

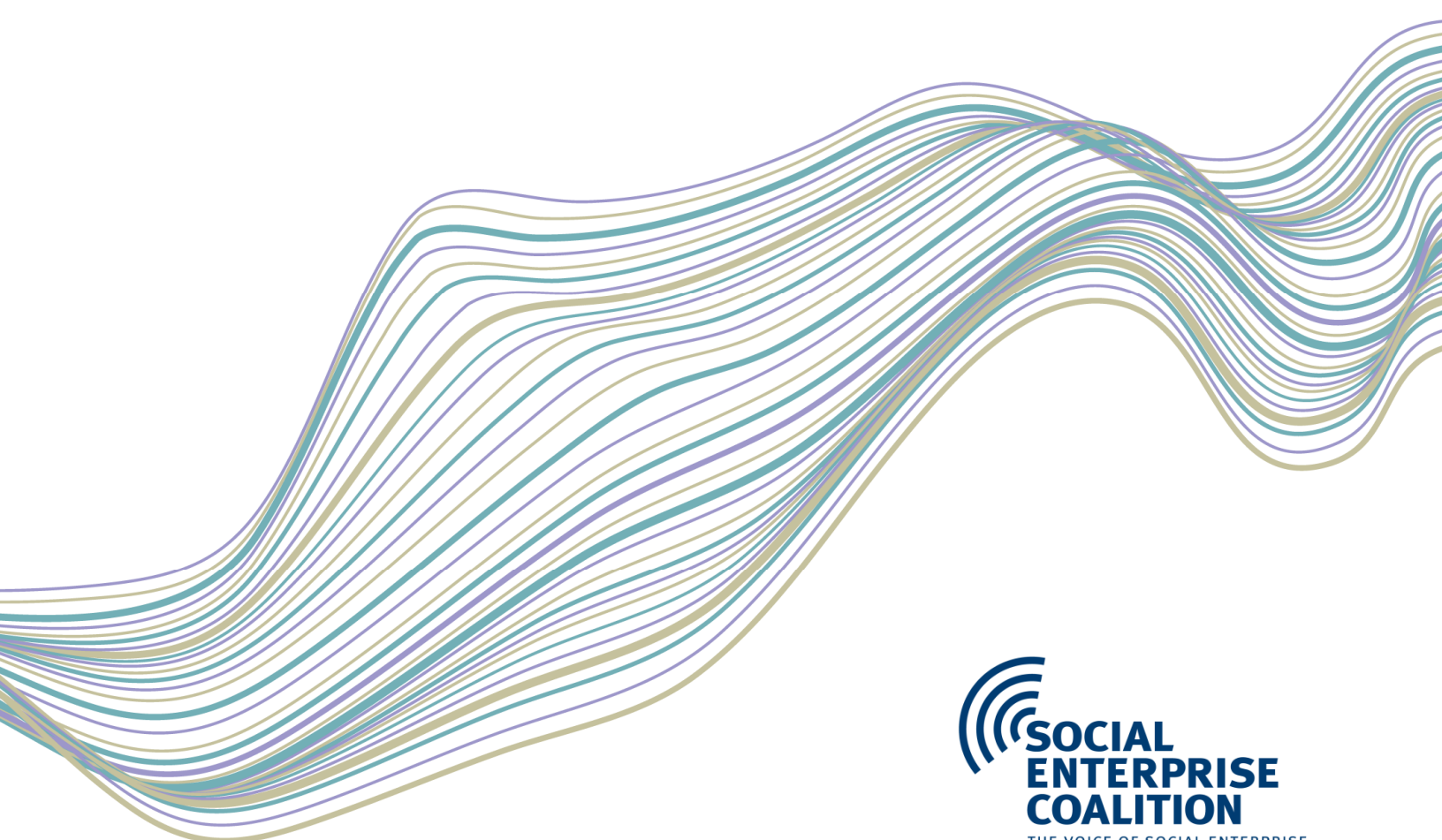
Social Enterprise Coalition response to **the European Commission's consultation on the modernisation of EU public procurement policy: towards a more efficient European procurement market**

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The Social Enterprise Coalition's response to the EU's Consultation on the modernisation of EU public procurement policy – Towards a more efficient European procurement market

The Social Enterprise Coalition

The Social Enterprise Coalition was established in 2002 as the national body for social enterprise in the UK. We are a membership organisation. We conduct research; develop policy; campaign; build networks; support individual social enterprises; share knowledge and understanding, support private business to become more socially enterprising, and raise awareness of social enterprise and what it can achieve.

