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BSA Policy Discussion Paper: Improving public procurement for SMEs and VCSEs

Background

This is a Business Services Association - BSA - discussion paper and contains recommendations following discussions with BSA VCSE and SME members. The Business Services Association brings together those who are interested in delivering efficient, flexible and cost-effective service and infrastructure projects across the private and public sectors. A list of our members is attached as an Annex. They include large and small businesses, charities and social enterprises.

The sector includes ICT, facilities management, construction and infrastructure provision and other project delivery. 70 per cent of services are provided business-to-business and 30 per cent for the public sector. The sector employs 3.3 million people across the UK, accounting for around 1 in 10 jobs. As such it is an important driver of inclusive economic growth across every region and community.

The Government's spending with SMEs and VCSEs

In 2017 the May Government pledged to increase the percentage of government spending that is with small and medium-sized enterprises to a third, including both direct spend and spending further down the supply chain by main contractors.

This target was an extension of the Coalition Government's promise to increase spending with SMEs to 25%, which was met in 2013/14 and 2014/15, but fell back below 25% in 2015/16.

Figures released in February 2020 show that in 2018/19 the percentage rose to 25.7%, consisting of 11.6% direct and 14.1% indirect spend¹.

At the same time, the Institute for Government found that government procurement from charities, while difficult to calculate, appears to have remained essentially flat since 2008/09².

The Conservative manifesto for the 2019 General Election contained commitments to:

- 'support start-ups and small businesses via government procurement';
- 'use government procurement to support new ideas and new companies'; and
- 'continue to support charities'.³

This discussion paper will therefore explore the ways in which the Government can both continue and expand upon their support for SMEs and VCSEs via government procurement, beginning by looking at existing barriers in current practice.

¹ Cabinet Office (2020), *Central Government spend with SMEs 2018 - 2019*
https://www.gov.uk/government/publications/central-government-spend-with-smes-2018-to-2019?dm_i=2OYA,107OJ,75C4X5,3TG88,1

² Institute for Government (2018), *Government procurement: The scale and nature of contracting in the UK*.
https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_government_procurement_web3.pdf

³ Conservative Party (2019), *Unleash Britain's Potential and Get Brexit Done*, https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c15dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf?dm_i=2OYA,YX3C,75C4X5,300YN,1



What are the main barriers preventing greater SME/VCSE participation in the market?

1. High turnover thresholds

- SMEs/VCSEs are still too often precluded from bidding for contracts they would be fully capable of delivering because of excessively high turnover thresholds, which often appear to lack any clear rationale.

2. Iniquitous risk transfer

- Contracts and contract variations which seek to transfer high levels of risk will always tend to be prohibitive for SMEs and VCSEs. While larger organisations may have large enough balance sheets and/or broad-based portfolios of activity capable of absorbing these risks, smaller and more specialised SMEs and VCSEs are unlikely to have the capacity or appetite to do so.
- Such transfer of risk can be prohibitive (in the sense of discouraging bids) or can force organisations into taking on undue risk, potentially posing an existential threat in the case of unforeseen economic shocks.

3. Excessive complexity in the tendering process

- Unnecessary complexity in the tendering process remains a major factor in prohibiting SMEs/VCSEs from competing for public sector contracts.
- Lengthy and complex tendering processes tend to place smaller and VCSE organisations at a structural disadvantage in the bidding process. This is because these smaller organisations do not have the divisions of labour and large specialised bid teams that large organisations can draw upon.

4. Race to the bottom on price

- Excessive pressure for cost reduction in Government commissioning, and a focus on price over return on investment (including social value) further increases barriers for SMEs and VCSEs.
- SMEs typically tend to deliver quality, best value products and services, and VCSEs typically deliver extra value through their mission.
- Although the Government's social value policies should, if well implemented, begin to redress some of this, delivering social value is unlikely to come without any additional cost, so excessive downward pressure on price will still squeeze out the ability of VCSEs and others to deliver social value in line with their mission.

How we can improve the amount of government spending with SMEs/VCSEs?

