



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 9 March 2021

Session 5



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Pàrlamaid na h-Alba

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ECONOMY, ENERGY AND FAIR WORK COMMITTEE

8th Meeting 2021, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Maurice Golden (West Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

Alex Rowley (Mid Scotland and Fife) (Lab)

*Graham Simpson (Central Scotland) (Con)

Andy Wightman (Lothian) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Susan Craig (Scottish Government)

Nick Ford (Scottish Government)

Ivan McKee (Minister for Trade, Innovation and Public Finance)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

Virtual Meeting

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 9 March 2021

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning. Welcome to the eighth meeting in 2021 of the Economy, Energy and Fair Work Committee. Apologies have been received from Andy Wightman and Alex Rowley.

Agenda item 1 is a decision on whether to take item 3 in private. Do we agree to do so?

Members indicated agreement.

Public Procurement Inquiry

The Convener: Item 2 is an evidence session as part of our public procurement inquiry. I welcome Ivan McKee, Minister for Trade, Innovation and Public Finance. He is supported by Susan Craig, who is a procurement policy manager in the Scottish Government's procurement and property directorate.

I invite the minister to make a brief opening statement.

The Minister for Trade, Innovation and Public Finance (Ivan McKee): Good morning. I start by saying how pleased I am to make my first appearance at this committee since adding procurement to my portfolio responsibilities. As Minister for Trade, Innovation and Public Finance, I welcome the opportunity to focus on how procurement is and can continue to be a key enabler of the Government's wider priorities. Of great relevance to that is the committee's focus today on the Procurement Reform (Scotland) Act 2014. We welcome the committee's interest in that area and thank all the stakeholders for their input into the process so far.

Over many years, we have taken significant steps to shape public procurement in Scotland, starting in 2006 with the publication of the McClelland report, which identified a number of critical success factors in relation to getting the best value public procurement in Scotland. In 2016, we published a report that reflected on the overall progress of the public procurement reform programme since 2006. That was also the year when most of the provisions of the 2014 act came into force. The 2014 act enshrined in law the principles of public procurement in Scotland, introduced the sustainable procurement duty, which uses procurement processes to increase social, economic and environmental wellbeing; made it easier for small businesses to access and compete for public sector contracts; and increased the transparency of the procurement activities of public bodies.

Almost five years later, we are embarking on a process of reviewing the effectiveness of our policies. Last December, we published the findings of research that we commissioned into the impact and value of the sustainable procurement duty. We have recently undertaken a survey of suppliers to the public sector, asking them about their experiences of bidding for public contracts, and we are analysing the 1,500 responses that were received. We hope to publish the findings in the coming weeks, and we will soon publish the second annual Scottish ministers' report on procurement activity in Scotland, which will provide an overview of public procurement activity in 2018-19. The report is informed by individual

annual procurement reports that more than 100 public bodies are obliged to publish under the 2014 act.

The sustainable procurement duty report found that the duty has led to a step change in procurement practice. There has been significant progress since the duty was introduced in Scotland, and we are ahead of many other countries in our approach to sustainable procurement practices. The report reveals evidence that the duty is contributing to the achievement of national outcomes and the Scottish Government's overarching purpose. However, although significant progress has been made, it recognises that more remains to be done across all strands of the duty to take implementation to the next level.

We are not complacent. It is through all those reports that we will better understand what has gone well and where there is more that we can do. In that vein, we very much welcome the committee's work to scrutinise the 2014 act and the opportunity to give evidence today. We view this scrutiny as an important element of our review.

The 2014 act is recognised in other parts of the United Kingdom as progressive and enabling. The Welsh Government has replicated many of its provisions in its social partnership legislation, and the UK Government has picked up much of what we have had as established legislation since 2016 in its current green paper on procurement reform.

I welcome this opportunity to provide evidence to the committee on progress to date and to update you on our plans to do more to ensure that public money that is invested in contracts with suppliers impacts on Scotland's economy and communities.

The Convener: Thank you. Richard Lyle will ask the first questions.

Richard Lyle (Uddingston and Bellshill) (SNP): We all know that public procurement has a tremendous impact in stimulating the economy. How is the Scottish Government seeking to promote economic recovery from the Covid crisis through public procurement? Do you foresee any particular obstacles in your way?

