

ECONOMY AND FAIR WORK COMMITTEE

**9th Meeting, 2024 (Session 6), Wednesday
13 March 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 2023, 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 2023. Written responses [can be accessed online](#). The inquiry is being held over five sessions. Session 1 - the experience of businesses with procurement in Scotland. Session 2 – the third sector and social enterprise experience, Session 3 – contracting authorities, Session 4 – support for business and contracting authorities and Session 5 – Scottish Government.

5. The Committee also agreed to hold an online informal engagement event to hear directly from a local authority and some of its suppliers and local businesses looking to become suppliers for a local snapshot. Arrangements for to take place during the committee meeting slot on 27 March are being made.

Today's Witnesses

6. This is the fourth evidence session. The Committee will hear from—
 - Gillian Cameron, Programme Manager, The Supplier Development Programme; and
 - Graeme Cook, Head of Scottish Government Procurement Services, Scottish Government.
 - Peter Hunter, Regional Manager, UNISON Scotland; and
 - Julie Welsh, Chief Executive and Mary Mitchell, Chief Procurement Officer, Scotland Excel.
7. [Scotland Excel](#) and [The Supplier Development Programme](#) provided written evidence ahead of today's session. This can be found at **Annexe A**.

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

Written submission from Scotland Excel

1. Information about your organisation

Scotland Excel is the centre of procurement expertise for the local government sector serving Scotland's 32 local authorities and over 150 associate members from the public and third sector.

Established in 2008 in response to the McClelland Review of Public Procurement in Scotland which recommended increased collaboration and improved procurement capability across the public sector. Over the past 15 years, Scotland Excel has worked closely with the Scottish Government and other centres of expertise for health and further education on initiatives to raise the profile of public procurement and maximise the social, economic and environmental benefits it can bring.

Scotland Excel's £2bn portfolio of collaborative contracts ensures that our members achieve best value from procurement through their combined spending power. Scotland Excel enables procurement professional development and the resourcing of commercial projects for Scottish Local Government.

2. 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?

The Procurement Reform Act (Scotland) 2014 has underpinned the evolution of approaches to reduce barriers to entry in procurement.

In respect of these barriers the following represents the types of feedback commonly shared.

- Difficulties in locating and interpreting procurement strategies, annual reports and contract registers to predict when opportunities may become available.
- Inconsistent format and content of reports.
- Lack of market consultation at the appropriate time in the procurement journey.
- Difficulties in engaging with the PCS/PCS-T systems.
- Fragmentation of requirements and duplication in providing selection and award criteria within and across contracting authorities.
- Complexity of tendering requiring investment of time and resource.
- Lack of capability in engaging with complex legislative backdrop.
- Ongoing market volatility causing difficulties in committing to commercial rates, sustainable outcomes, or environmental measures for the period of a tender/contract.

Scotland Excel has deployed a range of measures to mitigate these barriers, including the following:

Over time the approach deployed by Scotland Excel to sub lotting has developed to include lotting by region, by council, by product/service grouping and through the signposting of second tier supply chain opportunities and advertisement. 3

Furthermore, the type and format of market consultation has evolved from PIN publication towards surveys, initiatives to shape the opportunity with the market, group or individual supplier/provider engagement sessions and hosted category events. Stakeholder engagement has become wider with the market directly as well as with a diverse range of supplier representative organisations.

The development of selection and award criteria and tender weightings has progressed to include more innovative approaches for the assessment and management of social and environmental outcomes.

These measures help to ensure that the vast majority of suppliers awarded onto contracting arrangements are Small and medium-sized Enterprises (SMEs) comprising c. 75% of all suppliers.

Through our development of national collaborative opportunities for our members Scotland Excel has a long history of engaging extensively with our supply chain partners. Our current portfolio is served by over 1000 suppliers/providers working alongside our member organisations to deliver vital public services across Scotland.

This collaborative approach provides an insight into the experiences of organisations seeking to tender for public sector contracts and managing those arrangements already in place.

There exists the opportunity to further reduce barriers to entry including broader utilisation or expansion of the supplier profile on PCS-T, proliferation of early market engagement, targeted supplier development initiatives and meet the buyer events.

3. Does the sustainable procurement duty mean that adequate weighting is given to environmental considerations?

Scotland Excel builds the strategy for each procurement exercise with recognition of the importance of sustainability. This is achieved by aligning Scotland Excel's procurement work to the national policy and practice for sustainability, this informs the weighing used.

