle of frequent re-tendering, as shown in [CCPS's research commissioned in 2019](#). This short-term approach undermines the principles of Fair Work and is disruptive, even distressing, to service users who lose the secure and familiar services they rely on.

Longer-term contracts are essential to achieve sustainable outcomes, allowing for more effective long-term planning and capacity-building and lasting benefit and impact for service users and public service delivery at large. The constant need to provide monitoring information during annual re-bidding processes is disproportionate and benefits no one. The excessive time and resources spent repeatedly applying for contracts drain time and money that could be better utilised

elsewhere for both the bidder and the procurer. One organisation told SCVO, "What is most effective are reasonably long-term agreements, ideally a minimum of three years, with an option to extend for an additional two."

Commissioning human services such as social care or mental health services should be viewed as an investment; a long-term, strategic investment approach is the best way to maximise scarce public funds as well as being better for those receiving the services.

### **Tender for contracts with fair funding levels**

Competitive tendering focused primarily on price often leads to contracts that lack adequate funding for the expected outcomes. This puts more strain on an already under-resourced sector, compelling organisations to find resources elsewhere (i.e. subsidise the contract) or compromise quality. SCVO's research indicates that voluntary organisations increasingly must find additional funds to maintain services, effectively subsidising their contracts with public authorities with money from reserves or from fundraising. That's both unethical and unsustainable.

Organisations have also reported that Service Level Agreements (SLAs) are often inflexible, lacking mechanisms for periodic reviews with no way to take account of inflation or other unexpected changes. Providing sufficient funding for services is crucial to maintaining financial sustainability for providers, and therefore for service delivery to often vulnerable people. The current procurement practices of public authorities undermine their claims to promote Fair Work principles, including the commitment to pay the Real Living Wage and job security.

### **Foster collaboration not competition between sectors and organisations**

The current procurement system relies heavily on competitive tendering as a way to reduce costs. While this approach may drive down short-term costs, it generates unnecessary bureaucracy and uncertainty which in fact adds costs in the medium to long term. It creates competition at the expense of much-needed collaboration. Prioritising low-cost tenders can lead providers to withdraw from, or return, contracts that become unviable. We need funding mechanisms that encourage collaboration between organisations, whatever sector they are in, rather than driving competition.

Despite the existence of the Sustainable Procurement Duty, price continues to dominate the evaluation of bids. This focus on low costs discourages investment in the workforce and compromises quality standards; it doesn't take account of what's best for the people receiving the service. One organisation told SCVO, "The government seems to fundamentally believe that a market-based approach delivers value and helps to eliminate corruption. However, this leaves little room for collaborative or innovative efforts that could add social value."

### **Avoid making procurement the default approach**

SCVO's interviews with voluntary organisations in 2021 highlighted varying approaches across local authority areas. While some have increasingly resorted to competitive tendering over the past two or three years, others have reverted to grant-based funding after acknowledging the limitations of tendering for sourcing certain

services. This prevalence of tendering has significantly impacted on voluntary organisations, who are far less able to access public procurement opportunities.

One organisation told SCVO, "Switching from grants to tendering has added a considerable workload. We've had to restructure our fundraising strategy and build capacity accordingly." Another organisation added, "We need alternative engagement models for local authorities to interact with the third sector that aren't solely contract-based." SCVO advocates for a more nuanced approach that doesn't automatically equate commissioning with procurement/contracts. It is evident that public authorities tend to default to contracts in situations where direct funding and grants would be more appropriate for all concerned.

However, decisions and agreement at the commissioning stage as to the correct approach for funding any given services must be ethical. This means involving people, communities, and providers in the co-design and redesign of services. This form of [collaborative commissioning](#) is vital for ensuring the best outcomes for people and that the correct decisions are made.

### **Commission and procure for outcomes, not processes**

Civil servants and commissioners often focus on specific tasks and activities in contracts rather than outcomes, frustrating voluntary sector suppliers. It is often the case that documentation provides little to no space for organisations to focus on impact and outcomes, constraining them to focus on activities and outputs. One organisation told SCVO, 'We need to be able to root in outcomes and impact from the beginning of the process but, unless you cram it into a question, there isn't much focus on this from those pulling the bid forms together.'

This rigid approach prevents services from being person-centred. Procurement must be outcomes-focused and geared toward how the public pound can make the most difference. A relationship-based approach in service delivery requires the contracting body to trust the service provider to know the right way to achieve the best outcomes for the people using their services. SCVO supports [CCPS's call](#) for collaborative, participative, and ethical commissioning frameworks that prioritises people over price and competition.

### **Adopt equitable and transparent partnership approaches to commissioning and procurement.**

Organisations are frustrated with being contracted to deliver a service but not involved in the development of the spec/programme of work. It leads to organisations feeling that local authorities and HSCP's do not understand what they do and could achieve, do not value the expertise they bring, and they feel as though any engagement is just a 'tick box.' Organisations have told SCVO that too often recognition of the voluntary sector is 'window dressing' rather than a real attempt to work with the sector to think differently and being open to new ways of delivering services. Therefore, the best outcomes for people and communities are not realised. One organisation told SCVO, 'The procurement system needs to engage in a way that creates space for ideas and solutions – government alone is running out of these.'



Voluntary organisations feel strongly that the public sector needs to change how it engages with our sector, including in the construction and evaluation of tenders that ensure they can bid in realistic terms. Voluntary organisations can play a greater role in collaborative commissioning and planning to improve both the process and the outcomes. These opportunities need to be fair and respect the sector as a partner. There are too many examples of public authorities extracting expertise and then moving on to other less experienced providers who will deliver at lower costs, or switching how a service is funded from grant to contract to reduce costs. See our response to Question 6.

### **Greater knowledge and understanding of the voluntary sector.**

Voluntary organisations are keen to see a shift in the public sector's engagement with them, particularly in planning, contract construction and evaluation. Playing a more active role would enable them to submit bids under realistic terms and would deliver a better product for the service user. It would be a significant improvement if those preparing contracts or funding agreements understood the context the provider is working in rather than treating them as a commodity. While these organisations can contribute meaningfully to collaborative commissioning and planning, the opportunities must be genuinely equitable, viewing the voluntary sector as a key delivery partner not simply as a source of free consultancy.

### **Enhanced and tailored support**

A recent survey by SCVO and Social Enterprise Scotland found that many voluntary organisations acknowledge the increased availability of guidance and support to access procurement opportunities. Still, those that had not bid for public contracts in recent years felt that more support would encourage them to consider bidding. They expressed a desire for more guidance from the public sector, individualised 1-1 support, and case studies showcasing successful bids from similar organisations.

While SCVO recognises the availability of crucial support through avenues like Just Enterprise, the Supplier Development Programme, Third Sector Interfaces, and local authorities, navigating these resources can be daunting and a challenge. Many organisations struggle to find the time to engage with these supports effectively, especially when content is tailored to a broad audience. As one organisation told SCVO, "There's a need for someone who can offer targeted assistance, tailored to our specific organisation and bid. We're inundated with information, but often the actual support is limited."

### **Q2: Does the sustainable procurement duty mean that adequate weighting is given to environmental considerations?**

SCVO recognises the potential of the Sustainable Procurement Duty (SPD) to stop focusing simply on cost, but for valuing social, environmental, and wider economic factors. Unfortunately, that is not what happens in practice; many tenders still overly prioritise cost in the scoring process. Price is clearly important, but this money-centric approach undermines the stated commitments of Scottish Government and others to address climate change, poverty and inequality. Longer-term outcomes for society and individuals would be better addressed through a more holistic, and realistic, approach. As one organisation told SCVO, "It remains challenging to get

contracting authorities to recognise the added value they get from voluntary sector providers compared with private providers, but this is challenging in context that they are always cash strapped.”