Ivan McKee: Procurement has a significant beneficial role to play, and it is important that we harness the power of that spend, which represents more than £12 billion across the Scottish Government, local authorities, the national health service, universities, colleges and other bodies.

You will be aware from the work that we have published that we see the sustainable procurement duty as a key part of that. We want to ensure that, within the rules that exist, as much of

that spend as possible can be directed to Scottish businesses, particularly small and medium-sized enterprises, in relation to which we have made significant progress over the past years, having taken a number of steps to reduce the barriers to those businesses' ability to access those procurement opportunities.

We are also focusing very much on community wealth building and are looking for opportunities to embed that approach and increase its impact. In that regard, we have run five pilot projects across Scotland, working closely with local authorities and others, to maximise the impact of procurement spend in local communities.

Richard Lyle: Has the Scottish Government given any consideration to developing standardised measures of procurement outcomes to assist in measuring the impact of the sustainable procurement duty?

Ivan McKee: If you look at our annual reports, you will see that a number of standard measures are in place in relation to the spend, the suppliers that benefit from that spend, the location of those suppliers, where the spend is coming from, where the money is being spent and the various benefits that we see with regard to community wealth building, including training, skills development and other aspects that are of economic benefit to local communities.

As I mentioned in my introductory remarks, our summary report pulls together individual reports from more than 100 public bodies such as health boards and local authorities, and sums up their analysis of their local spending priorities. Clearly, there is some scope within that for individual bodies to present data as they see fit, but there is a template, and much of the data is rolled up to a national level so that we can understand better the overall picture with regard to impact.

Richard Lyle: Some small companies feel that they cannot access council tender lists. How can we help small companies, in particular, in that regard?

Ivan McKee: I am always keen to do that, and significant steps have been taken through Public Contracts Scotland, whose quick quotes process makes the overall process easier, and through the Supplier Development Programme, which has been joined by, I think, more than 1,000 extra businesses. Many small businesses are involved in the programme, which gives them advice and support to enable them to access those contracts.

If we look at the success factors, we can say that, last year, 58 per cent of procurement spend on Scottish businesses went to SMEs, which account for only 40 per cent of business turnover in Scotland. I think that that shows that SMEs are able to take advantage of the significant benefits

that exist in relation to engaging with public procurement in Scotland.

Richard Lyle: That is good to hear.

The Convener: I have a few questions, minister. What is the Scottish Government doing in terms of the wider supply chain? I am thinking about fair work requirements and so forth. How can those measures take account of the experience of the wider supply chain and not just the primary supplier who is awarded the contract?

Ivan McKee: That is a great question. Prompt payment is an example of an issue that is of concern. Clearly, although the Scottish Government has a good record in that regard, with more than 99 per cent of invoices being paid within 10 days, it is important that that rolls down to tier 2 and tier 3 suppliers, so they can also benefit from that. We have initiatives that can help in that regard, such as project bank accounts, which mean that we can pay subcontractors at the same time as we are paying the primary contractor. I think that that initiative has made a significant difference, and we continue to roll that out. We are looking at similar opportunities, such as working with the primary contractors to get them to report on their prompt payment performance further down their supply chain.

We are taking steps such as those to ensure that the benefits roll down through the supply chain, so that it is not only the primary contractors that benefit from the approach.

The Convener: You are talking about prompt payment, but I was asking about fair work. What is being done to ensure that contractors that are not the primary supplier adhere to conditions in contracts?

Ivan McKee: Of course, you must remember that, because we do not have control over employment law in Scotland, there is a limit to what we can do with regard to putting those requirements into contracts. We have argued that having control over employment law would allow us, for example, to put stipulations around the real living wage and other aspects of the fair work first criteria into those contracts.

However, we have procurement policy notes that identify what the best practice guidelines are for fair work implementation and we work closely with tier 1 suppliers to understand what their practices are with regard to engaging with tier 2 and tier 3 subcontractors. You can look at several projects where we have worked with suppliers to embed the fair work first criteria as far down the supply chain as we can.

Clearly, the primary contractor will engage with whoever they see fit to support the work that it is undertaking. As I said, because we do not have

control of employment law, there is a limit to how much enforceability we can put in place around those criteria.

The Convener: What can the Scottish Government do through things such as procurement reports to provide us with knowledge about what is going on? We appreciate that there is a fine balance to be struck so that the need to get information does not slow things down or prevent things from happening by overburdening companies with regulations and so forth.

