



Opportunities for Public Procurement Post-Brexit

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DISCUSSION PAPER



**progressive economics
for people and place**

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Introduction

Procurement is one of the main levers that places can use to build local wealth. How anchor institutions purchase goods and services can bring direct benefits for local business and organisations and indirect benefits for the local economy, social economy and people. This paper outlines the need to progress the way we think about procurement, and how central government and places can achieve this progress in a post-Brexit context.

The Centre for Local Economic Strategies (CLES) is the UK's leading think and do tank dedicated to progressive economics for people and place. A key component of CLES' work is local wealth building, to ensure that places harness and maximise the potential of their existing wealth. This wealth comprises of public and private anchor institutions, the assets of the place in physical and human terms, and the activities that places undertake which enhance wealth and maximise benefits for the local economy and communities.

Over 10 years, CLES has undertaken work across Europe to change how public procurement is undertaken; from a process framed by orthodoxy and bureaucracy, to one which is progressive and brings local economic, social and environmental issues to the fore. Our work with Manchester City Council has enabled a significant increase in spend in the local economy, and shifted the behaviour of procurers and suppliers. Brexit will

have a significant impact on local economies as funding, especially for regeneration, decreases. However, CLES argues that Brexit presents an opportunity to further progress how public procurement is undertaken in a UK context, utilising the principles pioneered by CLES. We need national legislation and an associated framework which shapes the way central government undertakes procurement; and more localised frameworks and approaches which are developed cooperatively by anchor institutions and shaped by local economic, social and environmental challenges.

For CLES, the re-shaping of procurement legislation, policy and practice is not an isolated change but part of a new economic urban agenda for the UK. We need to localise, socialise, and democratise the UK economy and ensure that social justice and environmental sustainability are not simply hopes, but central objectives.



EU and UK policy framework

We purchase goods and services almost every day of our lives as consumers. We make decisions based on a number of factors which are defined by our personal values and circumstances. For many people, a mix of these factors define what, when, where, why and how they buy products. These factors include: the cost; the shop or service provider we are buying it from; where it has come from geographically; the ethics of the organisation producing the product or service; and the quality.

The process of public procurement in theory is no different. Across the globe, central governments, local governments, health providers, and police forces (amongst others) buy goods and services. The difference in public procurement is that it is framed by a much more formal, complex and bureaucratic process than individual consumerism given the nature and scale of the goods and services being procured.

Across the Member States of the European Union (EU), and since the signing of the Treaty of Rome in 1957, the process of public procurement has been framed by specific Procurement Directives, the most recent of which were signed in 2014. Historically, the primary principles of EU Procurement Directives have focused upon:

1. ensuring competition in the process and the movement of goods and services across borders;
2. ensuring procurement is undertaken in a legally compliant and risk averse way; and
3. ensuring procurement is undertaken in an efficient manner, with cost the predominant decision-making criteria.

This has often meant that wider factors around human rights, local economic development and environmental sustainability, for example, have been marginalised in the decision-making process. The 2014 EU Procurement Directives sought to redress the balance between compliance and wider factors in procurement through the inclusion of three important further principles.

1. The Directives talk about the importance of flexibility in procurement so that processes are more reflective of the nature of the good and service being procured and its value, thus making it simpler.
 2. They talk about the importance of Small to Medium Sized Enterprises (SMEs) to national economies and the need to procure more of them.
 3. And they talk about the need for the process of procurement to be linked to and address wider social and environmental goals.
- practice is patchy. As such, all bar the most progressive procurers remain tied to traditional and bureaucratic methods of procurement, framed by European legislation, and underpinned by cost and the need to utilise procurement to make efficiency savings. Brexit is an opportunity to shift policy, mindsets and practice around procurement, based on existing, proven experience.

In the UK, the European Procurement Directives were transposed into UK level law in 2015 and drive the way in which our public bodies buy goods and services. In addition to European level legislation, public procurement in the UK is also framed by the Public Services (Social Value) Act 2012, which seeks to ensure that considerations of local economic, social and environmental concern form part of the procurement process and particularly decision-making. The emphasis of the Act is upon services and contracts above the existing EU defined threshold values.

Despite this theoretical legislative desire to shift the balance of procurement so that it is about BOTH legal compliance and efficiency AND effectiveness and social value; evidence of real progressive procurement policy and



10 years of progressive public procurement

CLES has worked with procurement officers in local government and other anchor institutions, over the last 10 years. We have challenged the orthodoxy of the traditional approach to procurement to make the process more progressive and beneficial to local economies.

Our objectives at the outset of this engagement were three-fold.

1. To understand in-depth where procurement money went and particularly how much was spent in local economies and with particular types of supplier such as SMEs.
2. To shift the behaviour of procurers so that the process linked into the economic, social, and environmental challenges facing that locality and in turn linked to the priorities of wider place based strategy.
3. To encourage the suppliers delivering procurement contracts to be more socially responsible and deliver outcomes, beyond simply the provision of goods and services.

