

3SC - POSITION PAPER

**THE CRISIS IN
PUBLIC SECTOR
CONTRACTING**

AND HOW TO CURE IT

www.3sc.org

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3SC is a social enterprise. Our core mission is forming third sector partnerships to win and deliver public sector contracts. That is a grand statement, and one that could all too easily be dismissed as just another piece of spin. There are thousands of “social enterprises”, all struggling for attention, all trying to do the same general things – improve lives for those who most need it – and all competing for resources, especially from the public purse.



FOREWORD

What makes 3SC distinct is that we exist to unite both smaller and larger social enterprises, but particularly smaller, so that they can punch above their weight when it comes to bidding for public sector contracts. We have been doing this since 2009 without too much song and dance. It has been a bumpy time, living through a period of protracted Government austerity. I think it is fair to say that we have all gone through something of a fiscal Blitz. After 1945 Britain was a changed society. Austerity has again left us emerging as a changed society, not least in how we manage and fund those areas which have been badly battered.

Public procurement faces significant challenges. The demise of Carillion and the challenges currently being faced by other major contractors has highlighted the problems of always procuring big. That is not to say that Carillion and other major outsourcers do not deliver wonderful projects, high quality services and value for money. However, the fixation with the same procurement outcome is what is at fault. Variety and diversity will, in our view, deliver more in terms of innovation, service excellence and better outcomes.

There is a growing momentum for change – one size does not and should not fit all. The people who procure public services need to recognise that contract awards do not have to rest on price and scale alone, as they currently

seem to do. Indeed, the best results and outcomes are rarely linked to size. We are not arguing that procurement should focus only on smaller organisations and the third sector. We have an extremely successful contract working with Interserve delivering rehabilitation services through the third sector, and there are plenty of other examples of the different sectors working together in a positive, joined-up and powerful way.

What we are pushing for is more sensitivity in how services are procured and, within that, an explicit commitment, from Government, for third sector and smaller organisations to secure a reasonable share of the public procurement pie.

In response we have set out in the following pages some thoughts on how we

can start to tackle the social challenges we face today. We cannot rectify problems, of reoffending, housing, disability, employment, and so on, by squabbling or trying to score politically-motivated points. Nor are the problems – long gestated and deep-seated – going to be solved by quick and easy fixes. They need cooperation, patience, longevity, clear thinking, as well as money; but money that is spent not just with an eye to getting the cheapest solution, but the best solution. In other words, Partnerships with Purpose – something which 3SC is dedicated to creating for the common good.

John Swinney - *Chair 3SC*

PROBLEMS

2.1 SUMMARY

In 2017, the Prime Minister and Rt Hon Greg Clark MP Secretary of State for Business, Energy and Industrial Strategy launched the BEIS White Paper, *“Industrial Strategy Building a Britain fit for the future”* a document which promised that it would “help businesses to create high quality, well paid jobs right across the country” and stated that it was

“more than just a set of announcements, it heralds a new approach to how Government and business can work together to shape a stronger, fairer economy. At its heart it epitomises my belief in a strong and strategic state that intervenes decisively wherever it can make a difference.”

Quite remarkably this document did not include any reference to the role that social enterprises have in building that strong and prosperous economy.

This was despite the fact that there are over 80,000 social enterprises across the country contributing £24 billion to the economy and employing nearly a million people.

Social enterprises cover a wide variety of sectors and a large number are involved directly or indirectly in supporting the public sector and its delivery of services. However, when public sector investment is set against the 80,000 social enterprises the real level of social enterprise involvement in public sector contracts is marginal. This is despite the importance of public sector contracts to the growth of the UK economy as a whole - central Government spends 14 per cent of GDP on public sector procurement each year.

Despite the struggles in accessing public sector contracts, the growth of social enterprises is a success for the UK. The collapse of Carillion, the current challenges facing Capita and the wider problems facing the outsourcing sector have brought into stark focus how public sector contracts could be procured and delivered going forward. We are seeing the consequences of procurement based on price rather than outcomes, scale rather than fit and the same solution rather than diversity. Outcome is only measured fiscally rather than having additional social goals to establish financial returns and the positive social change which can be delivered through properly structured and administered public sector contracts.

The aim of this Position Paper is to highlight the challenges that social enterprises face in relation to public sector procurement and more importantly to offer some solutions.