Ivan McKee: You are right about that balance, and we need to get it correct because, at the end of the day, it is businesses that have to provide the data around whatever requirements are put in place, and it is local authorities, health boards and others that need to put in place the processes to collect and monitor that data. I think that we have got the balance correct. We have mentioned SMEs and, clearly, the more reporting requirements that are put in place, the harder things become for those businesses in particular.

It is important to collect that data, and I think that we have got the approach right. I have mentioned the procurement policy notes that set out the best practice guidelines.

To go back to your previous question, we expect primary contractors to apply fair work first right down through their supply chain and, as part of the bidding process, primary suppliers are asked to commit to fair work principles for their whole supply chain. We collect the data from the primary suppliers to allow us to monitor that. As you have rightly said, there is a need to get the balance right and not make the process too cumbersome, thereby potentially excluding SMEs in particular from the process.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Since I was first elected, I have had a stream of complaints about the procurement process and how it disadvantages small companies and so forth. I will touch on the issue that the convener mentioned. The committee has received evidence from local authorities and industry bodies about the lack of resources for monitoring progress against agreed outcomes in procurement contracts. Are enough resources and systems in place to carry out that monitoring and evaluation?

Ivan McKee: [*Inaudible.*—SMEs, which are businesses with fewer than 250 employees, represent about 40 per cent of business turnover in Scotland but benefit from, in total, 47 per cent of public sector procurement contracts, which rises to 58 per cent for Scottish businesses only. Clearly, many SMEs would love to get more public sector contracts, and of course that is absolutely what someone who has a business wants to do—they

will want to push and get as much of that business as possible. I have outlined the steps that we have taken to make that process as supported and friendly as possible for smaller businesses to access. Those numbers speak to the fact that small businesses get more than their turnover share of those contracts.

On the monitoring and evaluation process, I again go back to my previous comments. The more resource that we put into that, the less we have to spend on other things. We want as much public procurement spend as possible to go to communities, and to small businesses, to allow them to benefit those communities and employ as many people as possible. The more resource we put into the bureaucracy, the less money we have to put into those other aspects. I think that we have the balance right.

We monitor and track what is important. We are always looking for opportunities to do that more cost effectively, but, as I have said, it is important to strike the right balance, and I think that we have got it right.

Colin Beattie: I noted the percentage that you quoted about the volume of procurement that goes to SMEs. The Federation of Small Businesses has said that, although the Public Procurement Reform (Scotland) Act 2014 dealt with a lot of the barriers that prevented SMEs from accessing public procurement, there is no evidence of a significant increase in spending with SMEs. Were the percentages that you gave those of contracts or of the value of contracts?

Ivan McKee: [*Inaudible.*]

Colin Beattie: Minister, you are muted.

Ivan McKee: Can you hear me?

Colin Beattie: I can.

Ivan McKee: Those were percentages of value.

Colin Beattie: Percentages of value.

Ivan McKee: Yes.

Colin Beattie: There seems to be an extraordinary difference between the perceptions of the FSB and its members and those of the Government. Do you have any—

Ivan McKee: SMEs are a broad category, which includes everything up to businesses that employ 250 people. Typically, that can be broken down into medium-sized businesses of 50 to 250 people and small businesses of fewer than 50 people. If you look at the data, you will see that the small business cohort of fewer than 50 people represents about 27 per cent of turnover and benefits from about 26 per cent of the value of public sector spend on procurement. That is as you would expect.

The FSB has identified a difference when it comes to microbusinesses—those that employ fewer than 10 people. Those represent about 14 per cent of business turnover and get, in the overall context, about 7 per cent of procurement spend. In the Scottish context, that is about 10.5 per cent of procurement spend. That data is in the FSB report.

If we focus on microbusinesses, we see a gap, but the vast majority of microbusinesses are exclusively in the business-to-consumer space, rather than in the business-to-business space. To be frank, such businesses do not necessarily want to access larger contracts, because that is not part of their business model or what they are set up for. Having said that, we are comfortable about having a conversation about microbusinesses with the FSB and others, if they think that more can be done.

I would be careful about assuming that the statistics on microbusinesses mean that there is a problem. The vast majority of microbusinesses that employ one, two, three, four or five people are not necessarily in a position to bid for substantial public sector contracts.

