



Briefing 13/42

October 2013

Scottish Procurement Reform Bill - Update

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland

For information only to England, Northern Ireland and Wales

Key Issues

- APSE [Briefing 12/43](#) highlighted the components of the consultation on the Procurement Reform Bill
- The Bill sets out how European legislation will be interpreted and put into practice in Scotland
- This briefing updates APSE member authorities on the proposed Bill which was sent to Parliament on 12 September 2013 following the consultation which closed on 2 November 2012

1.0 Introduction

On 12 September 2013, the Scottish Procurement Reform Bill was sent to Parliament. The proposed aim of the Bill is to establish a National legislative framework for sustainable public procurement that supports economic growth in Scotland. It will look to do this by:-

- Making public procurement processes transparent, streamlined, proportionate, standardised and business friendly
- Making it easier for consumers, particularly newer businesses, SMEs and third sector, to access public contract opportunities and sub-contracting requirements
- Ensuring a smarter use of public procurement to encourage innovation and growth
- Taking into account social and environmental sustainability
- Dealing with inappropriate conduct and poor performing suppliers
- Focus on application and compliance

The full analysis of consultation responses can be found at the following link
<http://www.scotland.gov.uk/Resource/0041/00412974.pdf>

2.0 Key findings from consultation responses

The public consultation was launched on 10 August and closed on 2 November 2012, with 251 responses received. All responses have been analysed and helped to develop the Bill which has now been sent to Parliament.

From the analysis collected a significant number of respondents supported the proposed Bill although the need for additional legislation was questioned at various stages throughout the consultation. The main principles of the Bill were largely supported, especially the general duty to conduct procurement in an effective, transparent and proportionate manner. There was also support to use standard processes, systems and tools to conduct the procurement process, specifically within advertising and pre-qualification, as well as support for encouragement and good practice through effective guidance and communication.

Although there were suggestions that encouragement might be more constructive than enforcement, respondents suggested within a number of sections that a creation of a Scottish Procurement Ombudsman would be helpful. This was particularly highlighted in relation to questions about enforcement of new duties.

The consultation process collected relatively widespread comment in relation to the need for compliance with European legislation, avoiding conflict with European legislation and for harmonisation with the new EU directive. The need for proportionality was also highlighted across different sections of the consultation.

There was also an Annex to the main consultation which sought views on the potential impacts of using procurement processes to promote the payment of the living wage by suppliers to public sector contracts. More respondents agreed than disagreed that procurement activity should be used to encourage contractors to pay the living wage to their employees engaged in the delivery of public sector contracts.

One area of particular interest highlighted in APSE briefing 12/43 was the proposal to include community benefit clauses into all major contracts. From the analysis it was highlighted that a large number of respondents agreed that those awarding major contracts should be required to consider including community benefit clauses and that those awarding should be required to publish details of the benefits those clauses are intended to deliver and the outcome or a statement explaining why the contract is not considered suitable for the inclusion of community benefit clauses. Also more respondents agreed than disagreed that those in receipt of major contracts should be required to publish training and apprenticeship plans for those contracts.

3.0 Comment and Conclusion

The Bill seeks to make it easier for businesses (particularly new), SMEs and the third sector to access public contract opportunities while generating new training and employment opportunities. The Bill also seeks to improve Scotland's approach to public sector procurement in policy and processes, to improve the economic, social and environmental wellbeing of local communities.

The Bill will need to be consistent with the detailed framework of EU law on procurement, which is currently under review. Finalising of the new EU public procurement directive was originally planned for December 2012 but this timetable had been revised until autumn this year.

APSE welcomes the emphasis on using public procurement as a means of achieving wider policy objectives, ensuring wider public value from the spend of the public purse.

APSE continues to assist its member authorities on matters relating to procurement and welcomes feedback from member authorities on how they are preparing to meet the new obligations.

For details on work in this area please contact the APSE office for more information.

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