Over the course of all our work we have learnt 12 valuable lessons...

1

European and UK national level procurement policy and strategy restricts progressive approaches at the local level, meaning a sometimes risk averse culture.

2

The function of procurement is not always aligned to wider place based challenges and associated strategy and priorities.

3

Procurement is a cyclical process. It includes: designing the good or service (commissioning); engagement with the market (pre-procurement); gathering tender responses (procurement); evaluating tender responses (decision-making); delivering the good or service (delivery and monitoring).

4

Procurers do not always have an effective relationship with commissioners or economic development practitioners.

5

Procurers are taught in certain ways – to frame their decisions on criteria around cost and quality. Considering wider social value factors can be seen as novel and against the norm.

6

Innovation in procurement and commissioning for outcomes are valued, but not widely practised.

7

Anchor institutions do not always know where their existing procurement spend is going in geographical and sectoral terms.

8

Organisations looking to tender for procurement opportunities do not always understand what types of goods and services procurers in the public sector are looking to buy.

9

Procurers do not always understand their local market and their capabilities, capacity, skills and knowledge to deliver procurement contracts.

10

Organisations tendering for procurement opportunities do not always understand social value and procurers do not always explain what it is, or ask appropriate questions around it.

11

Social value focused tender responses can be generic and not address the outcomes which procurement can help to achieve. Social value can also be perceived and seen as increasing costs.

12

Contract management can focus too heavily on progress against a budget or timeframe; as opposed to focussing on achievement against social value outcomes as well.



A post-Brexit procurement policy framework

Utilising the policy context outlined earlier and the lessons learnt from CLES' work over the last 10 years, we can highlight a number of ways in which central government and places can progress procurement policy and practice moving forward in a post-Brexit environment.

There are two overarching means for central government.

Develop overarching legislation and an associated policy framework

Central government needs to develop legislation and an associated policy framework for procurement post-Brexit. This needs to be shaped by the existing principles of the European Procurement Directives, the existing Public Services (Social Value) Act, the CLES core lessons outlined above, and importantly the real experiences of places when it comes to undertaking procurement.

What is effectively required is a 'beefed up' Public Services (Social Value) Act which is applicable to local public procurers AND those in central government; and legislation where social value is not a consideration in procurement BUT a requirement. The legislation needs to recognise the relationship between public

procurement and a range of other factors including global issues such as: human rights, equality and diversity and economic development; and to UK level challenges around youth unemployment, low skills, and poor business sustainability, for example. These issues need to be at the forefront of all procurement activity, alongside the more traditional emphasis on cost and compliance. We need socially responsible legislation, with an associated policy framework which embeds wider social justice considerations.

Apply framework to own procurements

In recent years central government have been very good at developing legislation and policy around procurement for local authorities and other public institutions to adhere to; yet have not really applied the principles of such policy to their own practices. This relates notably to

SME delivery of central government contracts and embedding issues of social and environmental concern into the process. Central government is the largest public procurer and therefore needs to apply the socially responsible legislation and the associated policy framework to their own procurement cycle and subsequently the behaviour of their supply chain. This needs to be cross-departmental, but also owned by a specific and specialist unit. Post-Brexit there should be a socially just procurement unit within central government which drives forward the implementation centrally of the 'beefed up' social value focused procurement legislation as outlined above.

The legislation and associated policy framework also needs to be applicable to procurement activity at combined authority and local authority geographical levels (including the diversity of different types of local authority, including district councils). The socially responsible legislation and associated policy framework as described above needs to link intrinsically at the local level to the stages of the cycle of procurement: strategy; commissioning; tendering; decision-making; and delivery and monitoring. Below, we focus particularly upon how procurement can be used as a means of delivering wider local economic, social and environmental outcomes and the activities that need to be undertaken to make the process more progressive. Pre and post-Brexit these steps should define all place based procurement processes.

Strategy

Places firstly need to be progressive in how they link procurement to wider challenges, strategy and policy. There are three of steps to this.

Step 1 Develop a framework

The first thing places need to do is decide which issues or challenges they want procurement spend and activities to contribute towards. Many places will have common challenges around (for example): youth unemployment, low skills, and poor business sustainability and will have strategies which outline these challenges and associated priorities. Places (led by local authorities) therefore need to relate these challenges to procurement through collaboratively developing procurement outcomes frameworks – these are high level outcomes which places want the process of procurement to contribute towards.

Step 2

Ensure other anchor institutions use the framework

Once the procurement outcomes framework has been developed, places need to ensure that all commissioners and procurers across anchor institutions are utilising it as part of their processes. This would ensure a common approach to procurement across anchor institutions and a wider set of institutions responding to address common issues or challenges through the tender process.