Colin Beattie: What is the Scottish Government's assessment of the remaining barriers that hold back SME participation? Do you have a concern about anything significant that is still out there?

Ivan McKee: Work continues on understanding where the challenges are. The supplier development programme has been effective, because it engages with such businesses and gives them clarity, training and support on how to access contracts. I visited the online portal last night to see what it looks like; access to what is there is fairly user-friendly, and we can always do more to develop and support that. Communication through public procurement bodies and others to ensure that information is as widely available as possible is important.

To be fair, there will be issues in relation to framework agreements—I have experienced that in my constituency. I come back to the point that, if an overarching agreement goes to a primary contractor, we want that contractor to deal with firms further down the supply chain in the way that we want. We will probably want to do more work on that.

The procurement team organises round-table meetings to hear at first hand from SMEs. When I took part in one of those sessions a couple of weeks ago, it was great to hear about small businesses' experience. There are challenges, but every small businessperson wants to do the best for their business and wants to get as much business as they can from whatever mechanism,

so they are always looking for more opportunities, which is absolutely what they should do.

It is good to hear from such businesses about challenges; there are things that we need to continue to press on. The numbers suggest good progress, but we continue to look to make the processes as accessible as possible.

Colin Beattie: The FSB has highlighted a couple of barriers. It believes that the requirements for public liability and professional indemnity insurance are disproportionate and do not always reflect the size of the contracted work. Are such barriers real? Do you have guidance for contracting authorities on how requirements can be more proportionate so that they do not discourage smaller bidders?

Ivan McKee: I will bring in Nick Ford to talk about the specifics of the policies, because they involve some technicalities. In principle, it is a case of striking a balance, and part of that involves having in place the indemnity and coverage to undertake the work—if that is not in place, all kinds of potential problems could open up. As public servants, custodians of public funds and custodians of public services, we would not want the indemnity not to be there, with the result that we could not ensure that things were done properly and in a correct and thorough manner. A balance must be achieved between that and loosening restrictions to allow SMEs to take part in the process.

Nick Ford will be able to comment on the technical aspects.

The Convener: Do we have Nick Ford? I can see you on my screen, Nick, but I cannot hear you.

10:00

Nick Ford (Scottish Government): I am here. I apologise; I am having terrible network problems this morning.

The Convener: Do you want to comment, subject to the information technology supporting you to do so?

Nick Ford: On professional indemnity, we recommend that the approach is proportionate and that public bodies should consider—[*Inaudible.*—the size and scale—[*Inaudible.*—so that there are no unnecessary barriers. The Scottish Government model terms and conditions—[*Inaudible.*]

The Convener: I am afraid that I cannot make out what you are saying—I do not know whether other committee members can. It seems that your connection is not working for us, unfortunately. Susan Craig is also with us, and her internet

connection might be working a bit better. Will you respond to the question, Susan?

Susan Craig (Scottish Government): Of course, and I apologise for the connection issues. In case you did not hear everything that Nick Ford said, I will repeat it. Professional indemnity insurance is part of the selection criteria, which are governed by the legislation and determine the suitability of bidders. The legislation makes it clear that the criteria should be set at levels that are relevant to the contract and proportionate to the market that is looking to bid. It is for public bodies to determine, on a case-by-case basis, what is relevant, given the needs of the contract.

In addition, the Scottish Government publishes the model terms and conditions that we use when we award contracts. We are undertaking work at the moment to check their suitability and the risk assessments that are attached to them, including by looking at things such as indemnity insurance, to ensure that they are proportionate. If need be, we will look to find a simple set of terms and conditions that could be shared to address some of the issues to do with barriers.

Colin Beattie: Are you actively looking at the issue? The FSB clearly thinks that it is an issue and that the approach is not always proportionate. Is the Government alert to the issue of proportionality?

Ivan McKee: Yes, we are. It is a case of getting the balance right, as I said. As Susan Craig said, a proportionate approach is important and is what we recommend. We are considering further steps. It is important to strike the right balance between ensuring that the necessary cover and protections are in place—because not having them in place opens up a lot of other issues—and understanding and addressing opportunities to reduce requirements, where it makes sense to do so.

Colin Beattie: Thank you.

The Convener: I will bring in the deputy convener, Willie Coffey.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister. I want to take you back to the discussion about the bigger frameworks. For a number of years, small companies in my constituency told me that they could never get near contracts because those frameworks were designed for the big boys, so they had to live off the scraps from the table. You said that 58 per cent of procurement spend went to SMEs, but SMEs are not getting 58 per cent of the bigger framework contracts, are they?