2.2 PRIVATE FINANCE INITIATIVE (PFI)

– DRIVEN BY SCALE AND SIZE

The relationship between the Private Finance Initiative (PFI) and public sector contracts has been well documented. The recognition that PFI required reforming, if it was to continue to be used as a mechanism for funding public sector contracts, is evidence of this. The subsequent launch of PF2 in 2016 and the reduction in the number of Government PFI contracts since then suggests that PFI is no longer seen as the go-to solution for Government and in fact “since 2010 the Government has signed 80 contracts under the private finance initiative (PFI). In the 13 years before 2010 it signed 620.”

According to the latest Treasury data there are 716 PFI projects with a capital value of just under £60bn. The value of all payments to PFI contractors is currently around £10bn a year, which is around 0.5 per cent of GDP. According to the National Audit Office (NAO), in January this year: “Even if no new deals are entered into, future charges which continue until the 2040s amount to £199 billion.” These are huge numbers and inevitably drive procurement towards big business as currently these are the only organisations which are capable of bidding and then delivering projects on this scale.

However, the real problem is that in using PFI/PF2/PPP as the mechanism for funding public sector projects and services, the evaluation is largely based on money. The NAO correctly points out that there has been no systematic evaluation of all the PFIs commissioned by Government. While the improvements in our infrastructure are clear, as a process it has reinforced the commitment to procure on the basis of size and scale, big balance sheets and borrowing capacity. It has largely excluded the smaller provider.

Clearly, public sector contracts need funding, particularly where they are linked to infrastructure projects as well as services. However, we would suggest that there should also always be a focus on the social value that the contract can provide to the users and local community.



2.3 THE RUSH TO THE BOTTOM

– PRICE, PRICE, PRICE

Public sector procurement decisions have seen a drive to the bottom in terms of price despite public procurement regulations providing that the most economically advantageous tender should be selected. This does not mean the cheapest one but that is rarely how tenders are assessed. The intention of both local and central Government to secure the cheapest spend on public sector contracts is understandable but may not achieve the best value for money. In particular, it may not obtain the best social outcomes for the customer or the end user. Contractors bid cheaply to secure turnover growth (rather than delivering profits against turnover) and public sector commissioners are intent on procuring services without recognising the impact of cheap and ultimately unsustainable bids.

In the wake of the 2008 crash, price has become a fetish of the market, driven by the austerity conditions within which central and local Government have been operating. Shareholder pressure encourages big business to seek growth at all costs, irrespective of the impact on the workforce, supply chains, performance and quality of outcomes.

In this rush to the bottom, where does this leave social enterprises? Walker and Tizard, in their report 'Out of Contract: Time to move on from the 'love in' with outsourcing and PFI' highlight succinctly that "Social enterprises, cooperatives, voluntary and community sector organisations have major roles to play in service delivery. But with the rise of competitive tendering the state has come to regard charity and social enterprise as little different from business – missing their wider social significance. They have been expected to use charitable income and voluntary labour to subsidise contracts"

This rush to the bottom, as outlined, often at the expense of any social value incorporated into a contract, leads us onto the issue of the Social Value Act.

PUBLIC



2.4 THE SOCIAL VALUE ACT – A VEHICLE FOR CHANGE OR LEGISLATION WITHOUT TEETH?

The Social Value Act introduced in 2012, requires public sector commissioners to take into consideration the impact and social value when making procurement decisions rather than the lowest cost. On the face of it, the requirement for both local and central Government to include a social value question in public sector procurement is good news. The recent report by Chris White, author of the Social Value Act and in particular his call for extending the Act to cover all public spending is also welcome.

However, while Local Authorities are supportive of the third sector for bringing more innovation and greater flexibility to social problems, that support does not always extend to their commissioning decisions. These still tend to favour large, well-known private firms over smaller third sector ones and the social value questions which tend to be included in public sector procurements tend to be a nod in the direction of the Social Value Act rather than the basis of any wider social value and such initiatives are rarely followed through into the final contract.

There are pockets of good practice but otherwise scant evidence that central and local Government procurement processes are achieving the goals of the Act. The current BEIS consultation on Corporate Governance is a positive Initiative, and it will be important as part of this Consultation for BEIS to commit to a review of the Social Value Act. Recent private sector governance issues bring into question their ability to genuinely deliver on social value. As such, the time is right for a full review.





