

FAO Russell George AM

Dear Mr George,

12th September 2019

**Public Procurement and the Foundation Economy in Wales
Inquiry by the Economy, Infrastructure and Skills Committee
Evidence from the Civil Engineering Contractors Association (CECA) Wales**

Thank you for the opportunity to provide evidence to the Economy, Infrastructure and Skills Committee on Public Procurement and the Foundation Economy in Wales.

As a Chartered Civil Engineer and as Director for the Civil Engineering Contractors Association (CECA) Wales I am well aware that public sector procurement, which for our members means the way they bid for and gain work in the public sector, is a constant source of frustration for our sector and, therefore, I welcome your Inquiry. I also hope that it represents an opportunity to recognise the contribution that the civil engineering sector makes to the foundation economy and to explore opportunities for the private sector to deliver far greater value for public money.

I note that the Committee is seeking views on the following:

- What is the current position regarding the proportion of public contracts in Wales that go to Welsh suppliers?
- To what extent could increasing 'local procurement' by the public sector create stronger local supply chains and build wealth in communities across Wales?
- What is your view of the Welsh Government's intended approach to increasing the amount of 'local procurement' undertaken by the public sector in Wales (including how 'local procurement' will be defined and monitored; how the principles of sustainable and ethical procurement are being applied; and how the statutory goals set by the Well-Being of Future Generations (Wales) Act are being met)?
- In what ways can local spend, and collaborative procurement amongst SMEs, be increased and sustained while working within the EU procurement framework, whatever arrangements may be in place following Brexit?
- Can you give examples of similar public procurement initiatives elsewhere in the UK and EU?

Accordingly, I have confined my response to these areas but would like to start with a broad overview of the current public procurement "landscape" from a "supplier's" perspective. As you would expect, my response is focused on the infrastructure sector where the suppliers are heavily reliant on the public sector for work.

Overview of the current public procurement “landscape” from a civil engineering suppliers perspective

Procurement in the public sector remains a contentious issue both for the procurer and the supplier. On the positive side Welsh Government Procurement Policy is generally well accepted as is the emphasis on social value and the focus on Welsh supply chains. However, implementation across Wales’ public sector, including the Welsh Government, particularly on smaller projects, remains highly variable with:

- i. “lowest price” tenders dominating regardless of whether this provides the greatest long term value
- ii. an increasing use of open tender processes;
- iii. a desire to transfer all-risks to supply chains;
- iv. an increasingly bureaucratic and costly process led by fewer people with relevant experience of the infrastructure sector; and
- v. a diminishing level of engagement between suppliers and procurers.

These issues act against the ability of smaller, local contractors to bid successfully for work in the public sector which impacts on their value to, and growth of, the foundation economy.

On the basis of ongoing concerns with the procurement process we are currently surveying our members’ views of the industry. Early indications suggest that many of our smaller members, who have traditionally serviced and relied on the public sector market for work, are now turning to the private sector where, although conditions are challenging, the bidding process is seen as being clearer, more focused, less bureaucratic, less costly and with a greater chance of success. Whilst austerity measures in the public sector have contributed to this with less investment being made a few companies have, within a few years, moved from an 80/20 public private sector split to 20/80. This in itself, should act as a warning to public sector procurers that their procurement processes are not as effective as they could or should be. It should also ring alarm bells for those who wish to grow Wales’ foundation economy.

What is the current position regarding the proportion of public contracts in Wales that go to Welsh suppliers?

Clearly many major infrastructure projects will need to be delivered by major companies given their scale, capacity and ability to manage the risks associated with major projects. However, given the ready availability of competent civil engineering businesses in Wales and an experienced and highly skilled workforce there should be more public contracts going to Welsh suppliers, particularly for small to medium sized contracts and works. The “principle of proportionality” is an important factor in this. Procurers need to ensure that, wherever possible, projects and work programmes are offered at a scale that can be delivered by local SMEs and that the effort needed to bid for work is proportionate to the scale, value and complexity of the work being offered. This does not always happen with many procurers preferring to “package” contracts into larger “lots” which effectively precludes many SMEs from the process. Whilst some SMEs may well continue to operate in the supply chain of a larger company this means that a proportion of Wales’ public sector funding leaves Wales in overheads and profits.