Ivan McKee: That is across all spend.

Willie Coffey: I am thinking about Scottish Water, for example, which tends to bundle everything up into big frameworks. Bigger players

tend to get those contracts, rather than SMEs. That is what I am talking about.

Ivan McKee: I cannot speak to the Scottish Water situation in particular, but I can tell you that we are making more and more use of lotting, whereby we break down larger contracts into smaller lots to make it easier for smaller businesses to access them.

There is also a balance of cost in terms of making sure that there is capability and capacity in SMEs. There might be limitations, depending on the nature of the contract—it might be very technical or it might require a high degree of expertise or access to technology, for example—and it is about getting that balance right as well.

Willie Coffey: That issue has been mentioned a lot for a number of years. Although visibility has improved and there are things such as the quick quotes service, the process of bidding still tends to favour businesses with the resources to throw at it. Is the situation still the same or is it improving? Can we do more to improve it?

Ivan McKee: We continue to look at that. It is good to hear that feedback. The public sector purchasing authorities lay out their strategy and what their forward view looks like to give as much visibility of what is coming down the pipeline as possible so that all businesses, but SMEs in particular, are able to see what is happening.

To go back to my earlier point, a balance needs to be struck when it comes to putting in more requirements around monitoring what businesses are doing, which is proportionately harder on smaller businesses. The monitoring around fair work first and other aspects such as community wealth building is very worth while, but the more we ask public sector bodies and businesses to track those issues, the more complicated that makes the process. There are also, as you would imagine, requirements on us to ensure that money is spent in the right place, for the right purpose and in the most effective way, but we need to balance that with working as hard as we can to ensure that smaller businesses get opportunities. That is important. We continue to look at that balance to see what changes we can make. That is an on-going process.

Willie Coffey: In the background information for the meeting, I read that authorities such as Clackmannanshire Council, Fife Council and Glasgow City Council were asking for an increase in the regulated thresholds, which would let SMEs use quick quotes for more opportunities. I am not sure why the threshold would stop them using the quick quotes service. Are you familiar with that issue? Will you tell us a wee bit more about it?

Ivan McKee: We have made changes there. I do not have the precise numbers, but Susan Craig

or Nick Ford will come in with those. We have made changes there already, and we are looking to see what more can be done.

Susan Craig: The 2014 act increased the advertising ability, which increased the accessibility of opportunities for businesses, including SMEs, to a lower-value threshold. The figures attached to that are any contract above £50,000 for goods and services, and anything over £2 million for works contracts. Prior to the 2014 act, those opportunities were not advertised. When it comes to the issue around thresholds, there has to be a balance between the opportunity to access far more contracts and the application of some rigour to the process of scrutiny and due diligence as part of the process of awarding a contract.

Willie Coffey: One of the organisations that gave us evidence for the meeting—Social Enterprise Network Scotland—asked whether the use and the weighting of community benefit clauses could be increased. According to our paper, the threshold has been stuck at £4 million since 2014. Will you tell us more about that? Could we introduce a bit more flexibility there?

Ivan McKee: I might be wrong—Susan will put me right—but I think that the £4 million figure was reduced to £2 million.

Susan Craig: Are you thinking about the project bank accounts threshold that was reduced?

Ivan McKee: Yes.

Susan Craig: The community benefit threshold is set at £4 million in the 2014 act.

Ivan McKee: Okay. That is something that we can look at, if it is seen as a specific barrier and businesses are asking whether it can be changed. The project bank accounts mechanism allows us to pay tier 2 and tier 3 suppliers through those bank accounts to make sure that they get the benefits of prompt payment. If people are asking for change, we will continue to monitor the situation and see what opportunities there are to make changes to those limits.

Willie Coffey: This is my final query. Again, it goes back to a local experience.

A number of years ago, a local company with 100 years of experience of doing wonderful work in the electrical sector was suddenly faced with a requirement to have internationally recognised quality management standards, and had the difficulty of throwing resources at that. That all suddenly emerged in the modern era, and the company's initial reaction was, "For goodness sake! What have we been doing for 100 years if it hasn't been any good?" Is there still a sense that we are asking smaller companies, which might not have the resource, to embrace changing

standards and therefore miss out on opportunities in future, when such companies, as shown by their track record, are clearly capable of delivering?