SMALL ACTIONS BY
THE RIGHT PEOPLE
CAN MAKE THE
BIGGEST DIFFERENCES

A young girl with long blonde hair, wearing a white polo shirt, a dark skirt, and a black backpack, stands in front of a school building. She is smiling slightly and has her hands on her hips. The background shows a green metal structure and a building with a tiled roof. A bicycle is partially visible on the right side of the frame.

COMMUNITY
FOCUS AND
DIVERSITY ARE
ALL BETTER
SERVED BY
SOLUTIONS



THAT ENCOURAGE DIFFERENCE
AND REAL EXPERTISE.

2.5. MONOPOLY V DIVERSITY

Another factor that has the potential to impact on social enterprises is the trend for councils to bring services back in house. This together with the other perceived challenges (some of which we touch on in this paper) of working with the third sector, undermine the enthusiasm of local Government to consider social enterprises as part of a delivery solution. Yet, the presence of an internal monopoly is just as restrictive of innovation and diversity as if the service was being provided by a big private sector outsourcer.

We would argue that monopoly is an inhibitor of world class procurement. It does not matter whether that monopoly is in private or public hands, competition, innovation, community focus and diversity are all better served by solutions that encourage difference and real expertise but they can only be delivered if the current procurement regime is revised to create a more flexible framework within which organisations of all sizes can operate.

COMPETITION
INNOVATION
COMMUNITY
FOCUS
ENCOURAGE
DIFFERENCE

3. SOLUTIONS

3.1 PROCUREMENT

– CHANGING THE FOCUS

It is our belief that there has been an inverted view of the problem, which fundamentally is: how do local and central Government, keep a tight grip of public finances and continue to fund successful public services that deliver the outcomes, particularly socially beneficial outcomes? Hitherto, the focus has been on keeping as tight a grip on spending as possible, regardless of the outcome.

Above certain financial thresholds EU Procurement legislation is at the centre of local and central Government public sector contracts. Post Brexit, there is an opportunity to reshape procurement in a way that has never been possible before. Indeed, the Local Government Association has also called for simpler procurement rules after Brexit, suggesting *“that a more efficient system of public procurement “could include giving councils greater ability to use local suppliers, specify a minimum local living wage for their suppliers’ employees, or specify additional social value so that companies awarded contracts can be asked to employ or train a number of local people”.*

We would urge central Government and in particular BEIS, Department for International Trade and Department for Exiting the European Union, to work together with their counterparts in the devolved nations to create a world class approach to procurement. That approach must offer more flexibility, speedier processes and a clearer commitment to social value and partnerships structured to deliver social positive outcomes. Brexit offers a unique opportunity to break away from the bureaucracy and restrictions of current procurement models. In short, a radical overhaul of the way we procure public services.

The Northern Powerhouse, Midlands Engine and other devolved initiatives also offer a welcome opportunity to redistribute the balance of power at a local level. While regional devolution is in its infancy, there is an opportunity for metro Mayors to drive regional procurement initiatives in support of social enterprises and with a focus on real and tangible social outcomes.

The Industrial Strategy recognised that the UK had grown during a time of industrial revolution when many entrepreneurs took the risk of establishing a business. At the same time many of those entrepreneurs put social value at the heart of their growth – including Cadburys, Rowntree, Co-op and John Lewis. All historically important to the UK’s economic development and all real examples of how placing social value at the heart of business can be an economic success story.

