

# Report

Report to:	<b>Finance and Corporate Resources Committee</b>
Date of Meeting:	<b>20 January 2021</b>
Report by:	<b>Executive Director (Finance and Corporate Resources)</b>

Subject:	<b>Calls for Views: Procurement Reform (Scotland) Act 2014 - Post Legislative Scrutiny</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to: -

- ◆ to advise of the Scottish Parliament's Economy, Energy and Fair Work Committee's call for views on the Procurement Reform (Scotland) Act 2014
- ◆ to provide details of the Council's response, which is due for submission on 22 January 2021

## 2. Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s): -

- (1) that the content of the Council's response to the calls for views on the Act, as set out in Appendix 1 of the report, be noted.

## 3. Background

3.1. The Procurement Reform (Scotland) Act 2014 ("the 2014 Act") placed a number of responsibilities on public bodies to consider how procurement activity can be used to improve the economic, social and environmental wellbeing of their area and how they will facilitate the involvement of SMEs, third sector and supported businesses and promote innovation.

3.2. The Economy, Energy and Fair Work Committee has agreed to carry out post-legislative scrutiny of the 2014 Act and has requested written evidence on how the act has impacted procurement in Scotland since it came into force in April 2016. The Committee will consider the written evidence received and hold an evidence session with the Cabinet Secretary for Economy, Fair Work and Culture to explore the issues raised.

## 4. The Procurement Reform (Scotland) Act 2014

4.1. On 13 May 2014, the Scottish Parliament published the Procurement Reform (Scotland) Act 2014.

4.2. The main points noted within the Act are summarised below:-

- ◆ the Act places a number of general duties on public bodies regarding their procurement activities and also places some administrative requirements on higher spending public bodies to publish procurement strategies and annual procurement reports

- ◆ the sustainable procurement duty requires that before a contracting authority buys goods or services, it must think about how it can improve the social, environmental and economic wellbeing of the area in which it operates, with a particular focus on reducing inequality
- ◆ all Scottish public bodies must consider the use of community benefit requirements for regulated procurements where the estimated value of the contract is £4 million or more. A community benefit is a contractual requirement which can relate to training and recruitment or the availability of sub-contracting opportunities. Alternatively, a community benefit can be intended to improve the economic, social or environmental wellbeing of the authority's area
- ◆ Statutory Guidance on Addressing Fair Work Practices, including the Living Wage, requires public bodies to consider whether it is relevant and proportionate to include a question on fair work practices, to be evaluated along with other relevant criteria
- ◆ public bodies are required to include in their organisational procurement strategy a statement on their general policy on "the payment of a living wage to persons involved in producing, providing or constructing the subject matter of regulated procurements"
- ◆ the sustainable procurement duty requires public bodies to consider how they might facilitate the involvement of SMEs, the third sector and supported businesses in their procurements and which should be designed in a way that encourages them to be involved
- ◆ the Act requires Scottish public bodies to set out their prompt payment policy in their procurement strategies

## **5. Call for views**

5.1. The Scottish Parliament's Economy, Energy and Fair Work Committee issued a call for views on the Bill on 7 December 2020 with a response date of 22 January 2021.

5.2. Details of the Council's response to the call for views is contained in Appendix 1.

5.3. The key issues raised within the Council's response to the call for views are summarised below:-

- ◆ the 2014 Act has raised the profile of the sustainable procurement duty objectives including climate issues, Fair Work Practices, Living Wage, Community Benefits and local/SME spend
- ◆ balancing the requirements of the sustainable procurement duty against wider procurement regulations and the need for improved value, collaboration and cost saving continues to be challenging
- ◆ review of the performance measures used to help quantify the impact of the Act and the provision of software solutions to aid monitoring and reporting would be beneficial
- ◆ the Act has been one of several factors driving consideration of climate issues and climate sustainability is an area which has been embedded in several contractual arrangements for the Council
- ◆ there has been a positive impact on Fair Work Practices in South Lanarkshire contracts
- ◆ the use of the national advertising portals make public procurement opportunities very accessible to SMEs and local supply chains
- ◆ the focus on value and sustainable procurement must be balanced with pressure on local authority budgets and attempts to secure savings through the procurement process

- ◆ it can be challenging to measure many of the outcomes of the sustainable procurement duty

## **6. Employee Implications**

- 6.1. There are no employee implications in terms of the recommendations contained within this report.