Ivan McKee: Electrical standards are not what they were 100 years ago. You are not quite old enough to remember that, but I remember them from 30 or more years ago. The world has moved on, and electrical standards is an area in which you would want to get it right, for obvious reasons. It is probably a good thing to have internationally recognised quality standards, certainly in my experience of working in business.

Again, it comes back to ensuring that we have the standards to protect the quality of the work that the public will be face to face with, be that in schools, hospitals or wherever. As you know, it is really important to get the quality of work absolutely right. We definitely cannot compromise on that, so having those standards and requirements in place is really important.

On the flipside of that, the work of the supplier development programme is to help suppliers to increase their capability and maintain a standard that enables them to bid for work. Those criteria need to be proportionate, and the nature of the contract will dictate the requirements that we put in place.

We also now have the single point of inquiry. Suppliers can put in their query, raise their concerns and get responses that will hopefully help them to understand better what the requirements are and why they are there, and help them to access support to increase their capability and the qualifications that they hold.

Willie Coffey: My question was not about the company's unwillingness to embrace standards; it was about the additional cost and burden for a smaller enterprise to move into that kind of territory, when the bigger boys, by comparison, can throw money at it pretty easily. My question was about that imbalance.

Ivan McKee: I am sure that the company is very willing to embrace the standards. As I said, the supplier development programme, and the training and support that go with that, is to help companies to embrace those standards. It depends on the contracts that they are going for in the private sector, but those standards will help them to access bigger contracts, so it is a win-win for everybody.

Graham Simpson (Central Scotland) (Con): Minister, before you became an MSP, you had a successful career in business, which is quite unusual. You are one of the few ministers who has that background, but it is very useful in your job. Have you had any personal experience of using the procurement system? What did you find?

Ivan McKee: The microbusiness that I ran was business to business and all in the private sector. I did not engage with procurement in my consultancy business, but I did so through leadership roles and interests in manufacturing businesses. This is going back a number of years—10 years or so ago—before the 2014 act was passed and the latest criteria and processes were put in place, but for the manufacturing businesses that I had an interest in then, it was problematic to access public sector opportunities. Therefore, looking at it from the other side of the fence, it is good to see the progress that has been made. Many of the challenges have, I hope, been addressed.

10:15

Graham Simpson: So you think that things have improved since you were in business.

Ivan McKee: I would say so. Certainly, that is what I have found from talking to businesses in the round-table sessions that I have been involved in; from looking at the process that is in place now and the supplier development programme, which is a relatively new initiative that involves many thousands of businesses; and from looking at the online portal and seeing that it is relatively easy to understand and to access what is there. We also have the strategies that local authorities have put in place to give visibility to businesses. There has been a lot of progress on the back of the 2014 act and other work that has been done over the past number of years.

Graham Simpson: That is interesting.

Obviously, we have left the European Union. I am not asking you to make a political comment on that, but a number of Scottish councils have said that there is an opportunity to strengthen or change procurement regulations now that we are out of the EU. I know that you were not in favour of leaving the EU, but do you see the possibility of strengthening some localisation requirements, for example, which other members have raised?

Ivan McKee: We have to be careful, because being out of the EU does not mean that there are no requirements, particularly in public sector procurement. That is because it is really important that we comply with the World Trade Organization's agreement on Government procurement, or GPA, which lays down the rules internationally to create a fair playing field for businesses. Of course, that means that Scottish businesses can bid for contracts internationally, which is hugely important for all kinds of reasons that I do not need to explain to the member, and the quid pro quo for that is that international businesses are able to bid for contracts in Scotland.

We still need to comply with the WTO GPA regulations that are in place. Of course, the UK also has its trade and co-operation agreement with the EU, which addresses many of those issues. Therefore, when we actually look at the space and the ability that exists there to move away from the EU regulations, we find that it is fairly limited. There might be examples where we have that ability, and we are comfortable about having conversations to understand what opportunities there might be. However, we need to bear in mind that, for lots of good reasons, including economic ones, we want to stay as closely aligned to the EU requirements as possible, where it makes sense to do so.

Taking that in the round, there might be examples where things can be slightly different, but we have to be careful not to go overboard in talking about the difference that that makes in reality.