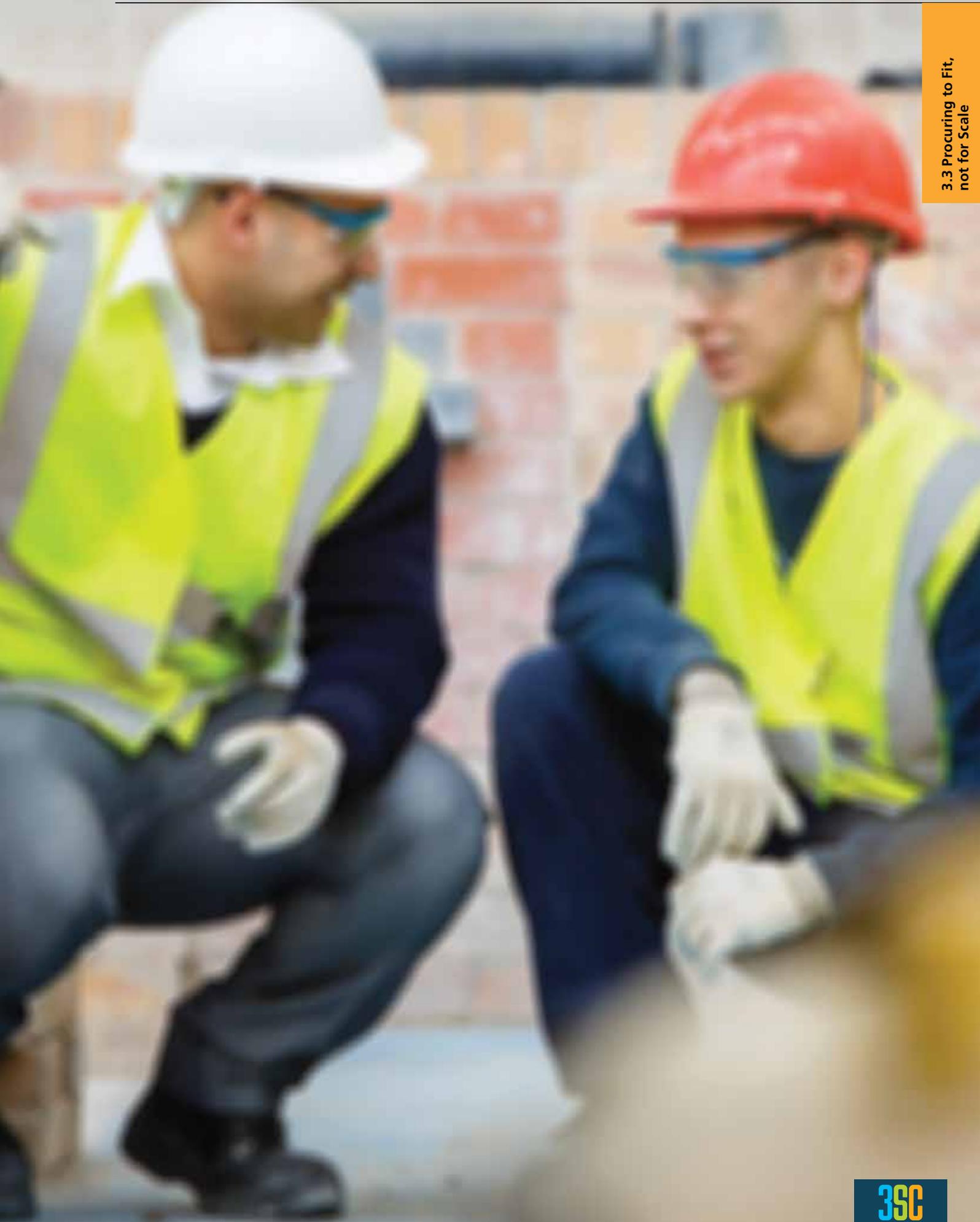
3.3 PROCURING TO FIT, NOT FOR SCALE

Historically, much of public service has been about delivering solutions which are well established but often lack in imagination and the flexibility to meet changing circumstances. This is a product of both the need for uniform procurement process and the lack of diversity in delivery. However, the time feels right for change. Partly precipitated by the collapse of Carillion and the wider uncertainty of the outsourcing sector but also on the back of Brexit, regional devolution and the continuing pressures on public finances is this the moment for commissioners to commit to encouraging solutions which go beyond one size fits all?

It is clear that a fundamental rethink and reform of public sector procurement is required. This process must involve all stakeholders whether service providers, policy makers or commissioners, private, public or third sector. It needs to embrace small as well as big organisations - it needs to go beyond the 'usual suspects'.

This reform is critical. We need to reinvent a clearly broken system. There is a place for all types of services users in all sectors. Large private sector organisations will inevitably dominate major infrastructure projects but in their rush for growth they have taken services and tasks which are much better suited to smaller, more agile and passion driven community based organisations. At the heart of any new model, therefore, must be a much stronger social focus.