With the climate emergency recognised as a strategic national priority, Local Government procurement has a critical role in achieving net zero greenhouse gas emissions by 2045. The sustainable procurement duty legislates an approach embedded within procurement consciousness as value being representative of the balance between environmental, social and commercial considerations. The weightings apportioned to each is determined by the market and the outcomes required from the procurement exercise.

Important to the determination of this weighting are tools and guidance published alongside the sustainable procurement duty, life cycle impact mapping, sustainability

test and prioritisation tool. By using these tools it is possible to effectively weight tender evaluation appropriately but it does not guarantee that environment measures will take precedence.

Examples in recent years of how the Scotland Excel contract delivery plan has evolved to ensure national collaborative arrangements are in place to offer members a route to market for net zero enablers. These include Electric Vehicle Charging Infrastructure, Energy Efficiency Contractors and Property Maintenance and Refurbishment. Key procurements have delivered innovative environmental measures for example:

- New Build Residential Construction developing a specification which enables offsite construction methods and requires a range of sustainability standards.
- Groceries and Provisions including consideration of food miles, route planning and recycled packaging.
- Domestic Furniture and Furnishings including a lot for reuse furniture.

While environmental considerations are recognised as a pillar of public sector procurement initiatives there are a number of factors that can limit the weighting attributed, including the need to minimise budget commitments or operating in immature markets for example.

The scale of the transformation required to deliver net zero 2045 leads to complex considerations in the transition to a circular economy. For example, how to;

- Invest in goods, works and services to extend their lifecycle when contractual arrangements recur c. every four years.
- Move from established working practices of owning goods to alternative models of lease/hire with the corresponding practical and contractual implications.
- Invest in innovative and lower carbon goods, services or works when these may not be market ready, specified or recognised in the appropriate standards/certification regimes.
- Develop longer term supply chain collaboration on net zero measures but through more inclusive and flexible non-commitment contracting.
- Establish a baseline for both direct and indirect carbon emissions and a way of measuring progress against this.
- Evidence that the whole life cost of those procurements tackling carbon reduction represent value for money against business-as-usual activities.
- Fund the cost of this transformation.

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

Fair Work First criteria are embedded in public sector procurement opportunities and, where relevant, bidders are asked to demonstrate how they will commit to progressing those criteria through planned, measurable actions at the point of tender. Most commonly this is measured through responses on the payment of the Real Living Wage and responses are categorised according to whether bidders are

accredited, working towards accreditation, paying without accreditation, or not paying. This is monitored throughout the duration of contract management such that payment of the Real Living Wage is reportable.

There is lesser visibility on how awarded suppliers cascade or assess how Fair Work First criteria is applied within the supply chain. The introduction of prompt payment performance in the supply chain (SPPN 2/2022) provided a format for these social considerations to be extended further.

Greater visibility of how Fair Work First criteria impacts the supply chain would underpin Community Wealth Building initiatives. There is the opportunity to align a proposed Community Wealth Building Bill with procurement legislation.

Mechanisms for reviewing public sector supply chains could be developed further.

5. 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?

N/A

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

Scotland Excel operates a portfolio of Category B national collaborative frameworks meaning each tender exercise reaches the threshold and community benefits requirements are consistently applied to procurements.

Over time different models have been introduced to Scotland Excel's portfolio to ensure that bidders offering for national frameworks, where extensive sub-lotting can exist, are enabled to contextualise proportionate and relevant community benefits to deliver at a local level.

Opportunities to embed community benefits require appropriate contract mobilisation and management to ensure that supply chain partners are investing in those outcomes most desirable to contracting authorities. In this regard it is essential that buyers are signposting appropriately within and across departments to optimise economic development and community wealth building opportunities. This means community benefits are consistently delivered at a local level with expenditure below the £4m threshold.

Scotland Excel's experience is in the creation of frameworks and embedding mechanisms for community benefits obligations to apply through call off contracts. Greater opportunities are likely to be embedded when the commitment contract is made, and the supplier can quantify offerings against expected spend. Furthermore when the contracting authority has visibility of the sustainable outcomes possible, balancing commercial, social and environmental objectives in the spirit of the legislation.

Further latitude has been drafted into national procurements to enable “national” community benefits projects in instances where significant aggregated spend levels are in place and local opportunities for community benefits have not been exhausted.