SCVO consistently calls for public authorities, including the Scottish Government, to adopt a broader view of economic value - one that fully acknowledges the voluntary sector's contribution to Scotland's economic and environmental landscape. This involves recognising the contributions made in areas like up-skilling/re- skilling, local economies, and fair and sustainable economic transformation. By adopting this broader perspective, the focus moves from mere cost evaluation to understanding a contract's longer-term benefit to society. This approach enables better decisions that contribute to society's overall well-being.

The most recent Scottish Government Spending Review focused on procurement as an area for reform to deliver efficiencies in public spending. Efficiency is important in any procurement system and the current, short-term, bureaucratic approach is undoubtedly inefficient. For example, we should move away from short-term contracts that drain time, capacity, and morale in favour of multi-year investment with streamlined systems and processes. Regarding "efficiency" simply as a low immediate cost presents a significant risk to the stated aim of using public sector procurement as a driver to achieve a fairer, greener, healthier Scotland. If public authorities expect their efficiencies, or savings, to be met by essentially sub-contracting that responsibility to voluntary, or indeed private, organisations, we lose sight of people and communities, and damage the infrastructure we all rely on.

The Sustainable Procurement Duty has the potential to ensure that contracting authorities get the balance right in securing “Best Value” However, voluntary organisations heavily involved in procurement have told SCVO that they have seen no improvement since 2014. Best Value, as defined by Audit Scotland, ‘is about ensuring that there is good governance and effective management of resources, with a focus on improvement, to deliver the best possible outcomes for the public.’ The current system actively gets in the way of that due to its narrow focus on cost, driven by a competitive tendering environment that does not prioritise broader outcomes. As one organisation we spoke to noted, "The public sector needs better ways to engage with the voluntary sector to truly realise 'best outcomes.' The argument for tendering services is always around 'best value' but public sector doesn't get best value from procurement currently."

Especially in sectors such as social care, the prevailing tendency has been to prioritise cost at the expense of the wellbeing of individuals receiving care, despite rhetoric about person-centred services. To counter this, a more balanced approach is required, one that factors in social, environmental, and economic considerations when evaluating tenders. Currently, aspects like environmental sustainability often get short shrift due to cost concerns. There must be a more equitable balance across these aspects of bids. Greater involvement of the voluntary sector and communities through [collaborative commissioning](#) models is vital to ensuring human and environmental needs and rights are supported through contracts.

Procurement is a powerful tool that the Scottish Government, local government, the NHS, and other public authorities have at their disposal to shape the economy in a manner that delivers wider social and environmental benefits. That cannot be achieved while cost remains the single most important factor when evaluating and

scoring bids. Nor can it be achieved when contracting authorities are failing to ask potential suppliers to demonstrate impact and outcomes in their bids, as we raise under question 1. Therefore, SCVO encourages the Committee to strengthen the SPD to ensure a more balanced, outcomes-based approach to procurement and to genuinely support Community Wealth Building in practice, not just in rhetoric. See our response to question 8.

To promote wider value through procurement, SCVO supports conditionality clauses in contracts that aim for social and environmental good. However, we have significant concerns that the growing complexity of these conditions —relating to Fair Work, Net Zero, and more — could outpace the voluntary sector's capacity to adapt, particularly when meeting those conditions is not funded. Inconsistent government support poses risks for the voluntary sector's sustainability and effectiveness. One organisation told SCVO, “while contracts may reference needing apprentices, other parts of government are cutting support for apprenticeship programmes – this is very bad for some voluntary organisations in terms of risk.”

**Q3: The sustainable procurement duty aims to promote fair work practices. How effectively is this reaching secondary suppliers and the wider supply chain?**

Following up our response to Q2, Fair Work is one of the broader benefits that requires far greater attention in commissioning and procurement processes. While we acknowledge the Scottish Government's efforts to update the [Supplier Journey](#) to reflect its approach to Fair Work, far greater attention is needed on the buyer side to ensure that tenders and the approach to tendering support Fair Work. At the moment, the process actively undermines it.

Data from [Scotland's Third Sector Tracker](#) indicates a growing concern about the impact of rising operating costs, inflation, and financial pressures. Core operating costs continue to increase, with more organisations reporting a negative impact on their ability to deliver services. A large majority (71%) of organisations report facing financial challenges, up from 67% in December 2022, while more than half (51%) of organisations report that rising costs are having a negative impact on delivering their core services or activities - a rise of 5% since December 2022.

Encouragingly, [recent statistics](#) show a significant reduction in those paid below the Real Living Wage in Scotland's voluntary sector - from 13.7% in 2021 to 6.3% in 2022. However, the Real Living Wage should be a bare minimum, not an aspiration, and no new figures are available concerning age, ethnicity, disability, and type of work. Nor does it address paying a fair rate for the job. This decrease in the number of people paid below the Real Living Wage fails to tell us how organisations have managed to reduce the gap. Many voluntary organisations continue to top up funding out of their own income from other sources to ensure their staff are paid at Real Living Wage rates, propping up public services with income raised for their charitable purposes. Voluntary organisations across Scotland have sought to prioritise the wellbeing of their staff through the pandemic and the cost-of-living crisis, often through their reserves. The latest Third Sector Tracker results reveal concerns that charities' reliance on reserves is "unsustainable."

Recent [research](#) by CCPS reveals a 20% pay gap between NHS support workers and voluntary sector social care support workers who are starting out in their career. There needs to be an honest and open conversation – hopefully taken forward by the Committee – about the differential between working in the same job in councils or the NHS compared to the voluntary sector. During recent engagement, we learned that one charity was expected to deliver a personal care service for £16 per hour, in comparison to a similar service in the local authority that cost £24 per hour. The wage gap and broader gap in costs awarded between the voluntary sector and public authorities exacerbates recruitment and retention challenges, and a lack of uplifts in contracts to provide annual pay awards to voluntary sector staff often compounds this. One organisation told SCVO:

"We budgeted for a salary uplift of 1%, which had been the pattern for a number of years, while the COSLA pay award was 3.5% with a 3% in the following year. Although the Scottish Government recommended a 2.3% uplift to the third sector and gave local authorities additional funding to pay for the uplift, the local authority only gave 1.7% and kept the additional funding."

While the direct impact of this is on staff pay, it has a knock-on effect on other terms and conditions. The organisation quoted above has had to close the defined benefit pension scheme to new employees due to cost, so new employees do not get the same employment terms as existing employees or comparable local authority staff, making it even harder to recruit and retain staff.

Scottish Government has committed to providing the necessary funding in the next Budget to increase the pay of social care workers in the private, third and independent (PVI) sectors in a direct care role and those working in the PVI sector to deliver funded early learning and childcare, to at least £12 per hour from April 2024. However, CCPS and the sector at large view this as too late. Moreover, it highlights the fragility of the current system, where the voluntary sector can only hope for the best and plan for the worst. We urge the Committee to clearly back and champion [CCPS's 4 Steps to Fair Work Campaign](#).

It is not only the level of funding that is important to delivering Fair Work through grants or contracts. How contracting authorities issue money to voluntary organisations also matters. In August, SCVO and the TSI Scotland Network published the paper, '[Fair Funding and Fair Work](#).' This paper shows how unfair funding practices undermine Fair Work, including job security, staff fulfilment, opportunity for stability and development, respect, and having an effective voice.