STRONGER
FOCUS
ON
SMALLER
BUSINESSES



3.3 Procuring to Fit,
not for Scale



3.4 GIVE SMALLER ORGANISATIONS

A CHANCE

Smaller third sector organisations, based in local communities and driven by their mission can provide part of the answer to the problem but local Government must also recognise this and ensure such organisations are at the heart of certain future procurements. This is particularly true when it comes to tackling social issues as shown by the following:

- Empower is a small voluntary, community and social enterprise sector organisation working, in Grimsby, Louth, Scunthorpe and Gainsborough. As part of their contract with Humberside, Lincolnshire and North Yorkshire Community Rehabilitation Company, they work with individuals that have been through the Criminal Justice System. As well as working with offenders in the community, Empower also engages with offenders prior to release from custody, meeting them at the prison gate upon release and then providing a mentoring programme for them in the local community for up to 12 weeks. This programme supports individuals overcome the barriers that have prevented them from reintegrating back into the community, enables change towards positive lifestyles, personal development and in some cases moving towards or into employment. In 2017, they worked with 93 service users of which in the 12 week period after release, only 6 re-offended.
- The mission of award winning charity Elite Supported Employment Agency is to enable individuals with disabilities or those at disadvantage across South Wales, South West and Mid Wales, to access, obtain and maintain paid employment via appropriate support. They are one of the key providers on the Visual Impairment Specialist Employability Support Programme and through this programme, and others, they help hundreds of people including those with a visual impairment every year to access vocational opportunities and training to upskill and move them into lasting employment and independence.
- For 7 years as part of the DWP Work Programme, social business Black Country Housing have been working closely in and with local communities in Birmingham and the Black Country, to provide a holistic 'added value' approach to helping long term unemployed people access employment opportunities. As well as employment and training support, they provide services and advice covering fuel poverty, financial exclusion, housing options, benefits advice, health and wellbeing and help vulnerable people to retain their independence at home.



The appointment of a Commissioner for SMEs and the political weight that this role carries is to be commended. However, there is a need to expand the current Commissioner's remit to look at how social enterprises can also be given the same support and access to procurement opportunities.

A percentage of major Government programmes by value should be set aside for smaller, providers. Obviously, they must be the right organisations for the right problem in the right local communities. They will also need to show that they are (or can be for innovative start-ups) able to deliver a holistic public service that meets the required outcomes at scale. This will usually mean working as part of larger consortia either with bigger providers (probably from the private sector) or by creating consortia of likeminded organisations. However, for the latter point to work, commissioners will need to look differently at how they assess the financial strength of the parties and the nature of the partnership. A modern world class procurement framework must consider how to manage this very specific challenge.

Clearly, if this is to work there must still be robust corporate performance management, governance and financial systems, but they must be proportionate and not exclude smaller organisations. Again, it is the concept of one size fits all that makes a commissioner's life easier but third sector organisations involvement so difficult. So, support systems will be needed to incubate, hand hold and nurture such organisations. This will give third sector organisations the ability to maximise their contribution to tackling the engrained social problems they were set up for. The current arrangements mean that they are only ever involved at the edges of public service delivery.

3.5 FOCUSING ON OUTCOMES

Our thinking around how we measure economic value in tenders needs to change. Price is a blunt instrument for measuring value. Greater priority needs to be given to the quality of outcome. The structure of how the market should be managed, therefore, needs a change of ethos from one that focuses on outcomes achieved at the lowest possible price to one that measures the wider impact, particularly social impact, of services.

The current system drives commissioners to procure a service costing £1 per outcome rather than one costing £2, regardless of how much more value the more expensive offer might produce. If the higher priced service delivered £3 worth of value by, for example, achieving a greater reduction in homelessness, offending behaviour and substance misuse, it will secure not only better value for the taxpayer but a greater social outcome for the individual. This is where the litmus test should ultimately lie. Austerity driven silo thinking and commissioning will always drive silo solutions.

3.6 MAKE THE SOCIAL VALUE

ACT WORK

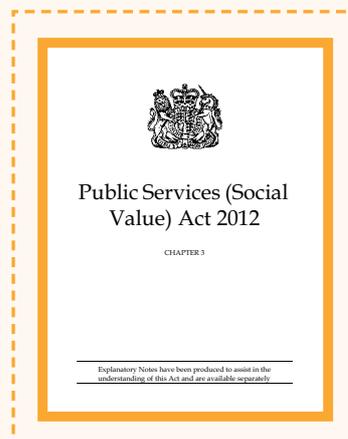
Value for money is of course important but it should not be the deciding factor at the cost of greater outcomes. We need to turn our thinking on its head and look at price differently. So much of public sector tendering is one dimensional with price the dominant driver in the decision making. The fact that the service cannot be properly delivered at that price is not considered.

