**Re: Green Paper: Transforming public procurement consultation**

**10 March 2021, submitted by Community Leisure UK**

We welcome the opportunity to submit a response to this consultation. Our response focuses on questions where we are able to provide a response on behalf of our membership.

**Contact**

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**Introduction to Community Leisure UK**

1. To briefly introduce ourselves, Community Leisure UK is a trade association representing members who are all registered charities or societies delivering public leisure, sport and/or culture services for communities across the UK. These charities provide physical activity, cultural engagement and social opportunities and are significant partners within their local communities. We have a total of 110 members, operating over 3 700 facilities across England, Scotland and Wales, with a total of over 100 000 staff and over 17 000 volunteers.

**General point in response to the consultation**

1. We welcome this consultation on public procurement, however, with regard to public leisure, sport and culture, we believe that the term ‘procurement’ is challenging as this, almost inevitably, results in a process driven approach led by Procurement Officers. These services have a core purpose of community outcomes and wellbeing, and this is often not understood by those responsible for procurement.
2. It is therefore important to highlight that public services should not be treated in the same manner as procurement for goods, with a focus on cost. We are witnessing the impact of a drive for efficiencies over a number of years, resulting in underfunded and undervalued public leisure and culture services. We must seek to stop this race to the bottom, and differentiate between cost and investment.
3. Procurement should be viewed as one part of the commissioning process. For public leisure and culture, there should be a move towards a partnership approach between local authorities and organisations delivering services. This would include an alignment of purpose and objectives, with the ability for delivery partners to be agile, flexible and adaptable.
4. A purely procurement, rather than partnership approach, brings other challenges, including local authorities choosing to terminate contracts early, or to change the delivery model. These decisions are not always based on evidence or in the interests of the community. A partnership based approach would ensure there are shared objectives and a more progressive working relationship.

**Question 6. Do you agree with the proposed changes to the procurement procedures?**

1. We welcome the intention of reforming the procedures and recognising the value that charities and social enterprises can offer. Before considering any changes to the procedures, it is essential to understand the scope and possibility afforded under the current regulations, and to consider why this scope and flexibility is not implemented in practice. There is a question of whether change to the regulations is required, or whether there should be more focus on change to implementation and training.
2. However, to reiterate the point in the introduction, public services must be viewed as distinct in terms of procurement. Social value and community benefit is at the forefront in the delivery of these services, and partnership with local authorities is key. The principles for public services should be based around partnership, co-design, multi-sector, community partnerships, long-term development projects, preventative planning and Innovation Partnerships.

**Question 8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?**

1. We welcome the intention of the reforms to create an equal playing field for charities and social enterprises, however, we feel that the proposed reforms do not go far enough to achieve this, nor do they recognise what is currently possible within the existing regulations.
2. It is important to recognise that procurement is one part of commissioning, and the focus should be on fostering more effective innovation within commissioning as a whole, with innovation in procurement as one element within that.
3. Significantly, there is a distinction between commissioning Public Services and Public Sector purchasing, which must be recognised with procurement regulations.
4. For public service contracts, the focus must be on outcomes and objectives, moving away from a process-driven approach to a purpose driven one. By focusing on purpose over process, this would enable the inherent social value within public services to be recognised and understood without requiring a formal marking system to attempt to capture this. Social value in these contracts is embedded and is not an add-on.
5. As all of our members are charities and social enterprises, there is inherent social value in their delivery of services, with their core purpose being community benefit. There is a need to recognise the distinct delivery models of charities and social enterprises and the inherent social value that these organisations provide in delivering services, as distinct to other delivery models. .
6. The challenge with the existing procurement regulations is in their application, with a process-led and risk averse approach adopted by many local authorities. This creates a challenge to improving and reforming procurement in Public Services as it requires addressing entrenched approaches to procurement with fundamental cultural change. Creating new procurement regulations will not address this issue, and there will need to be clear guidance to encourage procurement to be seen as purpose driven, flexible and facilitating.
7. The publication *The art of the posible in public procurement* highlights some of the misunderstandings and misinterpretations around the Public Contracts Regulations 2015, which are in reality far more flexible and purpose focused than they are perceived.[[1]](#footnote-0)
8. This view is shared by many Public Benefit sector Public Service providers, including Community Leisure UK members, as well as those represented by other membership organisations in different parts of the sector, including Social Enterprise UK, NCVO and E3M.
9. Public Services delivered by charities and non-profit distributing organisations are not focused on profit as the principal driver. They are required to provide full coverage within a locality, region, or nation; with sufficient and preferably high-quality standards; with consistency, sustainability, continuous improvement and long-term development.
10. Social Value is the core purpose of Public Services, and not something extra. Despite the introduction of the Social Value Act in 2012, there has been no significant change in public service procurement. There is a need to embed requirements for every supplier to demonstrate a dedication to the purpose of the relevant public services and a demonstrable commitment, capability and quality standard.
11. Procurement should be reformed so public benefit organisations, including charities and social enterprises, are not disadvantaged or excluded from public service contracts with a view to commissioning integrated, developmental public service partnerships.
12. The Government should reconsider the proposed removal of the provision for “Innovation Partnership”, which is designed to promote innovation through collaborative partnership, rather than service contract. There are examples of where this works well, and has won awards, including Oldham Social Prescribing Partnership.
13. There are already a lot of good practice examples of public service delivery and innovation within public services, but this could become far more widespread and encouraged through more flexible and purpose-driven approaches to procurement by local authorities.