For Scotland to be a Fair Work Nation, Scottish Government needs to work across departments, with local government, independent funders, and the voluntary sector, to ensure that organisations have the support they need. As with grant funding, there is a pressing need to shift to longer-term contracts that offer more predictable funding, annual inflation-based uplifts, and sufficient support for the Real Living Wage. In conversations with SCVO, various organisations have indicated that current contracts are static in value, lacking any mechanism for negotiation or flexibility. Many expressed the sentiment that voluntary organisations are expected to subsidise local authority and Health and Social Care Partnership (LA/HSCP) services by using their charitable funds. One organisation said, "Each year, we are raising a larger percentage of income to subsidise services."

It is also vital that voluntary organisations receive the core funding and full costs of delivering a service (such as training and development, utilities, and support staff). Feedback to SCVO has highlighted that organisations often struggle to secure funding for essential organisational costs such as management, development, IT, and financial services, all of which are necessary for fulfilling contracts. Even though organisations endeavour to achieve full-cost recovery, this is seldom provided. One organisation told SCVO, "We rarely receive core funding for organisational costs, but these costs are 25% of our budget. We must fund core functions from each contract, but this can make our prices uncompetitive when we are in a competitive tendering situation."

Public authorities must improve the accessibility of procurement opportunities, including renewal funding, to support services' long-term viability and effectiveness. These services often fall by the wayside when funding dries up despite remaining a priority area, leading to job insecurity and redundancies. A case in point relates to services for older people. One organisation told SCVO that the alignment between policy goals and funding has been inconsistent, jeopardising services' sustainability and expansion. They noted, "Earmarked funding, such as the 'Transforming Care for Older People Fund,' was once a reliable source but is no longer available" despite intentions to "eventually mainstream new pilot services established through initial transformation funding". This tendency to end one funding stream and replace it with the latest new thing, with no option to sustain things that are making a difference, is undermining Scotland's ability to achieve its National Outcomes.

Failure to address these weaknesses has a significant impact. It affects employees' job security, increases the risk of redundancies, and leads to low morale among staff and volunteers. These people feel undervalued and live in perpetual uncertainty, hindering their ability to secure mortgages or even rental agreements. The attrition of skilled and experienced staff from the voluntary sector to public or private sector roles further exacerbates the issues. Voluntary organisations find it increasingly difficult to keep pace with salary increases and professional development opportunities available in other sectors, hindering their capacity to recruit, retain, and develop staff. This impacts directly onto the people in receipt of their services.

We need to see the following in public contracts in Scotland:

- Multi-year investment of three years or more
- Annual uplifts built in, at a level as close to inflation as possible, and mechanisms to renegotiate in times of rapid and unexpected inflation growth.
- All procured contracts have both the Real Living Wage and annual uplifts to the Real Living Wage built into the amount awarded.
- Ensure that funding decisions are taken and communicated within agreed timescales.
- close the differential between working in the same job in councils or the NHS compared to the voluntary sector.

- work with the voluntary sector to ensure that good practice is highlighted and shared.
- Publish the proportion of contracts that are delivered on a multi-year basis, uplifted to keep pace with inflation, and accommodate payment of the Real Living Wage.

**Q5: How effective are community benefit requirements in procurement contracts, and how appropriate is the £4 million threshold?**

SCVO believes that the Procurement Reform (Scotland) Act 2014 has enhanced the promotion and use of community benefits, including generating employment and training opportunities, building capacity in community organisations, and minimising negative environmental impacts. However, SCVO believes that commissioning authorities are still not taking a strategic approach to community benefit where the voluntary sector and communities are actively engaged in shaping the benefits they would like to see.

The voluntary sector remains an untapped resource in relation to taking a strategic approach to community benefit. SCVO emphasises the importance of increasing engagement between the public and voluntary sectors to identify the priorities, limitations, and possibilities from the buyer's viewpoint. Voluntary sector involvement can maximise community benefits and take a more holistic approach. Community wealth building should be a catalyst to improve the participation of the voluntary sector and social enterprises in place-based decision-making.

The funding and operational challenges raised throughout our response demonstrate the need to use community benefits to ensure that private sector organisations that deliver large contracts support voluntary sector development and capacity through supply chains. While the Procurement Reform (Scotland) Act 2014 requires large suppliers to include in Annual Procurement Reports a summary of any community benefit requirements fulfilled during each year, it is unclear what level of independent auditing takes place to ensure impact and outcomes are met. Increased use and weighting of community benefits linked to supporting the development of charities, social enterprises and voluntary groups and more market engagement with voluntary sector suppliers, as proposed by the former SENScot, could support greater alternative investment in the voluntary sector.

SENScot delivered a Scottish Government contract, "Developing Markets for Third Sector Providers," a public sector-facing support programme aimed at embedding social value in procurement. This work facilitated a Public Sector Community Benefits Champions Group that promoted community benefits and engaged with the voluntary sector. The Network organised regular meetings and workshops on procurement and shared good practices with more than 100 procurement professionals from across the public sector. Sadly, the Network ceased with the end of the contract.

**Q6: What is your experience of tendering or bidding for framework contracts and lots within large contracts, are these becoming more prevalent in Scotland, and what is your view on how accessible these opportunities are?**

SCVO believes that there is considerable room for improvement in the design of public procurement frameworks. Poorly designed frameworks make the tendering process difficult, hindering effective competition and project implementation, with vague wording of what is required and too much focus on inputs and outputs rather than outcomes and impact. Lot divisions in frameworks often benefit organisations that have long been part of the framework at the expense of new entrants. Identifying existing frameworks can be challenging for new entrants, often requiring a Freedom of Information (Fol) request to ascertain their names. A more transparent approach is needed in both the creation of and access to these frameworks.

The [Social Enterprise Strategy](#) covers collaborative commissioning where local authorities and voluntary organisations could work together to develop new services and frameworks. As we note elsewhere in our response, voluntary organisations feel strongly that the public sector needs to change the way it engages with our sector, and this includes the construction and evaluation of contracts, including the division of lots. There is also a problem with when new entrants can join a framework. The way the Scottish Government releases procurement frameworks every 3-4 years aligns poorly with industry practices, and suppliers should be able to join a framework more often than every 3-4 years.

Non-committal frameworks also create uncertainty, resulting in precarious work and disempowered workers, and SCVO has long called for an end to non-committal frameworks in procurement contracts. One organisation told SCVO 'We are a small organisation, and it is a huge risk to join a framework without a guarantee of a proportion of that framework. If there was more clarity, we could put in place the resources and capacity to ensure we can deliver.'

SCVO's engagement with voluntary organisations supports the finding of the Scottish Government's report, [Public procurement - views and experiences: research](#), which states: 'insufficient lotting of contracts has a significant impact on organisations' ability to bid for public contracts, particularly smaller organisations.' Even when lotting is used, large lots push out smaller voluntary organisations from delivering local services. Small, specialist organisations may be best placed to provide specific parts of a larger lot, but they are excluded. More sophisticated lotting of contracts where voluntary organisations are involved in shaping those lots would make procurement more inclusive and deliver better services to people.

**Q7: What is the administrative burden of complying with procurement regulations in Scotland, and how has this changed since the 2014 Act was implemented?**

The administrative burden of complying with procurement regulations in Scotland presents several challenges for voluntary organisations, businesses, and public agencies alike. However, it is not simply regulations that add to the administrative burden, but the approaches and processes that different public authorities adopt. Together, these issues range from unnecessary complexity in tenders to issues around conditionality, inconsistent funding processes, and more.

In our response to Question One, we highlight that the current procurement regime in Scotland remains unnecessarily difficult for voluntary organisations to navigate and remains a major barrier to making the most of procurement, and is a drain on

already-stretched resources. A recent survey by SCVO and Social Enterprise Scotland revealed that the primary reason organisations had not bid for public sector contracts in recent years was a lack of staff capacity to draft complex bids. This was closely followed by difficulties in navigating the system.