Graham Simpson: Yes, I would not want you to go overboard about anything, Mr McKee. However, you recognise that there is some wriggle room there, so will you look at that?

Ivan McKee: As I said, it is important to understand that in the context of the WTO GPA restrictions and the implications of the UK's TCA with the EU. People can easily overstate the opportunities that the situation creates.

Graham Simpson: Fair enough.

Maurice Golden (West Scotland) (Con): I refer members to my entry in the register of interests.

The Scottish Government previously funded a sustainable procurement training programme, which trained 220 procurement professionals before it was cancelled in 2016. Does the minister plan to reinstate that programme, and has consideration been given to establishing an academy for excellence or an accredited qualification?

Ivan McKee: Are you talking about an accredited qualification for small businesses to supply the public sector?

Maurice Golden: I mean one for procurement professionals, so that we enhance their professional development.

Ivan McKee: That is on-going through the training that is part of the supplier development programme. As I mentioned, that programme is continuing and 17,500 suppliers are working through it, with 1,500 registered during the past year. A huge amount of work is done through that programme to help small and medium-sized enterprises to upskill and be able to access those requirements. Professional bodies deal with procurement skills, but our focus is on supporting—are you talking about the skills for

SMEs to have access to public sector contracts? Is that specifically where you are focused?

Maurice Golden: It is more on how we can focus the procurement professionals in the NHS and local authorities.

Ivan McKee: That work is continuing as well. I will let Susan Craig in shortly, but that engagement takes place through a number of mechanisms. For example, I am engaging with senior procurement professionals across the public sector on those issues from a leadership point of view. Work is on-going to engage with buyers all the way down through the different organisations through e-learning and so on to help them understand more thoroughly the duties in the legislation and how they can best take those forward and get the benefits of them. A number of targeted capability programmes are focused specifically on that work with public sector buyers to give them that skill set.

Susan Craig: I can add something to that, if it is useful. Maurice Golden referred to sustainable procurement duty training, which is an on-going focus for us because it provides the opportunity to develop policies and outcomes through procurement. We have a national framework available for that kind of training. In addition, we have a set of tools that provide supporting advice and guidance on various outcome areas, including climate, fair work and equalities. Professionalisation is very much a key area for us, so we have a national procurement development framework that is looking at effective recruitment, continuous professional development and career paths for procurement professionals. For the young, we have a focus on a procurement people of tomorrow programme, in which we look at bringing new entrants into the area through apprenticeships and so on.

Maurice Golden: I thank both of you for those comments.

Despite the First Minister declaring a climate emergency in 2020, the Scottish Government has missed a host of environmental targets, from recycling and renewable heat to biodiversity and source emissions. Although the Procurement Reform (Scotland) Act 2014 was passed in the previous session of Parliament, there is still a lack of progress in the area. Does the minister think that sufficient weighting is given to environmental measures and procuring circular economy models rather than to more traditional processes?

Ivan McKee: I think that you will find that we are making very good progress. Some issues that we would otherwise have taken forward more timeously have been postponed due to the Covid pandemic over the past 12 months, which is well recognised.

Climate and the circular economy are obviously a key part of the sustainable procurement duty. Looking at the whole picture of the balance of selection criteria, I note that it ranges from a 60:40 split, which is 60 per cent in favour of quality, and the various aspects that are included in that, versus 40 per cent on price, up to 70 per cent or more on quality and 30 per cent or less on price. The balance is very much on the non-price aspects, and climate and renewables are part of that. Clearly, there is 100 per cent to play with, so the more we give to climate and the circular economy, the less we will be giving to other aspects that we would want to consider as being hugely important as well.

There are great examples of where we have made tremendous progress in procurement because the climate imperative is part of the duty. As you will see from purchasing authorities' annual reports, that drives their procurement decision-making process. We continue to focus on that aspect with them, in recognition of its importance.

Maurice Golden: I have a quick follow-up on that, minister, on which I am happy for you to write to the committee with a response. What you say about price and quality would not effect a change in the behaviour of public sector procurers so that they focus on circular economy business models, whereby they focus on renting, leasing and service models for lighting, for example, rather than focusing on the capital spend to purchase lighting outright. Are you seeing a change in that space, with a move from the traditional procurement models to circular economy procurement?