Evidence from Scotland Excel’s work with local government suggests community benefits requirements are also build into a significant proportion of procurements with a value lower than £4m.

7. 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?

N/A

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

There is a significant administrative burden in complying with the Procurement Regulations and set out below are examples of this through different stages of procurement.

Tender

Within a regulated procurement exercise the evaluation of the selection criteria represents a significant investment of time and resource to complete business probity. This is also in direct proportion to the number of bidders. For example, checking of bidder details against companies house, compliance with mandatory and discretionary exclusion grounds and the validity of insurance alongside appropriate due diligence of financial standing, certification requirements and quality and environmental management standards.

The expansion of lotting and sub lotting procurement opportunities, while an important measure to remove barriers to entry, can result in large numbers of bidders. Evaluation methodologies must be carefully crafted to ensure that they are applied fairly, consistently and transparently to those bidding for a single specialist element alongside bidders who may be offering for the entire procurement. This has implications for the number and range of technical award criteria, word count, number of evaluators required and administrative measures to safeguard the appropriate application and recording of scores.

Standstill and award procedures also require a significant investment of time and resource to administer. Ensuring that recommendations for award progress through governance procedures appropriately. Ensuring that the outcome of the procurement is communicated consistently through Regulation 85 procedures while containing the appropriate level of detail is a labour-intensive process.

Contract Management

From a contract management perspective monitoring the performance of the procurement portfolio requires the collection, cleansing and processing of quarterly spend data from c. 1200 suppliers. This data is then used to ensure that commitments made at the point of tender e.g., community benefits, real living wage accreditation etc. have been met or as a prompt to enter further discussions. Running contract maintenance with annual checks that relevant documentation remain in place requires significant administrative activity e.g. insurance, certification etc. Negotiation of price variance procedures, running cost impact analysis, assessing market conditions, updating and communicating pricing details through electronic catalogues etc. Request to assign framework placings or respond to other methods of corporate restructuring as well as assess new entrants to Dynamic Purchasing Systems or continually open flexible framework agreements (light touch regime) are impactful also.

Since the Covid-19 pandemic, Brexit, Russia/Ukraine conflict, Suez Canal blockage and corresponding market volatility many of these activities have been exacerbated/constrained by;

- Higher volumes of price fluctuation requests and negotiations
- Higher volume of request to response to corporate restructuring (termination, withdrawal, assignation)
- Difficulties with insurance markets
- Unpredictable spend and market forecasts
- Bottlenecks in procurement pipelines, prevalence of extensions

Reporting

Essential that the benefits of procurement are quantified through robust contract management and reporting mechanisms. Measures to monitor SMEs awarded onto arrangements, suppliers that pay the real Living Wage and community benefit outcomes are embedded alongside spend and savings summaries. Work is ongoing to embed the reporting of benefit types to broaden the articulation of value and environmental measures are under-represented as part of reporting also. There is also a need to develop qualitative alongside quantitative measures as part of performance management and link this reporting to the classification of contracts in accordance with how they are segmented.

9. How can procurement policy in Scotland support the strengthening of local supply chains?

One way in which this could be achieved is for the public sector to have greater visibility in how the investment with a tier one supplier is shared through a supply chain. The introduction of prompt payment clauses is recognised as providing the second-tier supplier recourse to the contracting authority in instances where payment terms are not being honoured. There is an opportunity to encourage/obligate supply chain reporting of how spend is disseminated further to understand the local and regional implications of investment.

An investigation of supply chain resilience post-pandemic is important to understand whether the volatility experienced has led to an increase in spending with local

suppliers. This is closely related to Scottish manufacturing capabilities through supply chain development initiatives and the proliferation of “green” jobs required to deliver Net Zero 2045. Wider analysis into the appetite for public sector contracts i.e. the proportion of businesses registered on PCS and the proportion actively tendering for opportunities is required.

Alongside this would be a definition of “local”. Global and national organisations can deliver stronger local supply chains. Regional arrangements can strengthen local supply chains across local authority boundaries. It would also be useful to distinguish between local supply chains and SMEs as these often become conflated.

10. What are the opportunities to reform procurement in Scotland following the UK’s exit from the European Union?

Set out below are views on further opportunities to reform procurement in Scotland.