## **7. Financial Implications**

- 7.1. There are no financial implications in terms of the recommendations contained within this report.

## **8. Climate Change, Sustainability and Environmental Implications**

- 8.1. There are no implications in terms of climate change, sustainability or the environment in terms of the recommendations contained within this report.

## **9. Other Implications**

- 9.1. There are no implications for risk in terms of the information contained within this report.

## **10. Equality Impact Assessment and Consultation Arrangements**

- 10.1. No equality impact assessment is required in terms of the recommendations contained within this report.

**Paul Manning**

**Executive Director (Finance and Corporate Resources)**

29 December 2020

### **Link(s) to Council Values/Ambitions/Objectives**

- ◆ Accountable, Effective, Efficient and Transparent

### **Previous References**

- ◆ None

### **List of Background Papers**

- ◆ None

### **Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact: -

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## Appendix 1

### South Lanarkshire Council's Response to the Scottish Parliament's Economy, Energy and Fair Work Committee Call for Views on the Procurement Reform (Scotland) Act 2014

Call for views questions	South Lanarkshire Council's Response
Has the sustainable procurement duty helped to improve social, environmental and economic wellbeing and to reduce inequality?	The focus on the sustainable procurement duty has increased the profile of climate issues, Living Wage, Fair Work Practices, Community Benefits and local and SME spend. The associated wider societal impact on economic wellbeing and inequality is more challenging to quantify.
What are the barriers to the successful application of the sustainable procurement duty, and what changes could be made to improve its impact?	Balancing the requirements of the sustainable procurement duty against wider procurement regulations and the need for improved value, collaboration and cost saving continues to be challenging. A review of the range of performance measures would be beneficial to ensure they remain relevant and are reported consistently across public bodies. The use of the newly developed sustainability toolkit could further help demonstrate impact and improvement.
How can the impact of the sustainable procurement duty be measured?	Annex A to the Annual Procurement Report seeks to gather performance data in respect of a number of sustainable measures, including Living Wage, SME and local spend, Supported Businesses and Community Benefits: however, the resource intensive nature of maintaining and reporting on this data should be noted. In respect of spend analysis, consideration should be given to expanding the metrics in the national spend observatory and potentially the introduction of software tools to record and monitor data.
How has the Act affected public bodies consideration of climate policies and the circular economy through their procurement activity?	The Act has been one of several factors driving consideration of climate issues and climate sustainability is an area which has been embedded in several contractual arrangements for the Council, including waste management contracts, focus on reducing the use of single use plastics, emissions measures in transport, LED street lighting, and procurement of electric fleet. Building projects have also embedded sustainability measures in their specifications, including energy efficiency measures, for example, biomass boilers in schools.

