

Procurement Reform Bill Financial Memorandum

Purpose

1. The purpose of this report is to update the Executive Group on the evidence submitted by COSLA to the Scottish Parliament Finance Committee on the Procurement Reform (Scotland) Bill Financial Memorandum (FM).

Recommendations

2. Members of the Executive Group are asked to:
 - i. Note the background to the submission and content of the evidence to the Finance Committee (attached as Annex I to this report); and
 - ii. Advise COSLA of any further comments or areas of concern related to the financial implications of the Procurement Reform (Scotland) Bill.

Background

3. The Procurement Reform (Scotland) Bill was introduced to the Scottish Parliament on 4 October 2013. The Bill will establish a national legislative framework for sustainable public procurement. It places a number of general duties on contracting authorities regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement. It creates obligations concerning advertising, community benefits and procurement strategies. The Bill also places some administrative requirements on larger spending contracting authorities to publish procurement strategies and annual reports.

Convention

4. At Convention in October 2013, several key messages were agreed as the basis for continued lobbying on the policy intent of the Bill. Convention also agreed that COSLA should continue to ensure that Scottish Government considers the new duties alongside any existing or forthcoming duties including Best Value. Convention wished COSLA to continue to lobby for greater emphasis on community benefit and the need for procurement to encourage local jobs and business opportunities where appropriate.
5. This Bill cannot be considered in isolation due to the adoption of the EU Procurement Directive during summer 2013. The final EU Directive has been made less restrictive than originally proposed around the definition of shared services which COSLA lobbied for and welcomes. It does however place an obligation for procuring authorities to base their award decision not solely on cost alone but also on the wider notion of “most economically advantageous tender” (qualitative, lifetime costs) as well as introducing green procurement criteria. Convention agreed that COSLA should continue to lobby the Scottish Government to ensure that the EU Procurement Directive is transposed and harmonised with existing domestic legislation in a manner which retains maximum flexibility for councils to deliver shared services and share capacity to provide local accountable outcomes.

Submission of evidence

6. COSLA has already been in discussions with the Scottish Government on the policy intentions of the Bill and submitted evidence to the Infrastructure and Capital Investment Committee. The Finance Committee, which has responsibility within the parliamentary

scrutiny process to examine the costs of the Bill, invited separate written submissions on the Bill, with an initial deadline of 15 November 2013. COSLA sought an extension to that deadline but due to Parliamentary timetabling it could only be extended until 19 November 2013. Given the timescales for the submission and that Convention had agreed the key messages in relation to the Bill, the submission of evidence to the Finance Committee was agreed by Cllr Kevin Keenan in his capacity as Resources and Capacity Spokesperson.

7. In line with COSLA's key messages endorsed by Convention in October 2013 and following consultation with Directors of Finance and policy colleagues, COSLA's response to the Finance Committee conveys the following broad messages:
 - i. Many of the costs are already accounted for within local authority procurement processes as much of what is in the Bill is already being adopted as good practice to varying degrees within Councils. However, where improvement and procurement reform is required there will be a continued cost and this would appear to have been underestimated.
 - ii. One area of specific concern is related to training. COSLA has previously raised the issue of the additional costs associated with training and guidance. It is essential that an allocation of additional resource is made available to local government to fund the initial implementation stages in terms of training and support.
 - iii. Given the current uncertainty of additional activities and costs that will be incurred by local government, COSLA seeks assurances from the Scottish Government that the on-going costs to local government as a result of the procurement process changes associated with this Bill will be kept under review.
 - iv. The Bill needs to ensure there is not a disproportionate impact on local authorities with smaller procurement teams.
 - v. Consideration also needs to be given to the additional financial burden that the Bill may place on bidders responding to tender documents as suppliers are likely to pass on such costs to Local Authorities. The FM does not appear to have fully considered this impact of the Bill.
8. **Members of the Executive Group are invited to advise COSLA of any further comments or areas of concern related to the financial implications of the Bill.**

Conclusion

9. The Executive Group is asked to note the update within the report and to provide further comments as appropriate.

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Annex I – COSLA submission to the Finance Committee on the Procurement Reform (Scotland) Bill Financial Memorandum

Procurement Reform (Scotland) Bill Financial Memorandum

Thank you for the opportunity to submit evidence to the Finance Committee in relation to the recently published Financial Memorandum related to the above Bill. COSLA has already submitted evidence with regard the policy intentions of this Bill to the appropriate Committee.

COSLA is the representative voice of all 32 local authorities in Scotland, and Councils must already comply with the current public procurement legislation as well as deliver local government's duty related to Best Value.

General comments

Whilst many of the costs are already accounted for within local authority procurement processes as a result of much of what is in the Bill already being adopted as good practice to varying degrees within Councils. However, where improvement and procurement reform is required there will be a continued cost and this would appear to have been underestimated. For example, strategic and operational administration costs, particularly with the new requirement for an annual strategy and annual reporting; and administration costs to embed new requirements to be considered and the tracking of resulting benefits.

There are also other elements of the Bill e.g. consideration of community benefits, that are considered not to be cost neutral for all Councils (as stated in the FM) as it is over and above current practice. However, at this stage ahead of guidance and a full understanding of the application of these new duties and measures, it is difficult to fully quantify additional activity and any associated costs.

Training

One area of specific concern is the area related to training. COSLA has previously raised the issue of the additional costs associated with training and guidance. The additional Scottish Government expenditure shown and the associated notes suggest that the Scottish Government will continue to take financial responsibility for the systems and will further provide guidance and training on both systems and the new legislation to contracting authorities. However, if with these assumptions, it is essential that an allocation of additional resource is made available to local government to fund the initial implementation stages in terms of training and support.

Requirement for on-going monitoring of costs

Given the current uncertainty of additional activities and costs that will be incurred by local government, COSLA seeks assurances from the Scottish Government that the on-going costs to local government as a result of the procurement process changes associated with this Bill will be kept under review with an appropriate monitoring strategy implemented to ensure significant additional costs are not incurred by Councils.

In particular, the following are areas that need to be kept under review:

- Obligations under the sustainability and specification requirements may have unintended consequences on areas other than procurement, such as maintenance, standardisation of equipment and spare parts, staff training and accreditation;
- In terms of obligations regarding technical specifications, there may require to be a significant greater effort in preparing, monitoring and recording contract specifications, particularly for areas such as construction and capital works, due to the obligations for

greater use of sustainable materials and a more comprehensive life-cycle assessment of the elements of a project. The cost of this is difficult to measure as is whether or not this could be managed within current capacity;

- Whilst debriefing to unsuccessful bidders currently occurs, additional debriefing requirements may incur additional administration costs and require additional technical staff time and the costs associated with a regulated debriefing regime has not been fully accounted for; and
- There may be additional costs incurred as the result of an increasing risk of challenge. Whilst we appreciate that the number of formal challenges is relatively low the Bill may encourage increasing numbers of such challenges.

Need to avoid disproportionate costs

The Bill needs to ensure there is not a disproportionate impact on local authorities with smaller procurement teams. Care needs to be taken to ensure that any costs associated with embedding good practice should be proportionate to the scale and complexity of procurement operations in individual organisations. Whilst this appears to have been recognised in the FM, deployment of procurement practice has sometimes failed to recognise market characteristics in, for example, the islands setting.

Contract costs

In addition to increased costs associated with the procurement process that the Bill would introduce, consideration also needs to be given to the additional financial burden that the Bill may place on bidders responding to tender documents. Suppliers will incur additional costs, for example as they build in community benefit and sustainability management costs into their pricing, and these are likely to be passed on through to Local Authorities. The FM does not appear to have fully considered this impact of the Bill.