Social enterprises are businesses driven by social or environmental objectives whose surpluses are reinvested for that purpose in the business or in the community. They operate across a wide range of industries and sectors from health and social care, to renewable energy, recycling and fair trade and at all scales, from small businesses to large international companies. They take a range of organisational forms from co-operatives and mutuals, to employee owned structures and charitable models.

Our members come from across the social enterprise movement, from local grassroots organisations to multi-million pound businesses that operate across the UK. With them we are:

- creating a better environment for social enterprises to do business
- helping the social enterprise movement to grow and become stronger
- building networks to share, learn and create business opportunities

The UK social enterprise movement is recognised as a world leader and our members are united in their commitment to changing the world through business. The current climate presents the social enterprise movement with a unique opportunity. We know it can solve some of the UK's most pressing problems, promote social justice and help to bring about the more diverse, bottom-up economic growth that we urgently need.

This consultation

The Social Enterprise Coalition welcomes the opportunity to respond to the EU's Consultation on the modernisation of EU public procurement policy.

We firmly agree that public procurement is confronted today with important new challenges including high public deficits and the resulting need for the most efficient use of public money. It is especially promising to see that this consultation recognises the growing demand that public purchasing contributes to the achievement of overall societal goals such as fostering innovation, fighting climate change and promoting social inclusion.

Social enterprises are based on the principles of mutualism, co-production and participation. They offer a model where people, be it staff, service users or community members, are given a direct voice in running their organisation; where public assets can be locked into community ownership; and where people are empowered to transform their lives and the lives of those around them. As such they are well placed to play a key role in the future of public services.

We therefore strongly believe that social enterprises have a great deal to offer in terms of creating value in public service delivery and their voices should play an important part in the debate on how the EU public procurement legislation could be updated in order to help public procurers cope with these challenges.

Market stimulation and innovation

4. Do you think that the distinction between A and B services should be reviewed?

5. Do you believe that the Public Procurement Directives should apply to all services, possibly on the basis of a more flexible standard regime? If not please indicate which service(s) should continue to follow the regime currently in place for B-services, and the reasons why.

Many social enterprises in the UK deliver services that are categorised as Part B services, and that are therefore not subject to the full EU procurement rules. In particular, social enterprises deliver enormous value to communities in the UK in the fields of health and social services; education and vocational health services; transport services; and recreational, cultural and sporting services.

However, one of the greatest barriers to social enterprises working in these markets is that across the UK, many public bodies follow the full EU procurement rules where it is not currently necessary to do so. The complexity of the full EU rules procurement, including complex documentation, places an enormous administrative burden on social enterprises and SMEs which often lack the staff capacity to engage properly with the process. Similarly, since many tendering costs are fixed, social enterprises and SMEs in general face disproportionately high costs in comparison with larger enterprises.

The Social Enterprise Coalition therefore believes that any review of the distinction between Part A and Part B services must not exacerbate this situation. It is essential that procurement guidelines are cognisant of commissioners' role as market shapers and stimulators and as such the guidelines must ensure there are not unnecessary barriers to entry and that commissioning markets support market entry rather than limit it.

Further, clear guidance on where the full EU procurement rules do not need to be applied should be effectively communicated to commissioning bodies in order to avoid the continuation of practice that stifles market entry for social enterprises and SMEs, which undermines, rather than encourages, competition.

Similarly, the full application of Public Procurement Directives for all services would be wholly disproportionate and excessively burdensome for small contracts, and would present a clear and enormous disadvantage to social enterprises, voluntary and community organisations, and SMEs across the EU.

36. Do you think that a stronger aggregation of demand/ joint procurement might involve certain risks in terms of restricting competition and hampering access to public contracts by SMEs? If so, how could possible risks be mitigated?

Over the last 3 years, there has been a trend towards the aggregation of demand in UK public procurement. This move towards larger contracts across public service commissioning is disadvantageous to social enterprises, which are often small, community-based organisations and unable to deliver contracts on this scale. Therefore, in order to avoid disadvantaging small organisations, care needs to be exercised in the aggregation of contracts.

