

Written evidence submitted by the NCVO (The National Council for Voluntary Organisations) and the voluntary sector (Locality, Lloyds Bank Foundation for England and Wales, The Charities Aid Foundation, and The National Association for Voluntary and Community Action) (PB13)

PROCUREMENT BILL

About us

1. **The National Council for Voluntary Organisations (NCVO)** is the membership body for the voluntary sector and volunteering in England. With over 17,500 members, NCVO represents all types of organisations, from large 'household name' charities to small voluntary and community groups.
2. **Lloyds Bank Foundation for England and Wales** partners with small and local charities that help people overcome complex social issues. Through funding for core costs, developmental support and influencing policy and practice, the Foundation helps charities make life-changing impact. During 2021, the Foundation awarded £16.3m to more than 800 small and local charities.
3. **Locality** is the national membership network supporting local community organisations to be strong and successful. Locality provides specialist advice, peer-learning, resources and campaigns to help every community thrive, including to take over and run assets for the benefit of local people. They believe that when communities come together, they can transform lives and build a fairer society.
4. **The National Association for Voluntary and Community Action (NAVCA)** is the national membership body for local sector support and development organisations (also known as local infrastructure) in England. NAVCA's members support over 200,000 local charities and voluntary groups across the country, helping them to thrive and deliver essential services within their communities.
5. The **Charities Aid Foundation** is among the UK's largest foundations and for nearly 100 years has worked with partners across industry, government, and individual philanthropists to ensure vital funding reaches charities around the world. We were a key delivery partner for the Government's Community Match Challenge and are delivering more than £100 million in emergency and resilience Covid-19 funding to UK charities. Last financial year, we distributed a record £876m to good causes in the UK and 135 countries around the world. As the UK's largest specialist bank for charities, CAF Bank is an integral part of our work and has provided uninterrupted services to 14,000 charity and social enterprise customers during the pandemic.

Executive summary

6. We welcome the opportunity to provide evidence to the committee on an important Bill for the voluntary sector and the communities we work with. Collectively we represent and advocate for charities, volunteers and communities across the country.
7. While the Bill introduces some welcome changes which we support, there are key areas where amendments are needed to achieve government's ambition of opening the market to smaller business and charities and to ensure value for money. We welcome the government's ambition to improve public procurement, to simplify rules and improve value for money.
8. We detail here these concerns, providing evidence together with recommendations for addressing them. We focus on public services, and specifically what we refer to as person-centred services, which are designed around the needs of individuals and are responsive to their preferences and values. These are often best delivered by voluntary and community organisations and social enterprises (VCSEs) because they are embedded and trusted in the communities they serve.

The Procurement Bill

9. The Procurement Bill is an excellent opportunity to improve procurement practices, reduce barriers for VCSEs, and better meet the needs of communities whilst providing value for money. We particularly welcome:
 - the duty to consider lots, which we hope will encourage authorities to tender smaller contracts
 - that a lighter touch regime has been kept
 - a commitment to greater transparency, including pipeline and planned procurement notices
 - the power for contracting authorities to direct suppliers to enter legally binding arrangements with subcontractors. We hope this will address issues of charities being included in bids without referrals and funding following.
10. However, we believe that at best the current Bill merely enables better practice, and does not go far enough in encouraging it. For this Bill to achieve the government's ambitions to improve procurement practices and outcomes, a range of changes will be required. We set out a number of these aspects below.
11. The government's recent publication detailing the benefits of the Procurement Bill for prospective suppliers details a range of intentions for the Bill to make it easier for new entrants to supply chains¹. Whilst this paper sets out a range of ways a new regime would benefit SMEs, it provides little detail on the impact of changes for VCSEs. While many VCSEs will face similar

¹ <https://www.gov.uk/government/publications/benefits-for-prospective-suppliers-to-the-public-sector>

barriers to SMEs, there are also unique and differing barriers which need to be addressed.