SCVO's engagement with voluntary organisations and research from other sector intermediaries show several areas where improvements can be made:

1. Reduce length and complexity of forms: Overcomplicated tenders make it difficult for organisations, particularly small and medium-sized ones, to bid effectively.
2. Stop using generic templates: Requiring excessive insurance or other generic terms regardless of the scale of the contract can deter smaller organisations from bidding, or indeed are completely prohibitive.
3. Ask the right questions: Often, tender documents include questions that are not necessary for the actual scope of work, making the process unnecessarily cumbersome. For example, requirements for infrastructure projects are applied to services.
4. Only seek necessary accreditations: Demanding accreditations such as ISO Certification, not relevant to the project, discourages smaller organisations from participating.
5. Use Quick Quote facility: Greater use of quick quote facilities can increase the speed with smaller contracts, reducing time and cost.
6. Ensure consistency across contracting authorities in so far as possible: Different contracting authorities have varied and complex funding systems that make it difficult to navigate tenders consistently.

A major barrier to improving the current procurement landscape is the lack of feedback mechanisms. While SCVO welcomes the Scottish Government research into the barriers to accessing procurement opportunities, and we welcome the many opportunities to engage with the Scottish Government, such as through the Procurement Suppliers Group, constructive feedback on tender submissions at a contracting authority level is often lacking, making it difficult for suppliers to improve future bids and for contracting authorities to learn from what does or does not work.

Many of the challenges listed above are compounded by point 6, 'Consistency across contracting authorities.' Organisations frequently deal with multiple funding streams, each with its distinct rules and requirements, thereby complicating the tracking and reporting process. This complexity is exacerbated by the varying approaches adopted by different public authorities in the application, scoring, and management of bids. This inconsistent and convoluted landscape means that voluntary organisations must dedicate considerable effort and resources to understand and adapt to each specific set of guidelines, thereby placing a drain on their administrative capacity and resources that often receive no funding.

SCVO recognises that local authorities and other public bodies will have varying levels of capacity and resources and therefore operate differently. While it would be



difficult to achieve completely consistency across these contracting authorities, a greater level of consistency could be achieved through simplifying bidding processes more generally. Adaptations mentioned in [‘Public procurement – views and experiences: research’](#) include ‘asking questions in the same way, in the same order, to ‘reduce the amount of time spend tailoring the same information each time they bid.’

Throughout our response, we have touched on the importance of collaborative commissioning and the development of contracts in partnership with the voluntary sector. This is vital to achieving Best Value, but is seldom recognised in the initial stages of project development. This means that organisations invest time and resources working with the public sector only to see the fruits of their labour put out to tender, without any compensation for their time. Extracting the voluntary sector’s expertise and networks is not something that should be expected for free.

We have also raised the issue that commissioning should not always result in procurement. One organisation explained to SCVO that their local authority put them through competitive tendering for a service when their previous SLA had expired. This resulted in weeks of work, but they were the only organisation with capacity to deliver in the area and they were the only bidder in the process. This is a complete waste of time and resources and demonstrates why new models for local authorities which are not purely contractual are needed.

Organisations have also told SCVO that timescales also place a significant burden on the voluntary sector workforce. One charity leader explained that local authorities often publish tenders in the week before Christmas when they realise they have not spent all their budget. This is an annual occurrence and means that staff must give up their holidays to ensure the organisation can put in a bid within the short window available. Another organisation told SCVO that despite seeking an extension of the application window over the school summer holidays in the pre-qualifying questionnaire they submitted, from four to six weeks, the local authority ignored this request.

SCVO has also heard that voluntary organisations can struggle with holding effective in-contract discussions with contracting authorities. It is not unusual for issues to surface with contracts during the delivery period and there is a need to have mechanisms in place to address these challenges to ensure optimal delivery to achieve the best outcomes. Organisations currently find it difficult to re-engage in contract discussions, which has been even more important in recent years when the external environment has necessitated changes to contracts to adapt delivery during the pandemic. One organisation told SCVO, “It’s taken close to two years of trying to secure changes in the contract that open things up a bit for us.”

#### **Q8: How can procurement policy in Scotland support the strengthening of local supply chains?**

Community wealth building has the potential to ensure the progressive procurement of goods and services is strengthened through developing robust local supply chains of local organisations, including voluntary organisations, to ensure that people and communities benefit from employment and retain wealth locally.

This is one of the five pillars of community wealth building, and SCVO believes that public partners need to use the full legislative levers and guidance at their disposal to maximise their spending power, and this will require strengthening the Sustainable Procurement Duty and ensuring that the Committee's inquiry makes direct recommendations to inform the development of community wealth building plans and future legislation in Scotland.

At present, SCVO has little evidence to show that the public sector is meaningfully incorporating community wealth building considerations into procurement activity at scale. SCVO has not heard from anyone in the sector who has benefitted from this change in focus, although we recognise that there are efforts to develop legislation and other levers in relation to community wealth building. While CWB is mentioned in the Scottish Government's new procurement strategy, we have not seen any significant inclusion or progress in local authority procurement reports beyond community benefits, (including reports from CWB pilot areas), which is significant as most voluntary sector contracts are with local authorities.

Anecdotally, one TSI that SCVO spoke to in a CWB pilot area reflected that it was difficult for them to get in touch with the procurement team in their local authority, despite numerous attempts. Another TSI in a CWB pilot area disclosed that while the head of procurement at the NHS in their area was willing to open contracts locally, they were unwilling to shoulder the time/monetary costs that would come with breaking down a large contract into smaller contracts to make it more accessible to the sector. This example shows that many of the issues raised in our response to this inquiry must be addressed for Community Wealth Building to play out in practice, not simply in words.

There is a risk that community wealth building is the latest example in a long list of bright ideas with little spark to ignite them. Organisations interviewed by SCVO explained one of the biggest issues across commissioning and procurement is turning policy into practice. While there are good examples of where something is a clear policy priority, contracting authorities are not able to act on these policies and deliver, often caught up in bureaucracy. One organisation said, "the Coming Home report says what needs to be done – everyone agrees – but there is no finance to make it happen at local authority level." Another said, "even where there are strategic plans and commitments, there is often no funding to deliver the commitments."

There will be examples of where some progress has been made. For example, North Ayrshire Council has amended its standing orders to ensure it looks to local suppliers and where possible include five local organisations in tendering as part of the community wealth building agenda. While this is a positive step and SCVO does not have further details on the impact of this specific example, many of the challenges outlined throughout our response, such as poor contract terms and conditions and bureaucratic processes, remain major barriers for voluntary organisations even when actions are taken to ensure that they as suppliers are considered because of their local connections.

The organisations SCVO engaged through the consultation process on community wealth building are generally supportive of CWB principles and believe the five-pillar approach is a holistic way to bring together things which have been previously siloed. However, as with procurement, concerns were raised around inaccessible

language, the top-down approach taken by local authorities and the Scottish Government, the exclusion of the voluntary sector in planning and decision-making, fraught relationships between the sector and local government, limited resources to support with implementation, the need for policy coherence with other legislation, and the effectiveness of proposed legislation if these issues are not addressed. Many of these same issues can be found across procurement systems and reflect deep rooted issues in the public sector's engagement with Scotland's voluntary sector.