- Review exclusionary grounds in relation to serious and organised crime to give contracting authorities greater powers to act upon intelligence shared by Police Scotland or relevant regulatory/certification bodies.
- Guidance on the apportionment of risk in contracting, public sector risk averse and insurance levels not always adjusted appropriately – equally greater dialogue on setting of liability caps and market ability to respond on that basis.
- Review the maximum duration of framework agreements, and the drivers and parameters for this to facilitate greater supply chain commitment to the delivery of longer-term social impact. Consider mechanisms to increase the flexibility of framework agreements so easier to open/admit new entrants.
- Support for contracting authorities to trail wider use of procurement routes.
- Support for contracting authorities to have greater flexibility in the application of post tender negotiation to maximise commercial outcomes in view of the significant and sustained budgetary pressures.
- Delivery of a central repository of documentation for supply chain selection criteria and contract management processes to ease the administrative burden for all stakeholders. Furthermore, optimise the uptake of the functionality of the PCS/PCS-T systems to ensure bidders are pre-populating their supplier profile.
- Better support the supply chain to offer relevant and proportionate social outcomes and develop qualitative mechanisms of recording impact. This could be achieved through consultation, signposting to economic development departments or the creation of a library of national/local community benefit objectives.
- Support for contracting authorities to segment procurement opportunities based on influenceable spend in recognition that ambitious commercial, social and environmental outcomes cannot be delivered wholesale for every exercise.
- Develop guidance on the establishment of baseline carbon measures and how KPIs should be introduced to monitor progress towards Net Zero for both direct and indirect emissions.
- Investigation of supplier engagement and appetite for public sector contracting opportunities, proportion of supply chain registered and competing

for public sector contracts and eliciting feedback from the market on why not registered or not tendering.

- Mechanism to obligate awarded bidders to share supply chain data in relation to sustainable outcomes and also to understand access of wider supply chain to public sector contracts.
- SPPN 1/2022 has implications for Local Government, who were restricted from taking “non-commercial matters” into consideration relative to section 17 of the Local Government Act 1988. Consideration whether this should be taken into account to ensure consistency across the public sector.
- Clarity on whether lots within frameworks can be “reserved” for supported business as opposed to the entire procurement as appears to be the case set out in Reg 21 of the 2015 Regs. It may also be useful to consider the definition of “supported businesses” more generally. For example, whether the EU definition best reflects those organisations operating in Scotland.
- Simplify the procurement mechanisms for creation of new heat and energy networks. Presently public contracting mechanisms for the creation of concession contracts, commercial gain share arrangements, special purpose vehicles and joint ventures are complex and costly to the sector. It is likely arrangements of these types will become increasingly important as Scotland shifts to a more sustainable energy use.

Written submission from Supplier Development Programme

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?

There are a range of barriers to businesses accessing public procurement contracts in Scotland; many of which have been documented by not only Scottish Government's research but also through feedback collated by the Supplier Development Programme and other support organisations such as the Federation of Small Business.

Overall barriers most often cited by SMEs is the general complexity of the procurement process including the time-consuming nature of the process, and difficulty meeting mandatory qualifying criteria. Lack of capacity and that the process is too costly are other key points often noted. This may lead to an unsuccessful and demotivating history of tendering.

Appropriate tender support

A wide range of supports are in place to practically address potential barriers. These need to be consistent, equitable, guaranteed, integrated, appropriately invested in, and ensure maximise reach into the business community. These support bodies in practice need to collaborate to align on a range of cross-cutting policy priorities, and ensure their advice is accessible to suppliers at local, regional, and national levels. This also demands that full consideration is given to investing, growing, and connecting existing capacity before applying scarce resources to new initiatives. This is the best way to ensure value for money, and avoid further service complexity.

In many areas good progress has been made, but more can be done, and some future threats are apparent in the support landscape.

A key example of this is the role, value, and further potential of the Supplier Development Programme.

This is a very well established, respected, and award-winning service – with clear and strongly evidenced metrics on reach and impact. It offers directly relevant services, including:

- Free training and guidance on how to prepare public procurement bids.
- Free Meet the Buyer events that put suppliers in touch with public sector buyers to learn more about up-and-coming contracts.
- Early engagement and information activities with public contracting agencies to give suppliers advance knowledge and time to prepare for contracting opportunities.
- support to local authorities and other public sector agencies to

find and engage with local SMEs and social enterprises and encourage them to bid for quick quotes and contract opportunities.