Further, where the aggregation of demand means that contracts fall above the threshold for the full Public Procurement Directives, this incurs an additional barrier to market participation for social enterprises, voluntary and community organisations, and SMEs.

This is illustrated by recent contracts issued by the Department for Work and Pensions in the UK, where a move towards larger, aggregated contracts is hindering the ability of social enterprises to contribute their expertise in the delivery of employment and training programmes.

46. Do you think that the EU public procurement rules and policy are already sufficiently SME-friendly? Or, alternatively, do you think that certain rules of the Directive should be reviewed or additional measures be introduced to foster SME participation in public procurement? Please explain your choice.

91. Do you think there is a need for further promote and stimulate innovation through public procurement? Which incentives/measures would support and speed up the take-up of innovation by public sector bodies?

The Social Enterprise Coalition believes that social enterprise can make a real and sustained contribution to communities across the EU by applying innovative and efficient approaches to public service delivery.

Social enterprises are businesses based on the principles of mutualism and participation, which focus on the well-being and needs of their service users, local communities and staff. There are characterised by a range of benefits including:

- The ability to connect with staff, service users and communities
- The ability to address unmet needs and hard-to-reach audiences
- The autonomy and flexibility to respond to change and work innovatively
- A commercial and efficient approach
- The reinvestment of surpluses for community benefit

In principle, the exemption of contracts falling below the relevant threshold from the full Public Procurement Directives means that EU rules allow procurers the flexibility to create processes which foster participation by social enterprises, voluntary and community organisations, and SMEs.

However, immature commissioning capabilities often result in very risk-averse commissioning behaviour and an over-reliance on the procurement process to protect against risk. As stated above, one common feature of risk-averse procurements is that many public bodies follow the full EU procurement rules where it is not necessary to do so.

Applying the full set of EU rules adds complexity and cost for organisations competing for contracts, which is both unnecessary and disadvantageous to small organisations. The EU must mitigate against unconfident commissioners resorting to what is perceived as 'safe

commissioning' rather than commissioning for outcomes that can truly transform people's lives, to ensure that new entrants with innovative solutions are able to enter the market.

To achieve this, clear guidance on where the full EU procurement rules do not need to be applied should effectively communicated to commissioning bodies in order to avoid the continuation of practice that stifles market entry for social enterprises and SMEs.

Failing to address these issues will hinder the participation of social enterprises in public service delivery and by extension stifle the innovation that characterises the services they provide.

Social and environmental values

69. What would you suggest as useful examples of technical competence or other selection criteria aimed at fostering the achievement of objectives such as protection of environment, promotion of social inclusion, improving accessibility for disabled people and enhancing innovation?

In the UK, the government is the largest purchaser of goods and services in the country spending more than £175 billion on procurement each year¹. In these times of financial austerity, more than ever we must look at the full value created through our public spending decision. We must ensure that the full weight of the public sector's purchasing power is directed at delivering social, environmental and economic value.

For too long, public spending decisions have been completely separate from environmental, social and even economic policy. The Social Enterprise Coalition therefore supports the inclusion of social and environmental criteria in all public sector procurement decisions. Requiring all procurement decisions to demonstrate their wider positive social and environmental impact will ensure that the full weight of the public sector's purchasing power is directed at achieving social and environmental change, alongside delivering financial efficiency. We believe this could not only draw greater value from our expenditure but also stimulate greater innovation and widen the market and choice of suppliers.

In the UK, there is currently a Private Members' Bill going through parliament entitled the "Public Services (Social Enterprise and Social Value) Bill", which aims to ensure that the public sector gets the greatest value from its economic transactions. This could be requiring contractors to create local employment opportunities for disadvantage groups, put something back into the local community, or create a positive environmental impact by reducing waste or carbon emissions.

It particular, the Bill could help to:

Minimise the impact of the spending cuts on civil society organisations

Voluntary and community groups are already feeling the impact of the public sector cuts being implemented to reduce the budget deficit. Ensuring that future public spending decisions create additional social value in the community served could to help mitigate against the impact of cuts and ensure that the decisions that are made create greater value.