To support community wealth building through procurement practices, SCVO recommends:

- CWB action plans should explicitly commit to using the flexibilities in commissioning and procurement to enhance local supply chain development and encourage greater collaboration in design and delivery of public services and support for our communities.
- Contractors must provide reports on CWB, and the Scottish Government's annual procurement report should detail total contract contribution.
- CWB could be scored in the tendering process, rather than being treated as a side benefit.
- Councils need to get much better at signposting private organisations that win large contracts to potential voluntary sector sub-contractors in their local areas.

## About SCVO

The [Scottish Council for Voluntary Organisations \(SCVO\)](#) is the national membership organisation for the voluntary sector. SCVO represents the sector at a national level and provides advice and services to voluntary organisations. We champion the role of voluntary organisations in building a flourishing society and support them to do work that has a positive impact. Along with our community of 3,500+ members and supporters, we want to see a thriving voluntary sector at the heart of a successful, fair and inclusive Scotland.

## About Scotland's voluntary sector

The voluntary sector in all its diversity is a powerful force for positive change and a significant part of our economy. From grassroots volunteer-run community groups like village halls and playgroups to major providers of public services in social care and housing, the voluntary sector is present in every aspect of our society and is the glue that holds communities together, with over 46,500 voluntary organisations and 1.2million volunteers.

Together these organisations employ over 135,000 paid staff. A quarter of charities employ staff, and the average income of these charities is around £900k. However, three-quarters of charities are run entirely by volunteers and have an annual turnover of less than £100k. Many deliver vital services and work with some of Scotland's most marginalised communities. SCVO's State of the Sector statistics for 2022 are available [online](#).



# Written submission from Social Enterprise Scotland

## **What are the main barriers to businesses accessing public procurement contracts in Scotland, and how have these barriers changed since the Procurement Reform Act (Scotland) 2014 was implemented?**

Please see the accompanying paper in terms of this and all other questions in this consultation.

The paper contains context and background regarding procurement and social enterprises (independent businesses with a specific social purpose), as well as the results of our survey that identifies both existing barriers and opportunities for accessing public procurement.

Many of the identified issues in the paper precede the introduction of the Procurement Reform (Scotland) 2014 Act.

Our survey respondents may have further detail about their experiences and views and we're happy to make connections with them, in order to inform your work.

## **Does the sustainable procurement duty mean that adequate weighting is given to environmental considerations?**

The Sustainable Procurement Duty outlines that before carrying out a regulated procurement, a contracting authority has a duty to consider how, in conducting the procurement process, it can improve the economic, social, and environmental wellbeing of the authority's area.

While this results in consideration being given to environmental benefits, particularly through the use of Sustainability Tools by buyers, there are no specific requirements regarding the weighting given to environmental factors.

There is scope for environmental considerations to be included within the core specification of a contract, especially within certain tenders such as housing, construction etc. However, doing so could potentially incur higher costs for bidders and impact negatively on smaller organisations, in addition to some existing high costs, including social enterprise and charities, so this must be given very careful consideration.

The sustainable procurement duty aims to promote fair work practices. How effectively is this reaching secondary suppliers and the wider supply chain? Fair Work seems to generally work well at Tier 1 main contractor stage but it's not so easy to gain information of fair work practices within wider supply chains / sub contractors. Many social enterprise / third sector organisations promote and have embedded fair work practices as a core remit within their organisations, including paying the living wage where possible. We are unsure how fair work practices are demonstrated or evidenced in secondary suppliers.

**The Scottish Government have a framework contract which reserves opportunities for supported businesses (businesses where more than 50 per cent of the workforce are disabled workers unable to take up work in the open labour market). What is your experience of engaging with this framework as a supported business?**

No specific response for this question, please see accompanying paper. Our survey respondents may have further detail about their experiences.

**[Accompanying paper attached]**

**How effective are community benefit requirements in procurement contracts, and how appropriate is the £4 million threshold?**

There is widespread use of community benefits in major contracts over £4 million and a wide range of benefits have been delivered, especially around employability (apprenticeships and jobs), which indicates that community benefits can achieve desired impacts. There are also a number of new buyer initiatives, including Community Benefits wish lists, that are aimed at linking community benefits to community needs. However, it's important that we see more evaluation and evidence of the impact of community benefits and further development of initiatives that link actual community needs and wants to community benefits in contracts. Increasingly lower value contracts include community benefit requirements and it may be that over time the £4 million threshold becomes redundant.

**What is your experience of tendering or bidding for framework contracts and lots within large contracts, are these becoming more prevalent in Scotland, and what is your view on how accessible these opportunities are?**

Framework contracts are becoming more prevalent. They provide a great opportunity for smaller organisations who may not be ready for a larger contract but can gain experience in contracts through bidding to be part of a framework. The downside of frameworks is that there is no guarantee of work and it can involve a lot of time and resources to be accepted onto a framework. Lotting of larger contracts can provide accessible opportunities for smaller organisations, having different qualification criteria for the different lots can help to keep the requirements proportionate and accessible.

**What is the administrative burden of complying with procurement regulations in Scotland, and how has this changed since the 2014 Act was implemented?**

PCS (Public Contracts Scotland) and PCS Tender have reduced the administrative burden of complying with procurement regulations, making it much easier to save information to pre-populate forms and to submit tenders. However, since the 2014 Act was implemented there has been an expansion of additional areas that suppliers are asked to respond to, including the expansion of Fair Work Criteria and increased environmental considerations. Again please note that keeping up to date with changes in requirements and making sure workplace practices and policies are

compliant with requirements increases the burden of bidding for smaller organisations, including social enterprises.

### **How can procurement policy in Scotland support the strengthening of local supply chains?**

A requirement for in-person meetings/events, within a supportive and constructive format, for commissioners to meet local suppliers, at a local level. Please see our accompanying paper.

### **What are the opportunities to reform procurement in Scotland following the UK's exit from the European Union?**

There are opportunities to pursue further community wealth building outcomes through procurement, for example, measures to ensure that procurement processes are designed to support local businesses and suppliers as a priority. This could be achieved by introducing measures such as local supplier targets. There are also specific opportunities in relation to legislation and interpretation of reserved contracts, in particular to clarify/adapt the specified percentage of disabled and/or disadvantaged workforce to suit social enterprises and third sector organisations. It could be a really useful tool to enable many more local authorities to engage through this direct procurement route providing locally based opportunities, build consortia etc.

# Social Enterprise Scotland - accompanying paper

## Unlocking procurement for social enterprises

### The role of Social Enterprise Scotland in procurement and opening markets

- Giving social enterprises a voice to highlight the business development opportunities, challenges and solutions that both public and private sector procurement can offer in assisting Social Enterprises in fulfilling their important social mission.
- Working in partnership with policymakers and procurement teams both in tendering and delivering contracts, showcasing the quality products and services that Social Enterprises can provide and to increase the opportunities for social enterprises.
- Social Enterprise Scotland signposts and provides information and training to members and others about procurement and opening markets, through our weekly magazine and social media and through webinars, such as our recent one on the new national procurement strategy.
- We have previously organised national events and trade fairs bringing together social enterprise suppliers with commissioners.
- We respond to relevant policy consultations and [write blogs on the topic](#).
- We're a member of the Scottish Government Public Procurement Group and Procurement Supply Group and take part in those discussions.

### Procurement, opening markets and social enterprise: The current context

According to the Scottish Government, the public sector spends more than £14.5 billion a year buying goods, services and works.

Opening up these markets and procurement opportunities for social enterprises and third sector organisations continues to be a significant work-in-progress.

According to the latest [Social Enterprise Census](#), in terms of a “public contract win” over the past year, 15% of social enterprises reported success in 2017, with an increase to 18% in 2019 but down to 15% again for 2021 (4% in a consortium, 11% bidding alone), albeit within a lockdown context.