Over 20,00 SME and third sector suppliers are currently registered with the Supplier Development Programme, including over 650 social enterprises. The Programme also has developed a very strong set of mechanisms to evidence inputs, outputs, and outcomes.

In the wider context, the SDP continues to evolve and has considerable further potential to practically advance the aspirations of the Procurement Reform Act.

As a national shared service, we believe the SDP offers excellent value for money. However, Scottish Government support for the Programme has reduced in real terms since 2014, despite its increasing policy relevance and reach. This support primarily comes from the Procurement Directorate, despite the clear impacts SDP has in advancing other policy agendas. Breaking out of this Scottish Government funding 'silo' must be a priority in ensuring ongoing future supports. Funding from other sources remains very important, but the scope to grow this at present is very limited.

This current financial situation has led to concerns on the SDP's ongoing sustainability, which restricts some of its exciting growth aspirations. Moreover, the programme continues to be reliant on insecure annual grant funding. This seems entirely inappropriate for a national programme which should be clearly embedded in the Scottish procurement, economic development, and community wealth building support infrastructure. Moreover, this investment profile does not signal an ongoing service commitment from the Scottish Government to the business community.

Whilst funding is recognised as generally very tight in the current context, this SDP's budget reality must be addressed. It should be a priority before investing in any new infrastructure developments. It also requires greater imagination, and the joining up of the scarce resources that the Scottish Government has available. As detailed in response to question 6, this has not been the SDP's recent experience with a social enterprise support contract.

Tender Systems

The launch of the Public Contracts Scotland (PCS) Portal in 2008 was very welcomed. However, the system is not intuitive and has failed to keep up to date with modern IT e-tendering systems and the more intuitive "google" type search to support users identify (search for) relevant contracts.

A good example of this is the recently published contract notice: Requirements Reserved for Supported Businesses Dynamic Purchasing System (DPS) on Public Contracts Scotland. There is no description of the goods and services for which the contract will be used for, only CPV codes. The common procurement vocabulary (CPV) is a single classification system for public procurement aimed at standardising the references used by contracting authorities to describe procurement contracts.

Suppliers typically search for contracts on the main page using key words, however when creating their contract alerts, they can't use key words, but have to convert their key words into CPV codes which would represent the goods or services their organisations offer. This is an additional burden, and not easily achieved without guidance as the CPVs don't always correlate to a key word.

For example, CPV: 39000000 from the above contract, if it had included the description which covers Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products, it would be far more beneficial to potential bidders.

SDP suggests that Scottish Government should improve the functionality in PCS to always include the description of the CPV code, thus alerting users to the actual requirements. A more intuitive search function should be considered.

Double registration

The fact that there are two separate systems PCS and PCS Tender, and that each requires separate registration, is confusing to businesses. The PCS Tender system is more complex for suppliers to navigate and identify relevant projects. It still uses old terminology such as PQQ, and as stated previously is outdated in relation to other IT e-tendering systems. Two systems mean duplication of effort to complete and store SPD information.

Two Profiles on PCS

It is confusing for businesses to complete two profiles on PCS – one for the contract alert and one for their supplier finder profile. These should be simplified into one profile.

PCS - Supplier Finder Profile

The proactive opt in for suppliers to complete and publish a Supplier Finder Profile means that many businesses and social enterprises don't complete the process, and they consequently remain hidden from buyers so are not visible to invite for Quick Quote. During the pandemic, when face to face Meet the Buyer type events were not possible, this step was a crucial business process for potential suppliers to complete in order that Buyers could find local suppliers. It remains important an important priority today in support of the Community Wealth Building Agenda. Ideally, registration on PCS should require a simple published profile, to which further details could be added. This would mean that buyers could at least connect with known suppliers, and request that they publish more information.

Tender Documentation

Standardisation of tender documentation such as the SPD is a welcomed approach, however interpretation of the questions remains variable and can lead to incorrect bid answers. This includes pricing documentation, which is often in variable formats, with the presentation of pricing spread sheets potentially confusing to suppliers.

Buyers' use of inappropriate Selection Criteria in the SPD can also be an issue, providing additional burden to bidders.

Scope of services/works/ products.

The lack of clarity in the ask (scope) makes it more time consuming for potential bidders to assess if the contract is appropriate to them. The published contract notices often lack sufficient detail (as per points above) for potential bidders to understand if the opportunity is for them. Consequently, potential bidders have to register and download the tender documents to find out more. Sometimes this still does not provide enough information to make an informed decision.