For example, in social housing repairs outsourcing tender prices are submitted offering a discount of as much as 60% or 70% against a standard schedule of rates. It is impossible to deliver a quality service at this price without cutting corners, seeking variations in works or cross subsidising from other services or contracts. Yet commissioners across social housing continue to award contracts on the lowest price. Why?

As long as price is given such priority this type of misguided decision making will continue. We believe that its importance should either be substantially reduced or removed entirely at the early stages of the procurement process. What matters most – what the general public and taxpayer cares about and most importantly the individual who needs the service cares most about – is quality of outcome.

Individual and wider community social impacts can be difficult (but certainly not impossible) to quantify, but they are at the very heart of why we have public services in the first place. These, and the quality of outcomes, need to not only be considered, but considered at the very start when the tender is first being developed to drive the process, and be a first threshold which must be passed before price is considered.

This should not mean completely reinventing the wheel – the Social Value Act already requires people who commission public services to think about how they “can also secure wider social, economic and environmental benefits”. However, it will mean encouraging commissioners to do more than simply favour the lowest bidders; they are invited to consider what else a provider could contribute to the area. In reality, in the current environment, apart from some pockets of good practice, it appears to make little practical difference in implementation and smaller third sector providers still continue to miss out.



3.7 A PUBLIC-PRIVATE-THIRD SECTOR ENTERPRISE BOARD

Although resistance to new quangos is understandably strong, the strengths of co-design and co-production are clear. The idea of a Public-Private-Third Sector Enterprise Board (PPTTEB) made up of experts in their fields from each sector has much to commend it. It should oversee public service bidding at national and local levels, responsible for agreeing template terms of a tender and the process by which it is decided. It would set social value targets and guidelines, take into consideration how the sectors can work together and encourage organisations to play to their strengths. This board, which should have a local and national focus, should be mandated to command independent outside ad hoc expertise, not just from the UK but from overseas if appropriate.

The PPTTEB will be the vehicle that drives world class procurement. It will need to be structured in a way that does not just create another bureaucracy which slows down procurement, but one that will add value and be measured by how far it transforms commissioning. It needs to cut through commissioning silos and understand how the different sectors of justice, health, education, employment, housing and so on are inextricably linked.

It can then produce standard tender documents that encourage integrated and holistic solutions which are delivered by multi organisation consortia with a real diversity in skills and experience. For so long the cry has been 'joined up solutions' and at last we have an opportunity to structure procurement in a way that can deliver those cross service solutions.

The role of the Board could be advisory, executive or a bit of both; but what it must do is ensure that there is a fundamental rethink around what and who drives procurement decisions.

Behind this bigger picture lies a whole range of financial necessities. Value for money will always be important and price will still need to be considered. Bidders will continue to submit complete and full accounts where they have them or should be able to show, for small voluntary/ community organisations or start-ups, that they are not a financial risk. Service providers must be able to deliver the services to budget and post Carillion traditional financial tests need to be reviewed. However, these considerations should only come into play once the agreed quality of outcome threshold has been assessed, and it is clear that bidders or a consortium of bidders can deliver the breadth of outcomes required.

What we are calling for is a greater willingness on the part of public sector commissioners to continue permitting large private sector providers to deliver in their areas of expertise, but to trust smaller and especially smaller third sector enterprises, to do the right thing in theirs. The right thing for them is their everyday bread and butter, their mission, their passion and what most of them excel at: delivering excellent services. This is where and with whom the local, front line delivery of services to tackle engrained social problems should lie, backed by public and private sector partners as appropriate.

3.8 PARTNERSHIPS

WITH PURPOSE

Tackling social problems needs cooperation, patience, clear thinking, as well as money; but money that is spent not just with an eye to getting the cheapest solution, but the best solution. At a time of great social divisiveness there is only one urgent task for all of us whatever our sector – to start cooperating and spreading the load - or keep carrying on in the same way and keep missing the point. Partnerships with Purpose are needed that deliver for the common good and not just for shareholders.