The Government needs to work to tackle the above major barriers to SME and VCSE participation. Beyond this, we should also look to develop some systematic and lasting responses to these challenges. These should include:

1. Continuing to develop the Government's social value agenda
2. Development of frameworks or umbrella arrangements designed specifically to support SMEs/VCSEs
3. Greater support for SMEs in the procurement process
4. Encouragement and support for consortia-type arrangements



1. Continue to develop the Government's social value agenda

Summary

SMEs and VCSEs can be key generators of social value. Therefore, the Government's intention to place greater emphasis on generating social value from public contracts is to be warmly welcomed. In doing this, we need to strike the right balance between ensuring robust evaluation and avoiding being overly prescriptive and unhelpfully inflexible.

Enabling SMEs to deliver social value

VCSEs are often the experts at generating particular types of social value and typically see it as their mission to go beyond their contractual terms to do so. SMEs are more likely to invest and employ locally, and to understand and be responsive to local needs.

The Social Value Act has encouraged the public sector to take social value seriously, but only requires public bodies to 'consider' it. The Government is right to take a more ambitious approach and 'require' all central government departments to take account of social value in the award criteria. In doing so however, we must strike the right balance between maintaining robust evaluation on the one hand and, on the other, allowing sufficient flexibility to ensure that more specific types of social value, which SMEs and VCSEs particularly are often specialists in generating, are not overlooked and that the quality of social value delivery is taken account of as well as quantitative metrics.

We believe that the key to doing this is high quality market engagement with SMEs and VCSEs that allows them to come forward with solutions. In order to do this, we believe that guidance on market engagement should make it clear that buyers ought to seek to engage with VCSEs and SMEs whose organisational mission is closely aligned with delivery of the contract in question. They should discuss what relevant social value these contracts can generate and what suitable criteria and metrics for evaluation would look like.

Approaches such as impact funding should also be considered as further ways in which to drive increased social value. When competing schemes are evaluated, due consideration should be given to the amount of impact schemes would generate even if this leads to increases in costs. For example, we would argue that it is better to spend £2 delivering £5 of impact than £1 delivering £2 of impact. Thus, if there were two bids to deliver an employability intervention but one of the schemes also reduced offending behaviour then this intervention might offer better value even if it was more expensive. Work should be undertaken to quantify the value of secondary outcomes.

Suggested actions

- Introduce the Government's proposed approach to social value for central government with sufficient flexibilities built in.
- Publish guidance on high quality pre-market engagement which can best provide this flexibility and maximise social value delivery.
- Consider increasing the minimum weighting for social value above 10%, and/or provide guidance on when the social value weighting *should* be higher than this.
- Encourage and enable local government and the wider public sector to adopt the same ambitious approach to social value that the Government is proposing.
- Once the new approach to social value has been tested, amend the Social Value Act to require public bodies to take account of social value and extend its scope to goods and works. Set a timetable for this vision to be implemented.
- A body should be created to monitor the progress of these and other initiatives to encourage greater SME and VCSE engagement in the procurement process. This could be in the form of a



board or committee and should also challenge practice which excludes SMEs or VCSEs such as prohibitively high risk transferal.

2. Development of frameworks or umbrella arrangements designed specifically to support SMEs/VCSEs

Summary

The current formulation of many frameworks presents additional challenges for SMEs' and VCSEs' engagement. The difference in operational scale between SMEs/VCSEs and larger organisations also impacts on their ability to commit to frameworks which often have five-year terms. This is a considerable time-period in the operation of a smaller organisation and the uncertainty this provides constitutes a strong disincentive. At the same time, where the individual contracts on offer are felt to be too small and short in duration the operational costs smaller providers face in mobilizing any new service may serve to further disincentivize SMEs/VCSEs from engaging with them. More refined models, such as dynamic purchasing systems (DPS), are seen as flexible and potentially useful procurement tools to encourage the involvement of SMEs and VCSE providers although there remain certain areas where these can still be improved upon.