How successful has the 2014 Act been in promoting community benefits through procurement?	The Act has been successful in promoting Community Benefits and South Lanarkshire Council has embedded Community Benefits for all regulated procurements, which is wider than the £4m threshold stipulated in the Act. The most successful areas for community benefit impact have been major investment programmes through Glasgow Region City Deal and Hub SW which can demonstrate extensive programmes of Community Benefits.
What steps could be taken to improve the use of community benefit requirements in the public procurement system?	The introduction of a consistent approach to determining community benefit requirements, for example, extension of the points-based system promoted by Glasgow Region City Deal would be useful to both procuring authorities and suppliers. The implementation of consistent monitoring software to record and monitor delivery of community benefits would be beneficial, potentially through PCSt.
What impact has the 2014 Act had on promoting fair work as part of public procurement contracts?	There has been a positive impact on Fair Work Practices (FWP) in South Lanarkshire contracts, with FWP included as a mandatory technical scored question in all Invitations to Tender and an unscored question on payment of Living Wage (as this cannot be mandated). The Council has also adopted the Construction and Ethical Care Charters, and this encourages compliance from contractors with the principles within each.
How measurable is that impact?	A consistent approach to scoring and measurement of FWP is required to measure the impact: although payment of Living Wage can be an effective indicator of supplier FWP intentions.
How has the 2014 Act promoted the payment of the real Living Wage?	Payment of the Living Wage has been a key focus in procurement following the 2014 Act. Payment of the Living Wage, although it cannot be mandated, is included as a non-scored question on all South Lanarkshire Council Invitations to Tender. All social care contracts, which account for 30% of council spend, are monitored on payment of the Living Wage annually.
What more could be done through procurement activity to promote the real Living Wage and other fair work practices?	The inclusion of a Living Wage indicator in the national spend data would enable a consistent and measurable approach to analyse Council spend with Living Wage employers. This could have a significant impact on promotion of Living Wage.

How is the 2014 Act supporting SMEs and local supply chains since it came into force in 2016? Are there any changes that would promote increased involvement of SMEs and local supply chains in public procurement contracts?	There has been significant focus on supporting SMEs and local supply chains since the Act was introduced, supported through national reporting of local and SME spend through the national spend observatory and Local Government Benchmarking Framework. Increased involvement of SMEs and local suppliers, for those SMEs who wish to access public contracts, is dependent on access to tender opportunities and support to bid successfully. Improved accessibility to subcontracting opportunities from Tier 1 contractors would be beneficial to SMEs.
How accessible is the public procurement process in Scotland to SMEs and local supply chains?	The use of the national advertising portals of PCS and PCSt make public procurement opportunities very accessible to SMEs and local supply chains and increasing use of social media promotion of contract opportunities is also useful. Use of the Single Procurement Document (SPD) and training opportunities on the bid process from the Supplier Development Programme also improve accessibility.
Have SMEs gained an increased share of public procurement contracts as a result of the 2014 Act?	Scottish Procurement's Annual Report for 2019 reported that spend with SMEs across all public procurement bodies was broadly static and this has also been the case in South Lanarkshire Council, although expenditure with local enterprises and local SMEs have both increased.
What has been the impact of this prompt payment policy requirement?	In accordance with our prompt payment policy, South Lanarkshire Council consistently pays 90% of all invoices within 30 days and this is expected to have a beneficial impact on our suppliers and their subcontractors.
Are businesses experiencing improved prompt payment as a result of this policy?	Yes. Although this policy is measured for Councils through the Directors of Finance group, a national measure would be useful to demonstrate compliance with the prompt payment policy. Consideration should also be given to ensuring prompt payment policy is extended to subcontractors nationally.
What steps is the Scottish Government taking to ensure that procurement manuals and guidance are adhered to?	Scottish Procurement website has published significant guidance in support of the Procurement Reform Act, including Procurement Journey and Sustainability Toolkit. Regular Scottish Procurement Policy Notes (SPPNs) are issued to all public bodies advising of any changes to policy

	and guidance and the Act requires Councils to confirm their compliance through the Annual Procurement Report.
How can long-term value be promoted through the public procurement process (rather than lowest cost)?	The principles of most economically advantageous tender are well established for council procurements. The focus on value and sustainable procurement must be balanced with pressure on local authority budgets and attempts to secure savings through the procurement process.
How can the Scottish Government ensure that SMEs are supported in their efforts to bid for public sector work?	SMEs who have an interest in public sector contracts require accessible opportunities, through PCS and PCSt and skills development to improve the quality of bids. The Supplier Development Programme provides a key role in supporting SMEs to access tender opportunities and secure contracts through their training programme and support for council tenders.
How can the Scottish Government ensure that procuring public authorities have access to the necessary skills to support bidders?	Procuring public authorities have a responsibility to promote tenders opportunities and signpost bidders to support through close working with Economic Development functions and the Supplier Development Programme.