To what extent could increasing 'local procurement' by the public sector create stronger local supply chains and build wealth in communities across Wales?

Delivering civil engineering infrastructure work is an inherently local activity and, as long as the skills are available locally, which they are in many parts of Wales, it is highly beneficial for work to be delivered locally. Many of those employed in the sector come from some of Wales' less prosperous communities and access to high value public contracts could significantly raise living standards in these areas through direct employment as well as local supply chains.

SMEs have also been encouraged by the public sector to form consortia so that they may bid for higher value projects. This is no panacea! A certain level of maturity is needed to form consortia. They can be costly to develop and maintain. They also require "natural competitors" to collaborate on "one off" projects and then return to a more competitive environment having sometimes shared many of their "competitive advantages"! This is why there are not many examples of SME consortia in this sector. A far better approach would be for public sector procuring organisations to use the procurement process in a more subtle way to support the growth of these SMEs so that they can progressively bid for higher value projects. This will require a cultural shift in the way the public sector views the procurement process.

What is your view of the Welsh Government's intended approach to increasing the amount of 'local procurement' undertaken by the public sector in Wales (including how 'local procurement' will be defined and monitored; how the principles of sustainable and ethical procurement are being applied; and how the statutory goals set by the Well-Being of Future Generations (Wales) Act are being met)?

This has to be a positive move, however, our concern is that implementation by the public sector continually fails to meet the aspirations and expectations of the Welsh Government's policies and the business community in Wales. Bidding processes continue to be far too complex, bureaucratic and costly which discourages smaller, local contractors from bidding. There is a danger that in applying the Welsh Government's intended approach the current "tick box" exercise which too many procurers apply is extended even further. As I have mentioned previously the principle of proportionality should apply.

In what ways can local spend, and collaborative procurement amongst SMEs, be increased and sustained while working within the EU procurement framework, whatever arrangements may be in place following Brexit?

The public sector needs to accept that it has a key role and specific responsibilities, via the procurement process, to develop local suppliers and increase the prospects for local workers. It should not be just about procuring a piece of work, it should be about increasing local prosperity through direct employment and increased social value. There is little evidence of this happening consistently across Wales, if at all. However, it is in the hands of public sector procurers to make this happen rather than continually developing new policies to persuade them to deal with these issues. They need to see the development of local companies as part of the "procurement deal" in the same way that the Welsh Government's "economic contract" is striving for a "deal" between public funders and private companies benefiting from support. But to achieve this there needs to be a significant cultural change with a focus on managing risks fairly across the public/private interface rather than a risk averse approach which tries to transfer all risks to the private sector and to SMEs who are least able to accept major risks.

In terms of specific issues and actions that can be taken to support construction SMEs and the foundation economy I would highlight the following which should be viewed as a package of measures rather than a “pick and mix” :

1. Reduce reliance on lowest price tendering

As public sector cuts continue to put pressure on budgets the drive for lowest price tenders has accelerated. In a sector which has so many variables and risks associated with it, lowest price tendering, apart from on very simple and straightforward projects, rarely produces good value for money for infrastructure projects. Tendering processes should be aligned with the Wellbeing of Future Generations goals and the Five Ways of Working if we are to seriously embed the Act in our procurement practices and develop a sustainable and ethical approach to construction SMEs.

2. Reduce the use of open tendering procedures

Open tender procedures allow an unlimited number of suppliers to bid for work, rather than a restricted process which involves pre-qualification followed by tendering to a smaller number of “pre-qualified” suppliers. Whilst this may appear to be a good way of increasing access to work opportunities, in reality, it creates a “free for all” and increases bidding costs whilst reducing the chances of capable and local SMEs from winning work.

3. Adopt a more mature approach to risk management rather than risk aversion

Transferring all risks to a supplier, particularly a smaller one, may appear to deliver a “belt and braces” solution for the public sector procurer with all risks being passed to the supplier to avoid any further “comeback” should certain risks materialise. However, suppliers need to make allowances for these risks and effectively build these into their price - regardless of whether the risks materialise. In reality, there are risks which suppliers are better placed to manage, there are risks which procurers should retain as they are best placed to manage them and there are other risks which are best shared. This sophisticated approach is best termed “risk management” as opposed to the more blunt “all-risk transfer”. Comparisons could be drawn with the holiday insurance sector where the insurance company offers to accept risks from the tourist who pays a premium. The more risk transferred to the company the higher the premium. If all risks are transferred then it's unlikely the tourist will travel as the premium will be too high. But if the premium is paid and no risks arise then the tourist receives no recompense - but has been reassured! Unnecessarily high premiums for risk transfer are rarely a good use of public money.