DPSs

The Scottish government's recent adoption of a DPS for the provision of digital technology services may provide an interesting case study as to whether these types of arrangement do indeed encourage greater SME participation in the procurement process. Some BSA members are listed as suppliers in the most recent publication (29 November 2019) and could perhaps be approached for comment.⁴ Similarly, it would also be prudent to approach those who have been involved in the Ministry of Justice's recent adoption of a DPS. The department's update in January 2019 showed that since the Continuous DPS PQQ139 has reopened, it has onboarded 170 suppliers onto PEDPS of which 115 are SMEs.⁵ This is to be welcomed, however some providers have suggested that the individual offers in the Ministry's PEDPS are too small and short in duration. Commissioners must consider the needs of any business to be able to plan sufficiently far in advance and they need to make opportunities large enough to ensure that the investment required to mobilise a new service is financially viable.

In addition to this, the Department for Work & Pensions' DPS for provision of work focused activities involves providers putting offers onto the system and the department then calls off contracts as required.⁶ The problem providers face is that they do not know what is being called off until and unless they receive a call from the commissioner. In the absence of a call it is hard to know if their offers do not meet the requirement or if the department is not commissioning that particular type of service. This lack of visibility makes it very hard for providers to plan and remain commercially sustainable.

⁴ Scottish Government (2019), *Digital technology services - supplier list - December 2019*: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2019/01/digital-technology-services-dynamic-purchasing-system-guide/documents/digital-technology-services--supplier-list---december-2019/digital-technology-services---supplier-list---december-2019/govscot%3Adocument/Digital%2Btechnology%2Bservices%2B-%2BSupplier%2Blist%2B-%2BDecember%2B2019.pdf>

⁵ Ministry of Justice (2019), *Procurement for prison education dynamic purchasing system*: <https://www.gov.uk/government/case-studies/procurement-for-prison-education-dynamic-purchasing-system>

⁶ Contracts Finder (2019), *Dynamic Purchasing System for the Provision of Work Focused Activities*: https://www.contractsfinder.service.gov.uk/Notice/0f5cbbc4-3a1b-461c-b682-a25799c05912?_ga=2.66947371.446626227.1575889146-143749874.1565010031



It may therefore be worth exploring whether a greater adoption of DPSs ought to be encouraged as opposed to seeking to develop new frameworks and, if so, how these can be refined to ensure they operate as effectively as possible. It is worth considering whether there would be sufficient appetite within government to develop such frameworks if they are considering changes in procurement practices post-Brexit.

Suggested actions

- The Government should consider a review into the effectiveness of Dynamic Purchasing Systems in encouraging greater SME and VCSE commitments where they have been established. VCSEs and SMEs who are involved in DPSs should be approached and asked for feedback of their experience with these systems including discussing some of the current difficulties highlighted above.
- The review should also discuss with SMEs and VCSEs the areas in which they feel DPSs are inappropriate vehicles for greater VCSE/SME participation and use this feedback to formulate alternative proposals.

3. Greater support for SMEs in the procurement process

Summary

SMEs and VCSEs face significant structural barriers in navigating public procurement processes and the public contracting environment more generally. While the Government has done much to improve protection and means of recourse, for instance through the Public Procurement Review Service and tougher measures on fair payment, we should continue to think innovatively about what more can be done to support and strengthen the position of SMEs. In addition to this the Government should continue to engage with those larger organisations who support SME participation in the procurement process as part of their supply chains. This can include developing best practice guides and producing better data to better reflect the ways in which these organisations involve SMEs and VCSEs.

Supporting SMEs in the procurement process

Unsuccessful tenderers on public sector contracts have a legal right to receive feedback, but the quality and timeliness of feedback can vary enormously. Given the relatively high amounts of time and resources which SMEs need to invest in tendering, it is vital that, when they are unsuccessful, they receive adequate feedback in a timely fashion. Quality feedback allows them to learn and be more competitive in future, while also helping to promote transparency and maintain confidence in the process.

Smaller providers would also benefit greatly from additional government support with development policy and procedure, with ICT and data security (such as Cyber Essentials accreditation), and support to access finance to cash flow services that are payment by results. In addition to these, government support to help providers understand contractual and delivery risk associated with contracts would be especially welcome.

In scenarios in which a consortia arrangement is required, government support on the provision of contract and performance management will be of great value to SMEs and VCSEs. See Section 5 below for further points on the effective delivery of consortia arrangements.

