

Institution: 10007857 Bangor University
Unit of Assessment: 20 Law
Title of case study: Removing SME Public Procurement Participation Barriers in Wales
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Since 2008, Bangor Law School has pioneered research into the legal and risk barriers that inhibit SME participation in public procurement. This has had a transformational impact on 5 substantial non-academic communities: SMEs have benefited from improved access to public contract opportunities; Local Authorities have reduced procurer-evaluation hours and process times; the Welsh Government have implemented a Supplier Qualification Information Database tool improving tender-entry for SMEs; Representative Bodies (e.g. Confederation of British Industry) have extensively quoted our research findings to lobby Government to eradicate SME tendering barriers and our Tender Review Instrument has been adopted by International Agencies such as the Canadian Government.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Context and Methodology: With the advent of the 2007 global financial crisis, SMEs, starved of cash flow, faced a dysfunctional non-transparent public procurement market, with public procurement processes erecting structural barriers to successful SME participation. The Law School procurement research group formed the Bangor Institute for Competition & Procurement Studies, conducting evidence-based research projects, funded by substantial grants from the European Union Ireland/Wales programme and the Welsh Government. In Phase I of the research (the Barriers Research Project, 2008/9) our programme focused on the procurement transparency theme, isolating, identifying and categorising 6 main procurement barrier groups inhibiting SME engagement in public procurement. The Bangor Research Team was led by Professor Dermot Cahill (from 2007), assisted by Ceri Evans (Research Assistant 2009, Research Lecturer from 2010) and Gary Clifford (Research Lecturer from 2010) . Empirical data was gathered from 118 Welsh SMEs, and EU law jurisprudential research conducted in parallel, to assess barrier compatibility with EU procurement law. Phase II, the <i>Winning in Tendering</i> Project (August 2010 to November 2012), was designated as a “Strategic Project” by the EU INTERREG programme on account of the transferability of its findings to other EU Member States. This research was undertaken by Cahill, Evans, Clifford, Eyo (Lecturer from 2011) and Telles (Lecturer from 2011). We investigated low value procurement legal feasibility, focussing on EU Remedies Directive implications for SMEs seeking judicial review, electronic procurement and cross-border legal-test issues and finally developed a methodology and intervention to help SMEs overcome procurement-success inhibitors identified in Phase I.</p> <p>This research led inter alia to the development of the bilingual Bangor Law Tender Review Instrument (TRI) and low value procurement tender design methodology, following research conducted with over 200 companies in Wales & Ireland. The TRI overcomes procurer feedback deficiencies and assesses suppliers’ tender submissions against a number of criteria including European Union Transparency of Tender Evaluation Criteria Jurisprudence, Scoring Methodology Relevancy/Transparency Jurisprudence and ultimately involves a Final Impact Analysis which measures whether the participating SME’s tendering strategy, behaviour and/or results have changed for the better. The outcome of the entire 2008-2012 research programme established Bangor as a leader in procurement law and barrier research, with a reputation as a trusted source of advice for diverse non-academic communities., Our research was driving policy change by Government, changing poor public sector procurement practices and being taken up internationally by procurement policy formers and SME representative organisations. In September 2013, Bangor’s contribution to the <i>Winning in Tendering</i> project was runner-up in the industry-leading UK Chartered Institute of Purchasing & Supply Awards category for Best Procurement Project.</p>

Key Insights/Findings:

- i. Low Transparency of Evaluation Criteria: We uncovered significant evidence that public bodies in Wales were not providing sufficient tender evaluation information, contrary to European Court of Justice case law, frustrating the application of Judicial Review principles and creating an unnecessary barrier to tendering by SMEs [a1, a2].
- ii. Misinterpretation of European Law: We found overwhelming evidence of widespread non-advertising of 'sub-OJEU-level' contracts across Wales (i.e., contracts below £130,000 which are of the ideal size for SMEs because of their low value): this practice was frequently contrary both to the public sector's own organisation-specific financial standing orders on advertising thresholds, and also contrary to European case law on advertising contracts possessing a 'cross border' interest element [a1, a2].
- iii. Widespread use of Disproportionate Risk Thresholds: Our research revealed that risk criteria used in tenders were often disproportionate to the actual risk of contract failure and hence were unnecessarily locking out SMEs [a1, a2]. Given that 99% of Welsh businesses are SMEs or micro-businesses, this was having a significant negative impact on the Welsh economy.
- iv. Lack of Contract Standardisation: Public bodies, and even units within the same public body, were using widely different pre-qualification questions for requesting essentially common data, frustrating SME efforts to win tenders [a1, a2].
- v. Method of Improving Tender Success Rates: We found that public bodies were not providing meaningful feedback to unsuccessful tenderers to enable them to optimise future submissions. The Bangor TRI overcomes this deficiency: an SME using the Bangor Law TRI will increase its tender success rate within a 12 month period, from typically winning 1 in every 5 tenders, to 2 in every 5 (i.e. doubling their win-rate) [a1, a2].