Most social enterprises are not involved in bidding for contracts, 82% in the year up to Oct 2021. Also 5% were unsuccessful with bids.



Two main reasons were identified in 2019: insufficient capacity and experience to deliver on public contract requirements plus aggregating up tender lots resulting in a mismatch between the published requirements and the goods and services that social enterprises provide.

Processes seem to be designed for bigger organisations and it's larger social enterprises that are mainly involved in bidding for and also winning contracts, according to the Census.

Small social enterprises share similar challenges to smaller charities and private businesses in this regard.

The past few years has seen some significant reforms, including the most recent, the publication of [Public procurement strategy: 2023 to 2028](#).

The Scottish Government [Procurement and Property Directorate](#) (a good resource for information and history) is responsible for procurement.

The government convenes two procurement groups, SES is a member of both the Procurement Supply Group (PSG) and the Public Procurement Group (PPG).

The PSG includes the Scottish Government and representative bodies for business and the third sector. It meets regularly to discuss and influence public procurement policy and practices as these affect suppliers, in particular SMEs, the third sector and supported businesses. The PSG is consulted on key policy developments, live issues and priorities and helps to inform improvement opportunities.

The PPG is the leadership group for public procurement across Scotland. It is made up of the heads of Procurement Centres of Expertise and senior Scottish Government procurement officials, who work together to set the strategic direction for public procurement in Scotland.

There's currently a gap and lack of clarity in terms of third sector procurement support provision, due to be broadly filled by the specialist sector support provided in the new Just Enterprise contract and other providers.

How do we fully utilise Just Enterprise, Supplier Development Programme and other services to amplify and solve social enterprise needs? What role do the enterprise agencies play, particularly given the drive towards Community Wealth Building and related policy initiatives?

There's also the context of the latest Social Enterprise Action Plan and CPG policy priorities to be taken into account and what procurement issues are included within those two initiatives.

Much of the focus around procurement has been focused on local and national government and the wider public sector but there are also many opportunities in terms of private sector procurement and opening markets, of which SES has a key role in developing.

## **The survey of social enterprises and third sector organisations: A joint initiative by Social Enterprise Scotland (SES) and Scottish Council for Voluntary Organisations (SCVO)**

SES recently launched and promoted a survey, in partnership with SCVO, to hear the views and experiences of local frontline social enterprises and charities - and to find out how we can better use public spending power to benefit third sector organisations and the people and communities we serve.

Public sector procurement has been a hot topic for social enterprises, charities and community organisations for a while now and we felt it was timely to survey our local grassroots organisations.

Survey results are being used to inform our response to the review of the Procurement Reform Act by the Scottish Parliament Economy Committee and other policy work.

The feedback from the survey and recent webinar has been incorporated into the key points below, broken down into both barriers and solutions.

### **Ongoing blockages and barriers for social enterprises**

- A big, general policy issue, that particularly applies to procurement, is policy implementation on the ground in local communities. Often good, clear, evidence-based legislation exists (like the Procurement Reform Act) but is not always being actioned at a local level. The rhetoric and legal instruments are not translating into real life practice e.g. reserved contracts legislation not being used.
- Part of this is around a lack of monitoring and evaluation and any ensuing accountability/penalty. This is in terms of ensuring the community benefits detailed in any bid are delivered and - importantly - of the actual commissioning and procurement process and awards themselves (e.g. under the No One Left Behind policy, government has devolved employability provision to a local authority level with a 'wish' to see mixed economy provision. So far there seems to be little monitoring of this or accountability to ensure it happens).
- Culture change in bureaucratic public bodies - a mismatch with small, flexible social enterprises. Procurers are often, for good reasons, very risk averse, and often have a pre-conceived idea about social enterprises. This is changing but it is a slow evolution.
- Complex processes - there's still a lot of bureaucracy in procurement processes, how can these be simplified?
- Some local authorities are going down the PCS route instead of previously available grants to local charitable organisations, which further excludes smaller organisations. It's a huge leap from grants to tendering.

- The Procurement process is still too heavily focused on process rather than partnering for best outcomes, where cost is not king. Best value for money (long term) must be considered.
- Lack of local awareness within local authorities of the existence of social enterprise suppliers.
- Community benefit clauses - is there a barrier regarding CBC inclusion in smaller contracts? Are these really working in practice to transform procurement and improve local economies?
- Lack of relevant social enterprise suppliers for commissioners.
- Small organisations can't take on big contracts, capacity, expertise, and crucially the risk is too high for them (contracts are often payment by results with little or sometimes advance payments to support cashflow), how can these be broken down into smaller parts by public authorities? Often it's not difficult to do but requires a willingness to do it.
- Insurance threshold requirements - limits too high for small organisations (or lead organisations supporting smaller organisations) to bid for contracts.
- Smaller organisations without procurement expertise may be better at delivery but lack the capacity of bigger organisations to jump through the hoops.
- Case study of nonsensical admin costs - the admin cost of bidding for a contract was around 5% of the value of the contract itself and when adding up the cost of all the bids then this equalled more than the actual value of the contract.
- Easier to get grants rather than contracts - what is the incentive to bid?
- There are issues with practical business support for social enterprises for capacity building, training and skills development, building successful partnerships to bid for bigger contracts (previously P4P) and education around procurement processes.
- Reserved contracts are under utilised by public authorities as a means opening markets, for supported businesses and social enterprises, local delivery etc.

### **Potential solutions**

- Highlight existing successes and inspiring case studies of best practice where it does work, to inspire our social enterprise community and social entrepreneurs.
- Highlight existing successes and inspiring case studies of best practice where it does work, and the social benefit achieved from procurement to inspire and encourage both public and private sector buyers and policy makers to engage with Social Enterprises.

- Our social enterprise community and continue to educate commissioners and procurers.
- An updated and informative new SPPN (Scottish Procurement Policy Note) to be written and endorsed by the Minister and published across the whole of Scottish public sector procurement teams. The SPPN to highlight the importance of procurement engagement with Social Enterprises and the use of reserved contracts as an easy and quick solution. The last similar SPPN was published in 2017 SPPN (04/2017).
- Scottish Government Procurement to review and align use of reserved contracts and value in line with UK Cabinet Office. Value for goods & services up to £122K and ability to reserve on supplier location and/or organisational set up SME`s/Social Enterprises.
- An identified Scottish Government procurement contact for the sector like Supported Businesses.
- A report by public body listing the spending in the sector as reported in each public body`s annual sustainable procurement duty submissions.
- The Minister to chair and review 1/4ly spending by each procurement centre of excellence in the sector.
- Public sector buyers to actively promote and facilitate introductions for Social Enterprises to private sector supply chain organisations.
- Social enterprises to actively target and engage with private sector organisations.
- Research and consultation - gather very specific data from social enterprises for government and public sector by directly consulting local organisations.
- Big contracts - bundling up contracts for big delivery organisations will never be able to empower small businesses, contracts need to be broken down into deliverable manageable lots - this is how you get genuine community benefit and real Community Wealth Building. Organisations should be consulted at the very beginning as to exactly how big contracts could be broken down in practice.
- Tailored 1:1 support to guide organisations through the process and bid writing, specific to their organisation, building on existing support from Just Enterprise, Supplier Development Programme and others, both online and in-person
- A “local first” approach to getting suppliers wherever possible. Local public procurement should be encouraged to explore and engage with existing local Social Enterprise suppliers before advertising opportunities nationally (e.g Glasgow City Council)