**Question 9. Are there specific issues you have faced when interacting with contracting authorities that have not been raised here and which inhibit the potential for innovative solutions or ideas?**

1. Community Leisure UK members are faced with procurement being led by process rather than purpose. The inherent social value and charitable objectives of our members ensures that there is no profit extraction from public services and that any profit is reinvested back into delivering services.
2. There is no distinction, nor does this paper recognise any distinction, between procuring goods and the commissioning of services. Particularly as regards public services, there is a fundamental lack of understanding and a tendency to play it safe and resort to process driven approaches. Local authorities are, by their nature, risk-averse and will need clear guidance if they are to move towards purpose driven procurement.

1. The public benefit sector is under-valued and the important role that it can play in supporting public benefit ecosystems is poorly understood.
2. There is a lack of understanding of different models operating within the landscape, and an inability or lack of interest for local authorities to understand who they are when commissioning to deliver their services.
3. There are organisations operating in public service delivery that extract profit, which must be seen as inconsistent with purpose-driven service delivery. We are concerned regarding local authorities’ ability to fully understand and interrogate the structures put forward by private sector operators and failure to fully evaluate the risks associated with those structures.
4. It appears that local authorities (and leisure consultants advising local authorities in relation to leisure procurement) are unable to identify the difference within the structures of a “non-profit” potentially established as a vehicle to harness reliefs for the private sector operators, and a genuine charity.
5. In the case of many single contract charitable trusts, they have limited experience in bidding for contracts and going through the procurement process. They are, therefore, at an almost immediate disadvantage when competing against larger, private sector organisations, with experience and expertise in this area. The value of local charities and social enterprises must be recognised and valued, as distinct from other operating models, to ensure they are not unfairly disadvantaged.
6. Public benefit sector organisations are unfairly prejudiced, or disadvantaged, by financial pre-conditions in procurement, based on the idea that a commercially strong equity-capital-based, balance sheet is the key indicator of organisational sustainability. Charities, including most social enterprises and other forms of public benefit organisations, operate on financial models without equity-capital, so need other bases of assessment in relation to organisational sustainability.
7. Is it crucial that “Social Value”, is further valued and recognised as essential and central to Public Services and that “Social Value” is the defining feature of the public benefit sector.
8. There is a challenge when policy priorities are directed by central government, but procurement is being carried out by local authorities. There needs to be alignment across the priorities and an opportunity for local authorities to have the flexibility to ensure that local priorities are recognised and embedded in procurement of services.

**Question 11. What further measures relating to pre-procurement processes should the Government consider to enable public procurement to be used as a tool to drive innovation in the UK?**

1. In relation to Public Services there should be a pre-commissioning analysis of need, and consultation with the community and provider perspectives. The starting point must be understanding the needs of people who need the services and building from there, not the other way around. The pre-commissioning analysis should also focus on preventative action, social value in line with local authority strategy and outcomes, and long-term development.
2. A commissioning strategy should be developed, with procurement as one tool within this. This would ensure a more holistic approach, with the opportunity to engage with potential partners to inform thinking, and to allow more opportunity for true innovation, rather than attempting to innovate through the procurement process in isolation.
3. Potential providers should be involved in the pre-procurement engagement to inform the drafting of the procurement specification and contract, which would ensure that the delivery of services can be optimised and that there is an alignment of purpose with local authority objectives.

**Question 12. In light of the new competitive flexible procedure, do you agree that the Light Touch Regime for social, health, education and other services should be removed?**

1. No. As previously mentioned, the distinction between public service commissioning and public authority commercial purchasing need to be understood, and the challenges of attempting to apply the same regulations to both and the inapplicability of pure market theory to the former needs to be a core aspect of procurement reform.
2. In addition to flexibility, transparency and purpose within a procurement framework, public services require a special focus and particular processes to ensure that their inherent social value is recognised and that community benefit is first and foremost. The suggestion that “sector-specific parts or sections where different rules are required for effective operation or to protect our national interest" could be included in a new uniform set of rules could enable distinctions to be made between goods and services, and more particularly, understanding the unique requirements of public services.

**Question 13. Do you agree that the award of a contract should be based on the “most advantageous tender” rather than “most economically advantageous tender”?**

1. Yes. As recognised within the Green Paper, “MEAT can be mistaken as the need to deliver the lowest price when actually there may be scope to deliver greater value through a contract in broader qualitative (including social and environmental) terms.” It is essential to move away from a cost focused approach, which is not outcomes focused. However, there needs to be a full understanding and interpretation of MEAT to ensure the balance between price, quality and social value.
2. However, the proposal to use MAT to encourage a broader view on what can be included and considered is not strong enough. Social value should be embedded as a core purpose within any public service procurement, and not as an optional consideration.

**Question 17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?**

1. With regard to public leisure and culture, organisations that extract profit from these services should be excluded as they are wholly incompatible with the core purpose of public services being for community benefit.
2. There must be a duty on local authorities to interrogate and understand the structure of organisations seeking to deliver public services and to distinguish between genuine charities and non-profit distributing organisations, such as Community Leisure UK’s members, and those that seek to use complex structures to extract profit.

**Question 27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?**

1. Yes, absolutely.

1. Villeneuve Smith, F and Blake, J. *The art of the possible in public procurement.* Available: https://bateswells.co.uk/wp-content/uploads/2019/06/the-art-of-the-possible-in-public-procurement-pdf.pdf [↑](#footnote-ref-0)