Also, the lack of variation or innovation in bids means that suppliers don't apply and, in some cases, may lead to the public sector missing out on supply chain opportunities.

Bidder Feedback

Feedback to unsuccessful suppliers on regulated procurements has improved, but could still be better. For micros and SMEs who are commonly bidding for lower value and quick quotes the provision of feedback on these types of opportunities can be more limited or indeed non-existent. This requires improvement.

Price/ Quality Criteria

Public authorities, particularly local authorities, should be looking for the best balance of quality and price, not just the lowest price. However, in these tight fiscal times, price is still a key factor. This means that those companies that have invested in meeting policy requirements such as paying the real living wage and having carbon reduction plans/ sustainable practices, can still lose out to those that don't but who offer a "cheap price".

Insufficient lotting of contracts

A lot is where a procurement process separates a procurement exercise into smaller categories e.g. type of product or service, geographical location. This is attractive to small and micro-organisations. However, whilst it is mandatory for the creator to enter their reason for not lotting a contract - this information is not published within the notice. In the case of any contract with a value above thresholds, the main reasons for not lotting the contract must be stated in the procurement documents or in the procurement report. Again, this is often not available and requires time and effort to go and find out more. There should be more transparency on the reasons for not lotting a contract.

Short duration of Contracts

Where possible, offering longer contracts should be considered more. This is particularly relevant in the care sector where people focused care is of paramount importance and shorter contracts can be detrimental to the consistency for end service users.

Use of other portals to advertise contract opportunities

The hub Programme encourages Scottish SMEs to be an integral part of the supply chain with each hubCo committed to a high level of SME involvement in projects. However, these opportunities are not always promoted through Public Contracts Scotland, meaning that suppliers must look at the individual hub portals to find out more. Greater integration should be considered.

The UK Ministry of Defence has many sites and delivery points within Scotland, however, have their own separate contracts portal to promote their contract opportunities. Consideration of integration or a feed into PCS should be considered.

To further support Scottish businesses, SDP do run a free tender training course highlighting how suppliers can identify relevant “Scottish related” opportunities and opportunities out with Scotland.

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

The weighting given to environmental considerations varies depending on the items being procured, and the procurement process used. As per comments above regarding price/quality weightings in these tight fiscal times, price is still a key factor. In reality, this means that companies who have invested in meeting policy requirements such as having carbon reduction plans/ sustainable practices, can still lose out to those that don't, but who offer a “cheap price” due to the weighting favouring cost.

The Scottish Government highlighted, in July 2023, that further guidance on monitoring and reducing emissions from procured goods and services would be announced: this will be useful to further quantify climate impact. Indeed, a simple, single solution for monitoring and measuring carbon would be very helpful in enabling businesses to have a more consistent approach. This would also be welcomed by public sector procurement teams.

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

In order to raise the visibility of, and to assist opening up the supply chain, the Supplier Development Programme offers larger Tier 1 type contractors a Corporate membership to support them to engage and raise awareness of supply chain opportunities. This results in a more proactive supply chain development approach.

However, anecdotal feedback from smaller businesses is that prompt payment is still an issue with the flow down through the supply chain.

We would welcome the Scottish Government taking a stronger position to mandate the use of PCS to advertise supply chain opportunities, and to request that public sector buyers include these within their contract terms when letting contracts.

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?

First of all, it should be noted that the Supported Businesses workforce must be at least 30% disabled or disadvantaged, this changed as per SPPN 04/ /2017 updating Article 19 to Article 20 of Regulation 21, not 50% as stated in the above question.

Whilst not a supported business, SDP provides support to Supported Businesses and in this context, we would again highlight our comments in question 1 under tender systems.

SDP takes a pro-active approach to promote and assist Supported Businesses to understand how they can bid to be on the recently let Scottish Government Framework [Route to Market Published for Goods and Services provided by Supported Businesses | News | Supplier Development Programme](https://sdpscotland.co.uk/news/2017/04/route-to-market-published-for-goods-and-services-provided-by-supported-businesses/) (sdpscotland.co.uk)

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

Within the context of wider benefits and rationale, it should be noted that some bidders still consider onerous community benefits as a barrier to bidding. This often links to a lack of clarity on what the community benefit ask is, particularly if it should be related to the actual contract or to the wider geographic area it operates within.