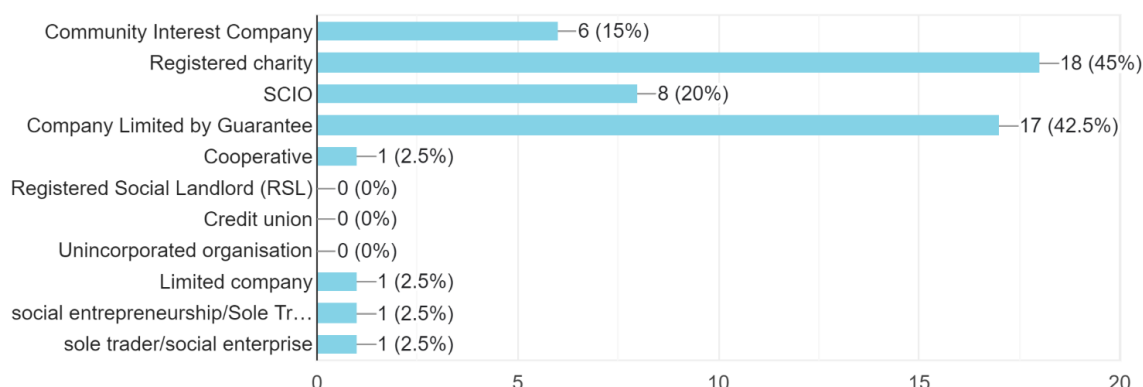
- Procurement officers regularly meeting social enterprise suppliers locally - in a format that fosters trust and collaboration, facilitated by a trusted third party.
- A full review of PCS - involving existing and potential social enterprise, third sector and small business users. Better use of CPV (Common Procurement Vocabulary) codes to identify and prioritise goods and services from Social Enterprises when entering a tender exercise and buyer requests a “quick quote” first.
- Community benefit clauses - review their practical implementation.
- Scoring - greater and timely clarity, openness and transparency needed about why organisations do or do not win contracts.
- Open and honest conversations with bidders regarding the constraints of the financial models in many of the opportunities - restrictive nature of some financial models offered will not always attract the best organisation to deliver value for money and quality. Financial models must not lose money for organisations, they must sustain local SMEs to deliver economic/social impact.
- Find alternatives to procurement processes for smaller organisations whenever possible e.g. quick quotes. How is it decided and by who, regarding what is procured and what is e.g. quick quote or grant?
- Giving much longer lead-in times and advance notice of tenders.
- Collaborative commissioning - allow local organisations to influence the design of services prior to procurement so that it best fits the needs of the target communities and taps into local knowledge and expertise to benefit everyone. System change, transformative approaches and Community Wealth Building all require this approach.
- Consider alternative models e.g. Public-Social Partnerships. How can we encourage public bodies to do this?
- Training for commissioners to understand the day-to-day business and financial realities for micro businesses and SMEs compared to big organisations. A one-size-fits-all approach doesn't work.
- Consortium development is a potential solution but commissioners must allow significant time and understand the resources needed in building successful partnerships.
- Payments - up front payment followed by instalments instead of one payment.
- Could public bodies create and develop spinout social enterprises (fully independent ones) to contract with for services, going beyond the ALEO model? This has happened in England and, in also in the context of the removal of EU regulations, the law could be changed to adapt and allow this to happen.

- Communication - commissioners must pro-actively communicate with bidders in a timely way and at every stage of the process. The use of plain language instead of jargon would be a big help, with clarity of what is required at the very beginning. A formal feedback process for every tender, alongside dealing with the same contact each time wherever possible.
- Specialist contracts could be tendered on a selective basis i.e. not always open tenders but issued to a regular suppliers long list of contractors chosen for their skills, approach and reputation. This would retain competitive bidding to achieve best value and also reduce the greater risk of disreputable contractors going in simply at the lowest cost.
- Commissioners need to understand that service tenders, for example, social care, require a different tendering approach compared to tendering for goods or maintenance. Can individual procurement officers specialise more?
- Use of procurement portals - many tenders placed by local authorities have similar requirements but the approach to the use of Public Contracts Scotland are totally different. Variability in use of portals drives inefficiency and, at times, confusion,
- Improved reporting and auditing - local authorities and public bodies need to ensure that they are complying with key legislation and regulations and are rigorously monitored by government regarding both the letter and spirit of the law.

**Some key statistics from the joint survey of social enterprises and third sector organisations**

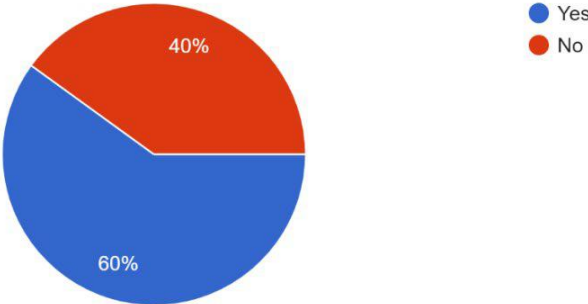
Organisation type (please select all that apply).

40 responses



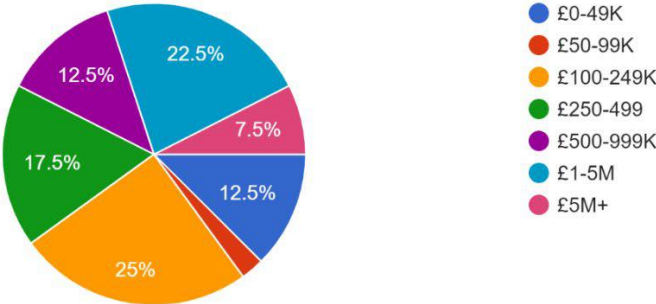
Has your organisation bid for any public sector contracts in recent years?

40 responses



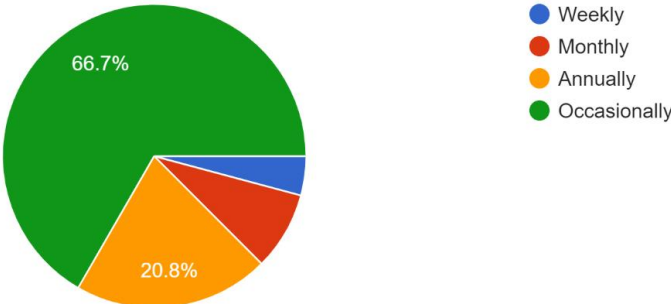
What is your organisation turnover?

40 responses



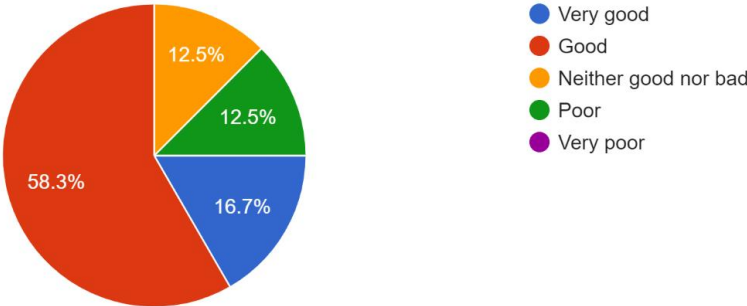
How frequently do you bid for contracts?

24 responses



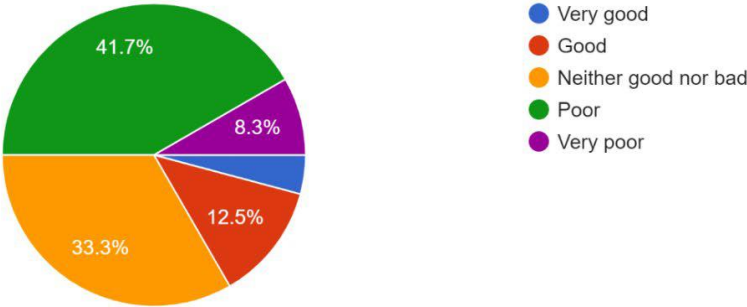
How would you describe your success rate?