Ivan McKee: Yes. Again, if you look at the infrastructure plan that Michael Matheson published recently, you will see that the focus is on how building something new should be the last thing that we do and that looking to reuse, repurpose and adapt what we have got should be the first thing that we do. From the very top of the infrastructure spend, which is where much of this will be impacted, there is real recognition and a strong direction that that must be done, and that percolates down to the individual procurement decisions that are made in each part of such projects.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I will continue Willie Coffey's early discussion on SME access to large frameworks. There is no doubt that there has been progress in awarding more contracts to SMEs, but how do you combat the often mistaken belief that many public bodies hold that larger contracts are better value for money, cheaper to manage and easier to get approved?

Ivan McKee: Again, you always have to strike the right balance. You need to be able to manage contracts in a way that will get the right value for

the public purse; you also need to be able to control them from a quality and implementation point of view. Making the contracts as small and manageable as possible is very much the steer. The lotting process whereby we break up larger contracts into smaller lots, which makes contracts more accessible to SMEs, is an important part of that. Big progress has been made in that regard, and we are continuing to look at that to see what further opportunities there are.

Lotting allows us to get the balance between having the contracts as small as possible to enable SMEs to access them and not making the process unmanageable and cost prohibitive.

Gordon MacDonald: On the point about breaking down larger contracts, the "Scottish Government Procurement Annual Report" states:

"we consider splitting up larger value contracts and frameworks into specialist or geographical requirements."

Can you say how many frameworks were awarded to SMEs on that basis?

Ivan McKee: I do not have that data. It will be somewhere, so it might be that we need to get back to you on that. However, I ask whether Susan Craig or Nick Ford has any number or examples.

Susan Craig: I can give some figures on what you described as specialist or regional lotting of higher-value contracts: 22.5 per cent of those contracts were lotted. We do not have figures on how many SMEs have been engaged in the various lotted contracts, just because our data systems do not collect that level of detail. It is significant that 22.5 per cent were lotted to provide the opportunity for smaller businesses to engage in the larger frameworks.

10:30

Gordon MacDonald: I have a final point about large contracts. Are there any changes that you would like to see to the procurement process?

Ivan McKee: We will continue to move forward with the things that we have in train. Those are right across the whole range, including understanding the importance of small businesses, looking at opportunities to build capacity in Scottish businesses, continuing to push the prompt payment aspects further down the supply chain and so on.

We have focused a lot on the demand side to make sure that procurement professionals do what they need to do. We have done a lot of work on the supply side with regard to supplier development programmes, but there is possibly more that we can do to ensure that we are strategically understanding which Scottish suppliers we need to work with to get them to a

place, over time, where they have the capability, capacity, skills and technical knowledge to access bigger contracts. It is possible that we can be more strategic about that in understanding who those players are and how we get them to that place.

Gordon MacDonald: My final question is about competitive tendering. We have had several respondents suggest that the competitive tendering model is ill suited to the social care sector, as the procurement process puts downward pressure on employees' pay and terms and causes recruiters issues with losing staff to other sectors that offer better terms. Has the Scottish Government evaluated the effect of pausing competitive tendering during the pandemic, and have you given any consideration to long-term changes?

Ivan McKee: There are a few things in there. All of this is in the context of the national care service work that is being taken forward. That work will come forward as proposals, including proposals on procurement. Procurement is not going to run off on its own and start making changes piecemeal outside the context of the national care service—it is an important overarching piece of it.

Local authorities have to consider the full range of aspects, including quality as well as price, which is something that we have that the rest of the UK does not. In the rest of the UK, they can make these decisions purely on price. In Scotland, local authorities are not allowed to do that; they need to look at the full range of aspects in their considerations. Local authorities already have the ability to make these decisions through processes other than tendering. They can do so through partnership or other routes that are not open tendering—those routes are already in place.

It is easy to say that we should pause the process, but that would have a lot of implications that would, in fact, make things more complicated, not less, given where things are at the moment. I think that the correct approach is to get the national care service model worked up and articulated, and procurement is clearly a key part of that. When that happens, those proposals will come forward and be implemented, and that will address the issues.

Procurement professionals in the public sector are aware of the issues and of how they can work as part of an overall process to do exactly what you are articulating, which is to have a process that is focused on fair work that is, at its core, providing high-quality service and doing so in a way that values the sector's workforce.

The Convener: There are no further questions from committee members. I thank the minister and Susan Craig for joining us.

10:34

Meeting continued in private until 11:15.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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