Step 3

Embed into commissioning and procurement practice

Once the procurement outcomes framework is embedded into the procurement strategies and policies of anchor institutions then it needs to become operational. Commissioners and procurers should be utilising it to frame every procurement which they undertake.

Commissioning

The best point at which other issues beyond the nature of the good and service should be considered in commissioning and procurement is at the design of service stage. To ensure progression in procurement processes, commissioners should be asking themselves a series of questions around how the outcomes detailed in the procurement outcomes framework (as described above) link to the type of good or service they are looking to design. As such there are two steps in this:

Step 4

Link outcomes to nature of good or service

Different outcomes will lend themselves to different goods and services and vice versa. For example, it might be relevant to create apprenticeships as part of construction commissions, but not for those relating to commissions around ICT. Commissioners at the outset of a design of a good or service therefore need to think about the types of wider outcomes which are potentially applicable.

Step 5

Enable outcomes through the commissioning process

There are a number of mechanisms which places can instigate as part of the commissioning process which will potentially enable more diverse wider outcomes to be achieved. These will enable more social value or wider outcome conscious suppliers to bid for services. The mechanisms include:

Encouraging Innovation

Places can consider adopting a Public Procurement of Innovation (PPI) approach for relevant opportunities. In this, rather than adopting a traditional approach to procurement where a brief is developed and then sent to the market; it is left to the market to innovate and develop new solutions that address particular challenges and achieve particular outcomes. This is particularly opportune for combined authorities as they seek to re-design and co-design services.

Engage with market

Places could be engaging with potential suppliers in the lead up to procurement processes commencing. This can take the form of 'Meet the Buyer' events whereby the tender process is explained alongside the nature of the good or service being commissioned. However, this is also an opportunity to explain the types of wider outcomes which are being sought through a

particular opportunity and how in turn they will be weighted as part of the decision.

Provide capacity building

Places could provide capacity building support to SMEs and voluntary and community sector organisations in order to develop their skills around tendering for contracts. SMEs and voluntary and community sector organisations are proven to deliver greater local economic and social benefit through procurement, yet often face numerous barriers with the process.

Encourage consortia development

Linked to the point about capacity building identified above, places can also utilise the commissioning stage to encourage voluntary and community sector organisations in particular to work together to bid for procurement opportunities. This could be particularly prevalent for larger value contracts, where individual SME or voluntary and community sector organisations may be precluded from bidding due to the nature of the contract and the economies of scale which may be provided by larger organisations.

Tendering

Once the above activities around commissioning have been undertaken and commissioners have decided which wider outcomes they want to embed into procurement, then they need to do the following in the tendering or procurement stage to be progressive. There are two steps to this.

Step 6 Set wider outcome weighting

Places need to decide what proportion of the decision-making process will be allocated to wider outcomes, alongside more traditional weightings around price and quality. There are two ways of doing this. The first is to adopt a blanket percentage across all procurements (for example 10%) or to do this on a case by case basis, whereby the percentage attributed to wider outcomes is relevant to the nature of the good or service being procured.

Step 7 Ask wider outcome focused questions

Places need to ask questions relating to the types of wider outcomes that they are seeking to achieve through procurements. If the wider outcome is around creating jobs they could ask 'How many new jobs will you create through this contract which are additional to what you would be creating anyway?' If the wider outcome is around the voluntary and community sector they could ask: 'As part of the delivery of this contract, what support will you provide to voluntary and community sector organisations?'

Decision-making

Once questions have been devised around wider outcomes as part of the tender process, there is a need to develop a means against which tender responses in relation to those wider outcomes can be scored in order to be progressive. This needs to be consistent for all bids and proportionate to the size of contract. There is one step to this.

Step 8 Choose a methodology for scoring

There are three ways of scoring wider outcomes, with the method utilised dependent on the nature of the question being asked and the types of wider outcomes sought. The scoring mechanism would need to be locally defined by the procuring organisation, but could use the following as the basis.

Quantitative

Some questions lend themselves to being scored on a quantitative basis – ‘how many?’ questions. For example, a question about a measure to create jobs could be ‘How many new jobs will you create through this contract in addition to what you would be creating anyway?’, and scored as follows:

- 1-2 jobs – 2%;
- 3-4 jobs – 4%;
- 5-6 jobs – 6%;
- 7-8 jobs – 8%;
- 9-10 jobs – 10%;

Qualitative

Other questions lend themselves to being scored on a qualitative basis – ‘what?’ questions. For example, a question about support for the voluntary and community sector such as ‘As part of the delivery of this contract, what support will you provide to voluntary and community sector organisations?’, could be scored as follows:

- A large range of quality support activities offered to the voluntary and community sector – 10%;
- A medium range of support activities offered to the voluntary and community sector – 5%;
- A low range of support activities offered to the voluntary and community sector – 2.5%;
- No evidence of support activities offered to the voluntary and community sector – 0%.