3. References to the research (indicative maximum of six references)**Key Publications:**

[a1] Cahill, D., 'The Ebb & Flow, the Doldrums and the Raging Tide: Services of General Economic Interest, and the Raging Tide of Article 106(2) over State Aid and Public Procurement' *European Business Law Review*, vol. 21 Issue 5, 2010, 629-662. A copy of this output is available on request

[a2] Telles, P., 'The Good, the Bad, and the Ugly: EU's internal Market, thresholds and Cross Border Interest', *Public Contract Law Journal*, vol. 43, Issue 1, 2013, 3-27. submitted to REF 2014. (REF Identifier 2020).

4. Details of the impact (indicative maximum 750 words)**Our research has had the following distinct Impacts:**

1. Adoption of Law-Proof Risk-Related Approach to Tender Design: Following our findings on contract standardisation and the recommendation that tender evaluation criteria be transparently defined, the Welsh Government established a *Procurement Implementation* Board in 2010 to create the Supplier Qualification Information Database ('SQUiD') tool. As a result of our findings, public purchasers using SQUiD move from a *pro-forma* approach to tender design, to a new *law-proofed* SME-friendly, risk-related approach. This was immediately adopted by 64 public sector bodies in Wales. SQUiD has been used more than 150 times to date, including by NHS Wales, Gwynedd County Council, Carmarthenshire County Council, Rhondda Cynon Taff Council and Pembrokeshire County Council. In 2012, Jane Hutt, the Minister for Finance, mandated all 109 public sector bodies to use the approach advocated by SQUiD [b2, b3, b6]. Since the introduction of SQUiD, the proportion of major Welsh public sector contracts being won by Welsh businesses

has increased from 1/3 in 2010, to 2/3 by 2013 [b9]. Less Welsh public sector spend has therefore been 'lost' to competitors located outside of Wales.

2. Judicial Review Impact / Legal Compliance Impact: The SQUiD promotes the adoption of transparent tender evaluation criteria in line with recent European Court of Justice Case Law set out in the *Barriers research*. Unlike England, Scotland and Northern Ireland, there have been *no* judicial review cases in public procurement originating in Wales, a testament to the transparency-generating behaviour that now encourages procurers in Wales to describe the tender requirements and evaluation criteria clearly at the tender design stage.

3. Changing Government Policy to bring Transparency to “Low” Value Procurement: As a result of our *Barriers* research, we recommended that all public contracts should be transparently advertised once they exceed £25,000 in value. This recommendation was adopted by the Welsh Government in 2009. As a result, the annual number of public sector contracts valued at less than £130,000 advertised on the National *Sell2Wales* website increased by 81% between 2009 and 2012 [b2, b10]. Over the same period, public sector requests for quotes publicly advertised increased by 150% [b2]. NHS Wales followed suit in 2010, and adopted our recommended contract advertising threshold of £25,000 [b2], resulting in a major increase in transparency of commercial opportunities for SMEs seeking to win NHS business. In 2012, the Minister mandated this *Barriers* Recommendation such that all of the Welsh public sector must adopt it [b6].

4. Changing Government Policy for the entire Public Sector: In Dec. 2012, Minister Hutt mandated the adoption of the recommendations of the *Barriers* research in the Welsh Government's *Welsh Public Procurement Policy Statement* [b6]. This followed the August 2012 McClelland Review “Maximising the Impact of Welsh Procurement Policy which labelled the Bangor Law School *Barriers* research as *outstanding and seminal* [b2, b7]. Our research changed Government policy from an ‘Opt-in’ to a *Mandatory* approach for the Welsh public sector [b2, b6].