Positive routes to highlight community benefit opportunities to potential bidders includes the use of community benefit 'wish lists'. This enables local projects to increase their visibility and add their projects to a list that potential bidders can plan and connect with, in preparation of their tenders.

To support realisation of Community Benefits, SDP work with our member councils helping them facilitate networking events for those Contractors successfully winning contracts and have stated that they wish to conduct supplier engagement days as part of their CB commitment.

These contractors can also become SDP corporate members to demonstrate their company's commitment to:

- Supporting the delivery of key priorities of the council and other public bodies, including meeting their Sustainable Procurement Duty targets.
- Supporting and improving access to sub-contract contract opportunities for SMEs, Supported Businesses, Social Enterprises, Co-Operatives, and the Third Sector as part of awarded contracts.
- Utilise SDPs extensive network to the supply base, and provide detailed outcome reports on activity. Given the pressures on procurement resources within the public sector, the follow up on what Community Benefits have been

offered by the winning bidder can also be inconsistent. We are aware of examples whereby the benefits being offered were not used. This often links to concerns around additional vetting requirements placed on the supplier to deliver the expert help offered.

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?

Recent SDP experience of contract lotting to strengthen the supply chain and encourage sub-contracting opportunities suggests there is some way to go in applying this consistently within the Scottish Government itself.

In 2022 the Scottish Government Third Sector support section determined to re-tender a contract to offer 'Business Support to Social Enterprises and the enterprising third sector'. This was the second phase of work, with no formal evaluation of the previous four years of operation undertaken. The contract was presented as containing 14 service components with a total 4-year value of £4.7 million. (By way of comparison, the total annual SDP budget is under £450,000). One component was to support procurement. This fitted directly with SDP's extensive experience, resources, and capacity - particularly as 650 social economy organisations were already registered with the Programme.

The contract, however, was specified as requiring a single bid for all components – it was not split into lots. SDP enquired in some detail as to whether this approach was appropriate in terms of good procurement practice, and the Scottish Government's own procurement aspirations. Our representations on the value of an alternative partially 'lotted' approach were rejected with the Scottish Government's response that 'the time was not right' to move in this direction. No other explanation was offered in support of the un-lotted approach originally agreed. It meant the SDP's ability to compete to integrate its resources within the new service, and bring some fresh and innovative delivery perspectives, was removed. Approaches to sub-contract this lot were made to the organisation (considered most likely and subsequently awarded the contract), but these were rejected as unworkable within their funding model.

We believe this is an example of a number of things which policy and good practice suggest should not happen, and where further improvements are needed.

- I. It missed an exciting opportunity to invest in existing capacity, integrate related services, increase contract reach, and simplify the support landscape.
- II. The Scottish Government's approach appeared to almost deliberately close the range of potential suppliers for this contract, contrary to all new procurement expectations. (We suspect by design only a very few organisations subsequently tendered).
- III. It appears to highlight a failure for Scottish Government functions to join up and understand cross cutting policy aspirations – focusing on narrow comfort zones at the expense of positive change.
- IV. It is an approach designed to minimise potential innovation and value for money.

Our experience overall suggested an operational driver within the Scottish Government of comfort and familiarity over innovation. Within our local authority partners, it led to concerns that the direct award of this Scottish Government contract appeared to run counter to many wider policy aspirations, and the procurement guidance they themselves receive. The awarding section appeared to have a limited understanding of what these were.

It should be further noted and evidenced by contract notices published on PCS that various councils have chosen not to use (call off) this framework but procure their own Third Sector Support services.

The use of National Frameworks

Suppliers can spend a huge amount of time bidding to earn a place on a framework. In practice, however, the use (uptake) of National Frameworks can be very varied. This can result in no opportunities appearing for suppliers successfully accessing frameworks – leading to understandable frustrations, and questions on whether the time invested in bidding to frameworks was worthwhile. National frameworks typically appeal to larger contractors due to their nature. The growth in the Community Wealth Building initiatives has seen a desire for frameworks to be more user friendly and lotted geographically. But in practice this is still work in progress in some areas. Where the framework opportunity has been awarded to larger contractors there often seems to be little visibility of their desire to connect and open up their supply chain. In conjunction with Scottish Government, SDP hold an annual national Meet the Buyer event offering the ideal medium for framework winners to connect with the supply base. However, despite invitations, those winning large-scale contracts do not commonly participate, even when encouraged by the Scottish Government and Scotland Excel to do so.