Suggested actions

- The Government should review whether more can be done to ensure that all public bodies provide detailed feedback in a timely fashion to those who have been unsuccessful in tendering for public contracts.



- The Government should work with private and third sector organisations to help to develop independent organisations that can support SMEs/VCSEs in the procurement and contracting process. For instance, organisations that can help SMEs to develop processes to report the social value metrics without adding additional administration burden.

4. Encouragement and support for consortia arrangements

Summary

Consortia arrangements help to address the problems caused by the prohibitively high transfers of risk which are discouraging for many SMEs/VCSEs. These arrangements can also be used to ensure that services suffer minimal losses in the event of unforeseen economic difficulties for SMEs/VCSEs or any other unexpected difficulty which leads to a loss of service. Additional benefits include encouraging public trust in giving contracts to smaller organisations, reducing overall transaction costs as only one contract needs to be negotiated and implemented, and encouraging increased sharing of best practice between SMEs/VCSEs.

Encouraging these arrangements

There are certain aspects of consortia arrangements that require reform if we are to further promote the participation of SMEs and VCSEs in the procurement process. The complexity behind establishing a special purpose vehicle (SPV) is that consortia often end up being configured as a prime with a supply chain. Commissioners often then judge the financial capability of a partnership based upon the financial position of the provider acting as prime rather than the financial capability of the partnership as a whole. This then means that large providers bid as a prime, leaving smaller providers with limited input into the design and management of the provision.

If the government wants to commission partnerships of SME and VCSE providers to deliver large publicly funded contracts it needs to develop an approach to either take account of the resources and abilities of partners who will be subcontractors or find a way to facilitate the creation of SPVs.

Encouraging increased use of consortia arrangements will also require an educational approach. This should focus on promoting awareness amongst SMEs and VCSEs as to the existence of these arrangements and guidance on how to form them. The Government, in conjunction with organisations who design such arrangements, would be the most appropriate to take the lead on this by launching awareness building campaigns.

Suggested actions

- The Government should review the way in which consortia arrangements are assessed when competing for bids and whether steps can be taken to facilitate the creation of SPVs.
- The Government should meet with those pre-existing organisations which encourage businesses to form consortia and discuss the two options above as well as how to increase awareness of consortia arrangements.
- This should then be used to develop a campaign to explain the benefits of such arrangements and provide support for those for wish to engage in them.



Annex 1. List of BSA Members, March 2020

3C3 Ltd	IBM
3SC	Ingeus
Accenture	Interserve
Amey Plc	ISS UK Ltd
Aramark	KBR
Atkins	KPMG (Scotland)
Atos	Kier Group Plc
Baachu	Maximus UK Ltd
Balfour Beatty Plc	Mears Group
BAE Systems	Mitie
Barclays Corporate	MTC
Bellrock Ltd	NatWest
Bevan Brittan LLP	NCG
Bouygues Energies and Services	OCS Group UK Ltd
Browne Jacobson LLP	P3
BT Group Plc	Pinsent Masons LLP
Capita Plc	Purpose Led Performance
Catch 22	PricewaterhouseCoopers UK
CBRE Ltd	Robertson FM
CGI	Salisbury Group
CH & Co Group	Seetec Group Ltd
Clyde & Co LLP	Serco Group Plc
CMS Cameron McKenna Nabarro Olswang LLP	Sharpe Pritchard LLP
Community Models	Shaw Trust
Compass Group Plc	Sodexo Ltd
Connect Assist	Sopra Steria Ltd
Corndel Ltd	Space Solutions
CSG	Spend Network
David Macbrayne Ltd	Strictly Education
Deloitte	TerraQuest Solutions Ltd
DWF LLP	The Gap Partnership
Elior UK Ltd	The Grichan Partnership
ENGIE UK & Ireland	The Sustainability Group
Eric Wright FM	Trowers & Hamlins LLP
Extentia Group	Veolia
Fujitsu UK	VINCI Facilities
G3 Systems Ltd	VPS Group
G4S Plc	Wand Consulting
GoodPeople	Wates Group
Hinduja Global Solutions	Willmott Dixon
HP	