Value for money

12. We believe the Bill should define value for money. Without a clear definition of value for money, or a description of what should be considered in assessing for the 'most advantageous tender', decisions may continue to be dominated by a very limited set of cost factors. This will continue to pose a barrier for VCSEs, and result in ineffective procurement practices which deliver poorer outcomes.
13. A definition of value for money should be added to Clause 12. This should include:
 - Considerations of social value (including the social value that is inherent in how many small charities deliver services)
 - The quality of the service provided and ability to meet the needs of those supported
 - Long term value, including whether the service properly supports people to address issues, reducing future support needs
 - Considerations of savings that could be made across other service areas, such as GP referrals and A&E admissions

Most Advantageous Tender (MAT)

14. We welcome the move in the Bill to award contracts to the 'most advantageous tender' (MAT, clause 19) in competitive tendering procedures, but this alone will not have the desired effect. This was already possible under current regulations and guidance, as contracting authorities are meant to account for the wider benefits of any bid, but in reality, it has rarely been applied, with decisions continuing to be dominated by lowest unit costs.
15. The change in language to assessing for the MAT will not be sufficient to change practice and culture. Further clarity and expectations are needed so that assessing the MAT includes placing more emphasis on the importance of social value and recognising the different ways this can be delivered.
16. It is particularly important to recognise how this value is generated by VCSEs delivering person-centred services, because it is inherent in what VCSEs do and how they do it, rather than an add-on. For example, a small local charity might deliver a service in a way that builds strong social capital, engages volunteers, and fosters deep community relationships.

Social value

17. We believe the Bill should explicitly include a commitment to social value, and to reference the Social Value Act 2012². Relying on the National Procurement Policy Statement to set the requirements around social value is insufficient, because it does not place social value at the

² <https://www.legislation.gov.uk/ukpga/2012/3/enacted>

heart of procurement processes, particularly those that are undertaken to provide person-centred services.

18. Significant culture change is required to ensure that contracting authorities give full regard to social value. Evidence shows that commissioning practice varies significantly, and does not always match up to existing requirements and opportunities to account for social value in procurement³.

Proportionality

19. Proportionality is crucial to the effective procurement of person-centred public services, and it is relevant across the entire procurement cycle. It ensures that resources are not wasted on overly complex processes and that the most appropriate provider to run the service can be procured rather than being excluded.
20. Providers often find themselves excluded because of, for example, their small size or their lack of experience delivering huge contracts where this is not relevant to the scale or nature of the contract in question.
21. Clause 12 should include proportionality as a core and overarching principle in the Bill.

Light Touch Contracts

22. The inclusion of light touch contracts is positive overall, as these can support commissioners to design flexible procurement processes. Light touch contracts can create an important distinction between people-centred processes and those for large-scale services, goods or other works.
23. Unfortunately, the principle as currently defined in the Bill is too broad. It does not go far enough in acknowledging the crucial differences in procuring services to meet people's and communities' needs, compared to those required for utilities, national security or defence contracts. Without this differentiation, it is likely that procurement practices will continue to present unnecessary barriers to organisations delivering people-centred services, which includes many VCSEs.
24. By not defining the types of services that should be procured using light touch contracts, the risk is that contracting authorities will not use this provision at all.
25. When the Light Touch Regime (LTR) was introduced, it was specified that it could only be used for education, health, and social services. The Bill should take a similar path in specifying the types of person-centred services that light touch contracts should be used to procure.

Preliminary market engagement

26. One of the original ambitions of the Bill is to open up procurement markets to reduce barriers and improve supply chains and outcomes. To achieve this ambition, the Procurement Bill must reduce barriers to entry for VCSEs, because they are often best placed to deliver a range of

³ http://oro.open.ac.uk/70878/1/Cristina%20Mititelu_Final%20Thesis.pdf

public services. They are trusted in communities, able to reach people who are overlooked or underserved by mainstream services, and can provide wrap-around support to address the root causes of the challenges people face. Clause 16 should be amended to include a requirement for contracting authorities to consider and mitigate barriers faced by VCSEs during preliminary market engagement. This would help to mitigate barriers experienced by VCSEs in procurement.

27. Evidence clearly demonstrates the benefits of co-designing services with the people who will receive with them⁴. When commissioning services for people, especially those experiencing a range of intersecting challenges, a ‘market’ often does not exist, and prior engagement to develop one is critical. Identifying locally embedded organisations that can provide the right support and allowing these organisations to respond in the most appropriate way should be the goal – rather than expecting contracting authorities, who may have limited understanding of the support needed, to specify what has to be delivered. This requires meaningful engagement at the earliest stages of the commissioning process, and is important regardless of the size of organisation involved in the delivery.

Supported employment

28. Clause 32 sets out measures around supported employment. Supported employment providers are organisations that employ a minimum proportion of staff (currently set at 30%) who are disabled. Reserving contracts so that only supported employment providers can bid for them is a widely recognised and longstanding way of increasing the employment of disabled people, and we welcome the bill’s preservation of this important concept.
29. However, the bill currently sets a threshold of only 30%, and includes both disabled and ‘disadvantaged’ people. There is no legal definition of ‘disadvantaged’, and our networks are concerned this will lead to increased barriers for Deaf and Disabled People’s Organisations (DDPOs), who provide a range of vital public services and campaign for social change.
30. The Bill should be amended to reflect the 50% threshold set out in the Public Contracts Regulations in 2006⁵ and to remove the word ‘disadvantaged’.