Pass/fail

Questions may also lend themselves to being scored on a pass/fail basis – ‘do you’ questions. For example, an environmental management question could be ‘Do you have an environmental management strategy?’, and scored as follows:

- Pass: environmental management strategy in place – 10%;
- Fail: no environmental management strategy in place – 0%.

Delivery & Monitoring

The final stage of being progressive in procurement is around delivery and monitoring. Suppliers will have now detailed which wider outcomes they are going to contribute towards and a decision will have been made with wider outcomes forming part of the process. This now needs to follow through into the delivery of the contract and associated monitoring. It is important to note that the stage of monitoring is often the one which public authorities struggle with most. There are three steps to this:

Step 9 Embed wider outcomes into contract terms and conditions

Places need to take the aspects and quantity of wider outcomes detailed by the successful supplier in their tender responses and translate these into terms in contracts. This will ensure that both suppliers and those commissioning goods and services know what is being delivered contractually as part of a good or service contract and what is being delivered in relation to wider outcomes.

Provide signposting to support to deliver wider outcomes

Places should not just leave it to suppliers to deliver wider outcomes. There are a range of types of support and signposting that can be provided, including links into employment support programmes, links into voluntary and community sector organisations, and advice and tools around measuring carbon. Places should actively provide this support to enable the best possible outcomes to be achieved.

Formally contract manage and monitor on wider outcomes

There are two main ways of monitoring the impact of procurement spend and activities. The first is on a contract by contract basis, with the second on a collective basis across all procurement spend.

Contract by contract basis

To monitor impact and wider outcomes on a contract by contract basis there are two main techniques undertaken on a relationship or contract management basis with individual suppliers:

- The first is on a quantitative basis, so for questions such as 'how many jobs have you created?' to ask suppliers to provide a number (plus supporting evidence) either during the life of the contract, or upon completion.
- The second is on a qualitative basis, so again for the jobs question, there may be an emphasis on collecting information about the sustainability of the jobs created or the implications that job creation has had on an individual's life (again this can be done during the life of the contract or upon completion).

This enables robust information to be collected and impact to be demonstrated.

Collective basis

To monitor impact and wider outcomes on a collective basis there are two main techniques which can be utilised:

- Where places have undertaken baseline spend analysis of where procurement spend goes and the extent to which it is spent with SMEs, for example, they can on an annual basis re-do that spend analysis and assess changes and impacts upon the local economy;
- Places can issue surveys to their suppliers on an annual basis and collect information and data about the wider impact they are bringing. This can include questions around how suppliers are re-spending the income they receive through a procurement contract back in a local economy; and also questions around how many jobs they are creating, for example.

Both of the above can be undertaken on a collective basis across all contracts and help ensure that social value promises are being delivered. However, survey work will only provide responses from a sample of the supply chain.



Conclusion

Brexit presents a significant opportunity for UK Government and place based anchor institutions to re-shape legislation around public procurement and in turn how procurement is undertaken in policy, strategy and practice terms.

These are real opportune times to shift the narrative of procurement from one of compliance, bureaucracy and risk to one of progression, social value, and innovation. In this discussion paper, we have outlined the need for reinvigorated national level legislation around public procurement which is socially responsible, which 'beefs up' existing legislation and which is accompanied by an associated policy framework. We have also outlined the steps which places need to go through to progress the way they do procurement – the steps should not be treated in isolation but as part of a joined-up

approach to reframing how we procure for the benefit of local economies and in addressing social and environmental challenges. These steps should become the norm to all procurement processes, with socially responsible legislation simply the frame for a shift in culture amongst both procurers and suppliers.

About the author and CLES' work

This discussion paper was written by the Deputy Chief Executive of CLES, Matthew Jackson. Matthew is one of the leading experts in progressive public procurement in Europe. He is the Lead Expert for the URBACT III Programme's Procure network, which is seeking to progress procurement policy and practice in 11 cities across Europe. He is also an advisor to the EU Urban Agenda Partnership on Responsible and Innovative Public Procurement. Matthew leads CLES' work on local wealth building, including collaborative work in Preston, and has led on CLES' work on public procurement for the last 10 years.

Key recent publications include:

- Jackson, M. (2017) The Power of Procurement II: the policy and practice of Manchester City Council – 10 years on. <https://cles.org.uk/our-work/publications/the-power-of-procurement-2/>
- Jackson, M. and McInroy, N. (2017) Community Wealth Building through Anchor Institutions. https://cles.org.uk/wp-content/uploads/2017/02/Community-Wealth-Building-through-Anchor-Institutions_01_02_17.pdf

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