

Reserving contracts with businesses with a public service mission

Rhian Edwards, Wales Co-operative Centre

Brendan Burke, Welsh Government

Richard Welfoot and Petra Kennedy, MTIB

cwmpas



Llywodraeth Cymru
Welsh Government

Objectives for the webinar

- Reflect on the principles of the Social Services and Wellbeing Act 2014 and duties under Section 16 of the Act.
- Discuss the two reserved contracting provisions in the Public Contract Regulations 2015 that are designed to help contracting authorities address social inclusion goals.
- Practically consider how you run a reserved contract procurement process.
- Hear from a supported business who is delivering services through a reserved contract arrangement.

Principles of the Social Services and Wellbeing Act 2014

- Well-being outcomes
- Users and carers as co-producers, with voice and control
- Collaboration between relevant agencies
- Prevention or reduction of dependency
- Added social, environmental and economic value
- Sustainability

Section 16, Part 2 of the SS&WB Act

Promoting social enterprises, co-operatives, user led services and the third sector

1.A local authority must promote—

- the development in its area of social enterprises to provide care and support and preventative services;
- the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;
- the involvement of persons for whom care and support or preventative services are to be provided in the design and operation of that provision;
- the availability in its area of care and support and preventative services from third sector organisations (whether or not the organisations are social enterprises or co-operative organisations).

Principle-based goals	Not-for-profit credentials
Well-being outcomes: Providers do what matters - as people define it	Often directly linked to core purpose. If user-led, more likely to do “what matters”
Co-production: They mobilise people’s own opinions and assets – including community	Often have strong local connections. If member based, these assets are mobilised
Co-operation: They work with others for shared public benefit	Local roots and ethical values may encourage collaboration
Prevention: They think long-term and act to reduce or avoid dependency	Locality and user/carer orientation leads to whole-life/whole population engagement
Added Value: They strive to go beyond just delivering a contract	Values and constitutions should encourage added value

Welsh policy context

- Public procurement can drive economic, social and environmental benefits and support jobs and growth.
- Consideration should be given to the wider social value public bodies may be able to achieve through the influence of their expenditure.
- Two reserved contracting provisions Regulation 20 and 77 designed to help contracting authorities address social inclusion goals - reserve contracts for businesses with a social purpose.

Benefits of reserving contracts

- Ensuring value for money
- Support objectives of the WBFG (Wales) Act 2015
- Socio-Economic Duty 2021
- Enable greater access to employment opportunities for disabled or disadvantaged people
- Increase the diversity of the public sector supplier base
- Increased social inclusion and interaction of disabled people in the labour market and their communities

Regulation 20 - reserved contracts

Regulation 20 enables contracting authorities to support employment and training opportunities for disabled or disadvantaged people, by enabling:

- Contract award procedures to be reserved to sheltered workshops (often referred to as **supported businesses** in the UK) and economic operators whose **main aim** is the **social and professional integration** of **disabled or disadvantaged persons**;
- or
- Such contracts to be performed in the context of **sheltered employee programmes**;
- Provided that at **least 30%** of the employees of those workshops, economic operators or programmes are **disabled or disadvantaged workers**.

Establishing eligibility – Reg 20

- “Main aim”
- “Social and professional integration of disabled or disadvantaged people”
- “30% of the workforce is disabled or disadvantaged”
- “Disabled or disadvantaged”

Establishing eligibility – Reg 20

- **Main aim is** the social and professional integration of disabled or disadvantaged persons
- The sole or main purpose for which the organisation has been set up
- Pre-qualification - confirm main aim and get copy of constitutional or founding documents of the organisation e.g. business plan
- **Tender question – describe what the organisation does or plans to do to achieve social and/or professional integration of disabled or disadvantaged people**

Establishing eligibility – Reg 20

- **Social and professional integration - development of social or professional skills**
- Bidders should be asked to provide a summary or appended plans showing what they do to assist disabled or disadvantaged people to achieve integration
- It is not necessary to require them to show both elements separately -a broad open approach may be taken to the type of social and professional integration that the organisation seeks to deliver as its main aim

Establishing eligibility – Reg 20

- **30% of the workforce is disabled or disadvantaged**
- Defining disabled or disadvantaged persons.
- Evidencing that '30% of the workforce is disabled or disadvantaged'
- Evidencing eligibility throughout the life of a contract

Establishing eligibility – Reg 20

“Disabled” and “Disadvantaged”

A '**disadvantaged worker**' means any person who:

- a) Has not been in regular paid employment for the previous 6 months; or
- b) is between 15 and 24 years of age; or
- c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or
- d) is over the age of 50 years; or
- e) lives as a single adult with one or more dependants; or
- f) works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
- g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment.

Establishing eligibility – Reg 20 “Disabled” and “Disadvantaged”

A ‘**disabled worker**’ means any person who:

- Has a physical or mental impairment, and
- the impairment has a substantial and long-term adverse effect on the persons’ ability to carry out normal day-to-day activities.

Regulation 77 Reserved Contracts for Specific Services

- Focus on social, health and educational services.
- Allows contract award procedures for certain services contracts to be reserved to organisations with a public service mission.
- Contract must not exceed a maximum duration of 3 years.
- The contracting authority must not have awarded a similar contract to that organisation in the previous 3 years.

Establishing eligibility – Regulation 77

- The primary objective of the qualifying organisations must be the pursuit of a public service mission linked to the delivery of services covered by the CPV codes relevant to Regulation 77.
- Profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations.
- The structures of management or ownership of the organisation are (or will be, if and when it performs the contract)
 - based on employee ownership or participatory principles, or
 - require the active participation of employees, users or stakeholders.
- The organisation has not been awarded a contract under Regulation 77 for the services concerned by the contracting authority within the past 3 years.

Establishing eligibility – Regulation 77

- For Companies Limited by Guarantee - Memorandum and Articles of Association.
- For Community Interest Companies (CICs) - Memorandum and Articles of Association.
- For Co-operatives, Community Benefit Societies or bona fide co-operative - Rules.
- Mutual businesses - Trust Deeds (if owned by an employee trust) or Terms of Reference of the Workers Council.

Running a reserving contract process

- Reserving lots within a contract or framework or by specific goods or services or reserving a percentage of the whole contract or a percentage of a Lot
- Specification, selection and award criteria
- Pre-market engagement – Regulation 40
- Benchmark winning bids against the open market – price and wider socio-economic benefits
- Amending SOs and SFIs to permit the reserving of contract award procedures
- Contract management – examine the actual social outcomes and value for money

Other ways to engage with supported businesses

- Joint Bidding – invite collaborative or consortia bids
- Award criteria
- The light touch regime
- Lotting strategies
- Supply chain opportunities through tier 1 contractors

The Market

- Social Business Wales – Mapping Report and Directory 2021
- Local social enterprise networks
- Meet the buyer events for social enterprises
- Sell 2 Wales
- Cwmpas consultancy support

We are keen to hear if you would like to work through practical solutions with us...

info@cwmpas.coop

<https://cwmpas.coop>