Implementation of the Bill

31. Many barriers experienced by VCSEs in public procurement are issues which are not caused solely by the current legislation, but predominantly by a lack of understanding and consistent application of the law by procurement teams. There are broader cultural issues which present barriers for VCSEs in procurement, and are likely to limit the impact of positive change brought about by the introduction of this Bill.

⁴ <https://www.kingsfund.org.uk/publications/embedding-culture-quality-improvement> and <https://neweconomics.org/2010/04/public-services-inside>

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486856/20150409-FOI2015_03688_MOD_tender_evaluation_documents_EUPCR2006.pdf

32. In addition to the Bill, the government should consider how the implementation of the new legislation will affect VCSEs. This should include consideration of secondary legislation, future National Procurement Policy Statements, guidance, and training. The government's guide details how learning and development which supports communities of practice to share ideas and collaborate, will be important to maximise benefits⁶. It is vital that these efforts account for the needs of, and meaningfully involve VCSEs.
33. Efforts to improve practice would be strengthened by including greater definition of value for money and social value, and related requirements for contracting authorities, on the face of the Bill itself.

The role of the voluntary sector in commissioning and procurement

34. VCSEs deliver a huge variety of public services, earning around 7% of total identifiable public spending between 2016 and 2020⁷. In 2019/20, government remained the second largest income source for the sector, at £15.8bn, or 28% of total income⁸.
35. Around 166,000 voluntary sector organisations exist in the UK, including everything from national household name charities to volunteer-run local community groups. 80% are small organisations with turnover under £100,000 per year, and 1 in 5 work in the social services sector. The voluntary sector employs almost 1 million people (952,000) and our workforce has grown by 27% since 2011.
36. The sector is estimated to contribute £20bn to the UK economy, around 1% of GDP. The social services subsector alone contributes £3.8bn.
37. When volunteering is taken into account, Andy Haldane has estimated the sector's contribution to be multiplied tenfold - or around £200bn, 10% of GDP⁹. This is because the voluntary sector is powered by volunteers - around half of all people in the UK give their time to help others at least once each year, and 16.3m people volunteered formally in 2020/21¹⁰.
38. Despite a broad range of barriers presented by the current procurement regime, many charities are commissioned to provide public services:

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1127905/The_Procurement_Bill_Benefits_for_Prospective_Suppliers_to_the_Public_Sector.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1069635/UK_Public_Sector_Procurement_through_VCSEs.pdf

⁸ <https://www.ncvo.org.uk/news-and-insights/news-index/uk-civil-society-almanac-2022/financials/#/>

⁹ <https://www.probonoeconomics.com/news/press-release-undervalued-and-overlooked-the-need-for-better-understanding-civil-societys-contribution-to-the-uk-economy>

¹⁰ <https://www.ncvo.org.uk/news-and-insights/news-index/uk-civil-society-almanac-2022/volunteering/#/>

- In 2019/20, government remained the second largest income source for the sector, at £15.8bn, or 28% of total income.
- The majority of this income is for contracts to run public services which made up £11.6bn, around 75% of the total. The remaining 25% is for grants worth £3.8bn.
- The social services sector in particular receives a large proportion of funding from government, both in absolute terms (£5bn) and as a proportion of income (38%)
- This funding comes from central, local and regional or devolved governments, as well as from NHS trusts, non-departmental government bodies and others.

39. VCSEs often provided distinctive and additional value in public procurement. They deliver social value, alongside meeting the required outcomes of the procured activity. Evidence shows that smaller VCSEs provide distinctive offers, approaches and positions, which improve the delivered outcomes¹¹. Improvements in the Procurement Bill would support more charities to make a difference in their communities and drive positive procurement practices.

Questions for government

40. How does the government expect the Procurement Bill will ensure that the culture of procurement practice undergoes necessary change?
41. How will following statutory guidance and the learning and development programme ensure that the specific needs of person-centred services and VCSEs are consistently taken into account?

Further information and contact details

We hope that you have found this briefing helpful. If you would like to discuss further, please contact Chris Walker, Public Affairs Manager at NCVO at chris.walker@ncvo.org.uk

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¹¹ <https://www.lloydsbankfoundation.org.uk/media/c2aphccs/the-value-of-small.pdf>