5. Achieving Significant Low Value Procurement Progress: Our research with Carmarthenshire County Council in South Wales and Gwynedd County Council in North Wales (combined spend £265m per annum) has yielded dramatic results in terms of reducing tender procedure process time to around 38 days, whilst the UK Government targets a 120 day tender award timescale (*i.e. a 66% improvement on the UK Government's target*). Significantly, using the “Bangor simplified open procedure”, both Councils have reduced the length of their tenders by over 80%. The reduction in procurement officer input to a mere 20 hours from start to finish has saved each Council significant time and money in tender design, development and assessment. This represents a substantial efficiency gain. This is also very welcome to SMEs as shorter tenders, accompanied by speedier tender award decisions, are crucial. Carmarthenshire Council are now rolling out the “Bangor simplified open procedure” for all spend up to £75,000. Other Welsh Local Authorities are also expected to follow suit [b2, b4].

6. International Adoption of Bangor Research: The Office of Small and Medium Enterprises within the Public Works & Government Services Canada have modelled their tendering methodology on the TRI [b5]. The TRI methodology has been extensively used within 11 Local Authority regions in Ireland since 2011. In 2013, the Enterprise Europe Network (Flanders) cited the TRI as the perfect methodology for improving tendering success rates.

7. SME Tendering Competency Development based on our research: The Welsh Government's *Business Wales-Tendering* refers to the Tender Review Instrument in the “How2Tender” workshops they deliver to Welsh SMEs. It has been praised by Value Wales (Welsh Government Procurement Division – b2) and the Confederation of British Industry [b3], as well as by the Federation of Small Businesses. The TRI is enhancing tendering training provision to Welsh businesses: the TRI findings have directly fed into, and form a significant part of, the widely praised “Advanced How2Tender” 2013 Welsh Government training module/workbook run by *Business Wales – Tendering*. Cardiff University are referring to the TRI in their procurer feedback letters [b2] and Value Wales are recommending that all public sector organisations should refer to it [b2]. The Project Director, North Wales Procurement has also welcomed the value of the TRI to SMEs

seeking to improve their tendering competency and success rates. In May 2013, the Economic Ambition Board for the alignment of current Local Authority Supplier Development Services in North Wales proposed that the TRI should be adopted extensively throughout the region [b2].

8. Using our research findings, SMEs & Social Enterprises have increased their tender success rates: Dynamix, a Swansea based social enterprise with a workforce of 14, used the TRI and won the Welsh Government National Procurement Award (March) 2013 for “Most Improved Supplier” in tendering. Following TRI use, within 1 year, its tender success rate doubled from 20% to 41%, accompanied by a financial turnover increase of 36%. Even more significantly, they were successful in joining 4 lucrative framework agreements that have secured their future (having not succeeded in joining any before), allowing them to safeguard their employees’ jobs and indeed to award pay rises. The second and fourth placed suppliers in the Welsh Government National Procurement Awards (Advent Project Management and Arwel Jones Associates, both micro businesses) were also TRI beneficiaries (the latter’s win rate increased from 11% to 50% following TRI intervention) [b1, b2, b3, b5].

5. Sources to corroborate the impact (indicative maximum of 10 references)

- [b1] Principal, Arwel Jones Associates, Letter, April 26th 2013.
 [b2] Head of ESF Programme, Value Wales(Welsh Government), Letter, April 23rd 2013.
 [b3] Assistant Director, CBI, Letter, January 10th 2013.
 [b4] Procurement Manager, Carmarthenshire County Council, Letter, October 8th 2013.
 [b5] Regional Director, Office of Small and Medium Sized Enterprises, Public Works and Government Services Canada, Letter, October 10, 2013
 [b6] Minister for Finance and Leader of the House, “*Wales Procurement Policy Statement*”, 6 December 2012 (pages 5 & 6):
<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/welshprocurement/?lang=en> ;
 [b7] Chair of Skills Development Scotland, CBE, “*Maximising the Impact of Welsh Procurement Policy*”, Welsh Government 2012 (pages 58, 70 & 112):
<http://wales.gov.uk/docs/dpsp/publications/valuewales/barrierstoprourementopportunity/090520barrierstoprourement2en.pdf>
 [b8] Welsh Labour Party, Welsh Labour Manifesto 2011 – “*Standing Up for Wales*”, (page 14):
<http://www.welshlabour.org.uk/uploads/welsh-labour-manifesto.pdf>
 [b9] Head of Policy and Capability, Value Wales, Email to Welsh SME, October 7th 2013.
 [b10] Common Key Performance Indicators, Value Wales (Welsh Government), 2013.