¹ HM Treasury Operational Efficiency Programme report 2009

Support local job creation

In some areas of the UK where the public sector is by far the largest employer, spending cuts are inevitably going to impact on unemployment. This is going to be an enormous challenge. Ensuring that all spending decisions require contractors to support local employment opportunities can play a part in reducing the impact of this.

Widen the market and increase choice

This government has pledged its support for creating plurality of public service providers, but all too often public sector markets are created in such a way that only a small number of large providers are able to compete. In many areas of public services, such as waste and welfare, there is a very small supply side which inevitably limits competition, choice, innovation and value for money.

This Bill would allow the added value social enterprises offer to be taken into account, thereby encouraging them to enter the market and increasing choice. It could also stimulate a role for social enterprises as part of a wider supply chain, fostering greater partnerships between private companies and social enterprises as contracts require providers to draw on their combined skills and resources.

Examples already exist of commissioning working to foster the achievement of objectives such as protection of environment, promotion of social inclusion, improving accessibility for disabled people and enhancing innovation.

For example, over the last 20 months Durham County Council in the UK has brought in a comprehensive suite of measures to effectively develop a plurality of public service providers, build relationships with civil society organisations, and commission on the basis of social, environmental and economic criteria. As part of their engagement strategy with the sector, the council has mapped all social enterprises and other civil society organisations in the county. They believe that it is important to find and communicate with these organisations as part of a two-way process of improving understanding, but are careful to make sure that this is not at the expense of relations with other sectors.

In addition, the council has been working with a local social enterprise, the Acumen Development Trust, to explore community asset transfers and purchases. Plans for asset transfer include assessing the possibility of using these assets as a resource for start-up community organisations. Alongside this, the council has been work with Mental Health North East to understand and help address funding barriers for civil society organisations. The council has also set up a 'Whole Life Value Programme'. Working with legal experts, this programme has explored the options for incorporating social and environmental criteria into commissioning and procurement practice and has adopted this approach in the procurement of solar panels for public buildings, for example.

71. Do you think that in any event the score attributed to environmental, social or innovative criteria, for example, should be limited to a set maximum, so that the criterion does not become more important than the performance or cost criteria?

This question reflects what the Social Enterprise Coalition believes to be a fundamental challenge in the inclusion of social and environmental criteria in all public sector procurement decisions. Social and environmental criteria need to be embedded in public sector procurement

decisions to ensure the greatest value and performance is achieved from its economic transactions, in this way the criterion will not be seen as needing to compete with the performance or cost criteria but will form an intrinsic part of them.

The Public Services (Social Enterprise and Social Value) Bill aims to ensure that the public sector gets the greatest value from its economic transactions. This could be requiring contractors to create local employment opportunities for disadvantage groups, put something back into the local community, or create a positive environmental impact by reducing waste or carbon emissions. Requiring all procurement decisions to demonstrate their wider positive social and environmental impact will ensure that the full weight of the public sector's purchasing power is directed at achieving social and environmental change, alongside delivering financial efficiency. We believe this could not only draw greater value from our expenditure but also stimulate greater innovation and widen the market and choice of suppliers.

72. Do you think that the possibility of including environmental or social criteria in the award phase is understood and used? Should it in your view be better spelt out in the Directive?

84. Do you think that further obligations on "what to buy" at EU level should be enshrined in policy specific legislation (environmental, energy-related, social, accessibility, etc) or be imposed under general EU public procurement legislation instead?

The experience of social enterprises in the UK suggests that whilst best practice examples of the use of social and environmental criteria in procurement do exist, there is not widespread understanding and use of these within procurement practice.

Because of this, the Social Enterprise Coalition has been calling for better understanding of how social and environmental criteria can currently be applied in public sector procurement decisions. Further, a key recommendation in the Social Enterprise Coalition's 2010 manifesto recommended that social and environmental criteria should be embedded in all public sector procurement decisions.

As outlined above, this recommendation is currently being taken forward in the Public Services (Social Enterprise and Social Value) Bill and we believe that this Bill provides a legislative model which could be implemented at EU level to enshrine social and environmental criteria within public sector procurement, whilst maintaining local flexibility in determining criteria that best meet the needs of local social, environmental and economic circumstances. This local flexibility is essential to avoiding overly prescriptive policies at EU level that stifle innovation and prevent solutions that truly meet local needs.