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

Our local authority members report that the administrative burden associated with complying with the procurement regulations can be significant, with additional resourcing pressures arising from:

- Core tendering arrangements.
- The Sustainable Procurement Duty, including use of the Scottish Government sustainable toolkit, administration of Fair Work First and Real Living Wage, and the monitoring of Community Benefits.
- Preparation and publication of the Procurement Strategy, Annual Report, and associated contract information.

However, notwithstanding the above comments, from a business/suppliers' perspective, the availability of procurement strategies, annual reports and contract records is very useful to understand contract pipelines, and to help prepare for future bids.

The lack of functionality in the PCS system (detailed earlier) also adds to the admin burden. SDP have repeatedly fed back through the annual PCS Buyer survey that a key issue is the data structure.

Supplier registration should be set up per organisation with additional users, but presently this is not the case and results in many cases of multiple entries for the same organisations. This can also mean buyers using PCS for Quick Quotes and trying to find suppliers have to contact multiple people in the same company to ensure a response. Greater integration here would be helpful and easier. There is also missing functionality for buyers to easily identify and contact multiple local suppliers. Improvements here would support the procurement pillar actions for the local Community Wealth Building agenda. Using the reports function in PCS, under the organisation tab enables a download CSV file of suppliers, but the report is lacking several things:

1. There is no date range of registration; this would be useful to identify new suppliers in the local area and to understand if local businesses are signing up.
2. E-mail addresses are not contained within the CSV file download (phone numbers are). Whilst you can search each individual supplier for it, this data is not included in the download. (This would be useful to enable contact with them about relevant up and coming contracts, Meet the Buyer type events, market scoping etc.)

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

Further mandatory requirements within contracts to encourage winning bidders to connect and utilise local businesses and social enterprises would help strengthen local supply chains.

A good example of this working in practice is the case study whereby SDP worked with Scottish Fire and Rescue Services (SFRS), to support their tender for facilities management services. SFRS recognised that SMEs, including third organisations, can support economic growth and employment in Scotland and wished to ensure that the winner of their contract connected with the wider business base across Scotland.

SFRS utilised SDP to meet with potential Tier 1 contracts for its Hard FM contract opportunity in March and May 2021. The PIN and Contract Notice was published with this additional information: "The Contracting Authority is a member of the Supplier Development Programme (SDP) and will engage with the SDP in order to maximise sub-contract opportunities throughout its operational area. The successful contractor will be expected to work with the SDP in relevant areas to maximise such opportunities. The successful contractor will also be encouraged to attain Corporate Membership of the SDP."

In total, across the two webinar sessions that were held, 37 Tier 1 contractors attended the session. This included 95 attendees from 78 unique Scottish SME businesses.

Robertson FM became a Corporate Member of SDP following the engagement events with Tier 1s and subsequently was awarded the Scottish Fire and Rescue Service contract for Hard FM. Recently, Robertson FM engaged with more than 100 suppliers at an SDP supply chain engagement event. This included 95 attendees from 78 unique Scottish SME businesses. Nearly all Scottish SMEs (96%) who provided feedback said they were more likely to bid after participating in the event, and almost two-thirds (65%) of those businesses felt more positive about potentially working with Robertson FM.

Policy should also consider the roles the various Centres of Procurement Expertise, the Scottish Futures Trust and hubcos, as key enablers can play to support policy to support the strengthening of local supply chains.

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

There is an opportunity to review the standard/mandatory questions included in the SPD including consideration to remove the "European speak" and what can be seen as double negative questions. This causes confusion to both buyers and suppliers.

Consideration could also be made to expand the use and context of the light touch regime for regulated procurements, and in the further development of local supply chains.

It is widely recognised that Scotland through having adopted legislation in 2014 provided for a comprehensive set of public procurement rules going beyond what was required under EU law. The up-and-coming UK Government's Transforming Public Procurement Programme which only applies to procurement in England, Wales, and Northern Ireland could create challenges for Scottish businesses bidding for public sector contracts in the rest of the UK, with different sets of legislation to consider - this being very pertinent to those companies bordering England.

This further highlights the complex challenges that businesses face in tendering. It is important not to add to these burdens through an easy-to-use and consistent approach to pre-qualification that could be acceptable across the devolved nations.