24 responses



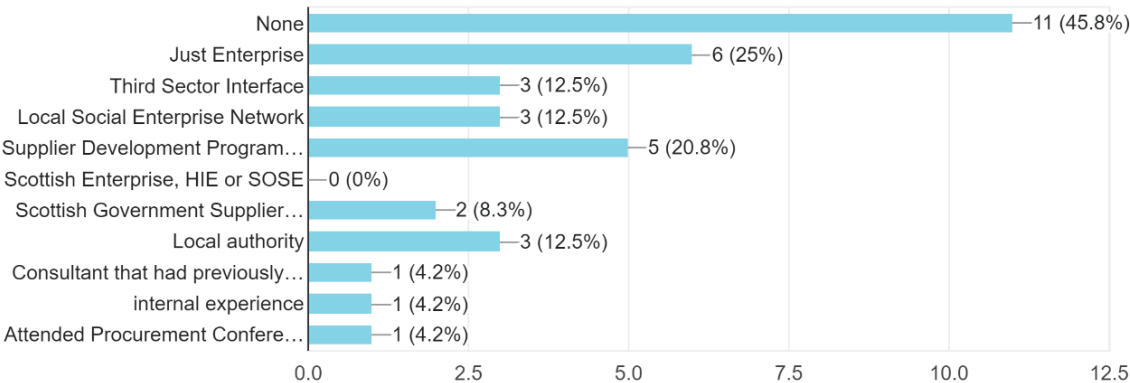
How would you describe your general experience of the public procurement system?

24 responses



What support services or training, if any, have you accessed to support your bids? (select all that apply)

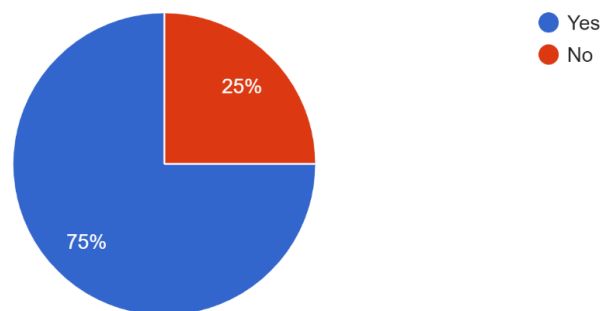
24 responses





Is your organisation registered on Public Contracts Scotland?

40 responses



### What has prevented you from bidding for contracts?

Not interested/doesn't fit with what we do	2 (12.5%)
No suitable contracts to tender for in last few years	6 (37.5%)
Lack of scale of our organisation	4 (25%)
Administrative burden	4 (25%)
Lack of staff capacity to write bids	7 (43.8%)
System too difficult to navigate	5 (31.3%)
Previous negative experience	0 (0%)
Don't think we'd be successful	4 (25%)
Contract values too low i.e. doesn't cover our full costs	0 (0%)

### What would make you consider bidding?

More guidance and support from third sector support orgs	5 (31.3%)
More guidance and support from public sector	9 (56.3%)
Training and events	7 (43.8%)
1-to-1 support	8 (50%)
Peer support/learning exchanges	6 (37.5%)
More case studies of organisations like ours submitting successful bids	8 (50%)
"Lighter touch" processes	11 (68.8%)

Thinking of your experience or awareness of public procurement over the last few years, please select any of the statements that you **AGREE** with.

The general procurement process has improved	4 (14.3%)
Communications inc. early notice about bids have improved	5 (17.9%)
More guidance and support now available	9 (32.1%)
The administrative burden has improved	1 (3.6%)
More smaller bids now available	3 (10.7%)
Easier to bid for smaller amounts	2 (7.1%)
Easier for third sector/social enterprises to bid	4 (14.3%)
Consortia bids are welcomed and supported	6 (21.4%)



# Written Submission from the Scottish Fair Trade Forum

The Scottish Fair Trade Forum welcomed the inclusion in the Procurement Reform (Scotland) Act 2014 of a requirement on public bodies to set out their policy in regard to the procurement of fairly and ethically traded products. Fair and ethical trade could assist public bodies in promoting sustainability and fair work and business practices. Our research, since the introduction of the Act, shows that while public bodies refer in their policies to fair and ethical trade products, it is not possible to hold public bodies to account effectively on these commitments due to the problems in recording and reporting actual expenditure on these products. This presents problems with both accountability and transparency.

With expenditure of billions of pounds a year on goods and services with in many cases international supply chains, Scottish public sector procurement is a powerful tool that could make a significant contribution, not only to communities throughout Scotland, but to the economies and livelihoods of economically marginalised workers and small-holder farmers around the world. Fair Trade's commitment to environmental standards and principles through the two main verification systems means that procuring Fair Trade products can contribute to meeting national and organisational sustainability targets including commitments to net-zero.

Recognising public sector procurement's crucial role in building the market for Fair Trade in Scotland [an independent report for the Scottish Government in 2020](#) advocated that priority should be given to encouraging public sector contracting authorities to set a baseline for expenditure on fair and ethical goods. It was the intention that such baselines could encourage a progressive approach to Fair Trade procurement whereby public bodies set indicators and targets to grow, year-on-year, their expenditure on fair and ethical trade and expand product ranges. Such approaches could be complemented by robust and comprehensive procurement strategies and policies that institutionalise long-term commitments to fair and ethical trading. Both the setting of clear indicators and the development of robust fair and ethical trade policies represent key stages of a wider process.

Throughout 2020-2022, the Scottish Fair Trade Forum utilised Freedom of Information processes to send requests in two phases to public bodies to:

- identify each body's general policy on the procurement of fairly and ethically traded goods and services and, identify whether these public bodies can, in fact, determine their annual spend on Fair Trade goods through available reporting mechanisms and,
- aggregate, where possible, each public body's expenditure on Fair Trade products for
- the financial years 2019/20; 2020/21; and 2021/22).

This information was then published in the report: [Fair-Trade-Expenditure-and-Policy-Commitments-Public-Sector.pdf \(scottishfairtradeforum.org.uk\)](#) In addition the Forum is currently compiling a similar report to cover the financial year 2022/23.

The research identifies that public bodies have vastly different:

- a) understandings of Fair Trade,
- b) commitments to Fair Trade through policies and,
- c) mechanisms to record their annual spend on Fair Trade goods through their finance ordering systems.

There is significant room for enhancement to Scotland's approach to the procurement of fair and ethical trade products. Two important changes would be:

1. A clear definition of Fair Trade being given to public bodies within legislation or guidance. (A definition could be used based on the two main international Fair Trade verification organisations.)
2. Establishing standardised processes for recording and reporting by public bodies of Fair Trade products procured.

These two key measures could increase accountability and transparency by allowing baselines to be set and comparisons to be made over time and between public bodies. A clear definition and processes for recording would allow more bodies to be able to answer requests for information on their procurement of Fair Trade products. Interim figures suggest that around half of Scotland's public bodies could not answer the request for information about levels of spending on Fair Trade products for the financial year 2022/23.

### **Scottish Fair Trade Forum February 2024**

Notes:

For further information, please see: [Fair-Trade-Expenditure-and-Policy-Commitments-Public-Sector.pdf \(scottishfairtradeforum.org.uk\)](https://www.scottishfairtradeforum.org.uk/Fair-Trade-Expenditure-and-Policy-Commitments-Public-Sector.pdf) which includes research on Fair Trade procurement by public sector bodies in Scotland from 2019-2022.