There are of course suppliers who will be prepared to take on all risks in an effort to win work (and keep workers in employment) and in some cases, if risks don't materialise, all is well. However, given the significant risks posed by infrastructure projects, this rarely happens with the potential for highly adversarial relationships, arbitration and, in some cases, liquidation and the loss of jobs. Is this the type of arrangement which should be advocated by the public sector? If we are to foster a successful “foundation economy”, based on sustainable and ethical procurement practices, shouldn't we be supporting these businesses, particularly the smaller ones, rather than putting them at risk of collapse through onerous procurement practices and the transfer of all risks?

4. Reduce bureaucracy and excessive bidding costs

The complexity of tendering arrangements put in place by certain procurers is gradually transforming the process of obtaining infrastructure work in the public sector into an extremely expensive “artform” with the unintended consequences of increasing bidding costs (which will be passed back to the public sector in various forms) and gradually “shutting out” smaller and

more local suppliers who are unable to deal with the complexity and cost of these arrangements. These smaller businesses underpin our foundation economy.

Whilst there clearly needs to be a process of differentiation this needs to be as simple as possible and certainly commensurate with the scale and value of work being offered. Expecting a supplier, particularly a small local contractor, to put significant work into bidding for a small contract in competition with 10 or more other suppliers is unrealistic, does little to achieve value for money and even less to encourage smaller suppliers. It also reflects poorly on the capabilities of the procurer and a complete disregard for the foundation economy.

5. **Improve communication and engagement between procurers and suppliers**

Communication and engagement during the early stages of any procurement exercise is essential to ensuring that all suppliers fully understand the requirements of a procurer and can ensure that their proposal or bid best meets those requirements. For SMEs this is essential as it is the stage at which an SME can understand the cost of bidding, the chances of success and the risks involved. Clearly it needs to be done in a transparent way which respects the competitive nature of any future bidding but without this any procurer is at risk of receiving sub-standard bids which will effectively translate into poor value for money. It also means that the public sector is missing an important opportunity to help to grow and develop the local businesses which underpin the foundation economy in Wales.

Can you give examples of similar public procurement initiatives elsewhere in the UK and EU?

There are examples in the public sector where procurement is conducted sensitively and with regard for both the growth of SMEs and value to the public purse. However, there are far too many occasions where it does not. This reflects the highly variable nature of procurement practices across Wales where the better practices are not adopted more widely. It also reflects the fact that individuals in the procurement sector have a far greater influence over procurement practices and organisational culture than any government policies.

This variability of performance makes the identification of specific examples extremely difficult but I would be more than happy to discuss this separately.

In summary, if we are to see procurement being successfully used to support the construction element of the foundation economy then :

- ***we need to make it crystal clear to those procuring that they have a responsibility to procure in a way that supports, develops and grows local SMEs***
- ***their practices need to be as streamlined as possible, removing unnecessary bureaucracy and costs***
- ***the focus needs to be on value (embracing WFG goals and sustainable and ethical principles)***
- ***risks need to be jointly managed rather than transferred entirely to SMEs***
- ***communication channels and engagement with SMEs need to be regular and clear***

For your further information I have also attached two reports that CECA Wales has jointly published with the Association of Consulting Engineers (ACE) and the County Surveyors Society (CSS) Cymru, which highlight simple action plans to address many of these issues raised in this response :

1. *“Transporting Our Future Generations” which focuses on the WFG Act and sustainable and ethical procurement practices*
2. *“Streamlining Public Procurement” which highlights a number of challenges and recommendations for improving procurement practices in Wales and proposes opportunities for the future including the growth of SMEs.*

I trust that these views and observations are helpful to you and your Committee but please contact me should you wish to discuss these matters in greater detail.

Yours sincerely



Ed Evans
Director, CECA Wales/Cymru