The challenge here is in finding ways to join up big business with the third sector and specialist smaller organisations. It is also about understanding the weaknesses in those organisations in terms of governance, financial capacity, policies and so on and then recognising these in the way procurement hurdles are structured. There is no way that a charity employing half a dozen people will have the same standard of written policies as an organisation such as Carillion with all of their expert bidding teams. However, if we are going to focus on better outcomes, more diversity, greater emphasis on community and local capacity building then commissioners need to reflect these differences in the procurement process.

It is also true that Government and local Government can find the organisational idiosyncrasies of third sector organisations more difficult to manage and, therefore, less attractive to procure. There are ways round this – workshops, supplier days, encouraging supply chain and service integrators and so on – and they need to be embraced to ensure that the third sector is seen as a credible alternative to deliver public contracts.

Indeed, supporting smaller organisations in managing relationships and the interface with big contractors is one of the things that 3SC do. Integrating different small providers within a contract framework and providing the governance and performance management to give comfort to prime contractors and indeed commissioners is the basis of our business model. Without this sort of support these small and specialist organisations would not be able to play a role in public service contracts. This is what we believe creating Partnerships with Purpose is all about. It is not an easy solution but if outcomes improve then the pain will be worth it.



PARTNERSHIPS WITH PURPOSE

4. CONCLUSION

This paper develops some ideas and thoughts for building a world class procurement framework. It argues for more diverse delivery arrangements – delivery arrangements which are no longer dominated by size. Even where size is important and the contract needs one prime or lead contractor to manage the relationship there should still be a requirement for supply chain diversity.

We do not have all of the answers but we are clear that achieving world class procurement requires a fundamental rethink. The ambition must be for procurement to choose the best providers not the biggest – diversity must underpin solutions. If we want to excel as a country then we have to encourage every service contract to be as good as possible. This will rarely be the case if it is always left to one provider.

APPENDIX A

- HIGHLIGHTING POTENTIAL SOLUTIONS

Summary of potential solutions include:

1. World class procurement – post Brexit there is an opportunity to create a flexible, more dynamic, speedier and community focused procurement framework where social value is a core outcome.
2. Regional procurement initiatives.
3. Diversity of delivery – commissioners to seek solutions which go beyond ‘one size fits all.’
4. Reinventing a broken system – at the heart of any new procurement model must be a much stronger social focus.
5. Commissioner for SMEs.
6. Allocating a percentage in terms of contract value for SMEs and the third sector.
7. Procurement models must not exclude SMEs and the third sector – procurement processes must be proportionate and sensitive to the governance challenges of contracting with smaller organisations.
8. A focus on outcomes not just price – measuring tender prices needs to recognise the value of committed outcomes and not just the raw price.
9. Social Value Act – making it work and giving it teeth – putting the Act at the centre of procurement.
10. Public, Private and Third Sector Enterprise Board – the creation of a specialist procurement body to drive best practice, inclusivity across and between the sectors and a world class procurement framework.
11. Partnerships with Purpose – building support frameworks which enable the third sector and smaller organisations to qualify for, compete and deliver public service contracts.

- 1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/664563/industrial-strategy-white-paper-web-ready-version.pdf
- 2 <https://www.socialenterprise.org.uk/What-is-it-all-about>
- 3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/664563/industrial-strategy-white-paper-web-ready-version.pdf
- 4 <https://www.theguardian.com/politics/2018/feb/03/pfi-carillion-capita-critical-list-outsourcing>
- 5 <http://www.smith-institute.org.uk/wp-content/uploads/2018/01/Out-of-contract-Time-to-move-on-from-the-%E2%80%98love-in%E2%80%99-with-outsourcing-and-PFI.pdf>
- 6 <https://www.socialenterprise.org.uk/Handlers/Download.ashx?IDMF=64e3d07b-ef79-42b1-bc5e-064d5e51fb91>
- 7 http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=32251%3Alga-calls-for-simpler-procurement-rules-after-brexit&catid=53%3Aprocurement-and-contracts-articles&Itemid=21



HEAD OFFICE
3SC, Suite 208
6 Hays Lane, London SE1 2HB

Call us 0330 30 30 300

www.3sc.org

