

Fulfilling its promise? Strategic public procurement and the impact of equality considerations on employers' behaviour in Scotland

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Paper Title

“Fulfilling its Promise? Strategic Public Procurement and the Impact of Equality Considerations on Employers’ Behaviour in Scotland”

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Summary

Public administration is an important force influencing the state of equality in today’s society. Like budgetary choices, public procurement has increasingly gained attention as a means to promote equality. Yet, important gaps in knowledge pertain, especially regarding the impact of equality requirements in public procurement on company behaviour. This article sheds first light on the impact strategic public procurement has on employers’ behaviour by constructing a business ‘benefit’. Based on empirical research, his article highlights that companies’ perceive a limited prevalence of equality stipulations in Scottish public procurement practices and raises doubts about the impact of public procurement practices to create a successful business case for equality.

Impact Statement

Over the last few decades, equality considerations have gained increasing importance in public procurement. Yet, an important gap in knowledge exists regarding the impact of equality sensitive public procurement on companies’ behaviour. This paper sheds light on the impact of public procurement practices as a lever for incentivising companies to adopt equality related measures. Focusing on Scotland, this article raises doubts about the prevalence of equality considerations in public procurement practices and on the impact that using public procurement to create a business case has on company behaviour if it is not

accompanied by supplementary measures. This article will have resonance for policy-makers at different levels who seek to utilise public procurement as a lever to promote equality.

Key words:

Gender equality, public procurement, public sector equality duty, business case, Scotland.

1. Introduction

Public spending is a major factor when it comes to promoting equality or reinforcing inequalities. Budgetary choices, which are seemingly gender-neutral, have been shown to lead to highly gendered outcomes (Bjørnholt and McKay, 2014; Elson, 1995, 2016; Himmelweit, 2002; Łapniewska, 2015; O'Hagan, 2016). These budgetary choices interact with inequalities based on gender as well as those grounded in age, ethnicity and race, and their intersections (see for example WGB UK, 2017). Like general budgetary choices, decisions on how to design buildings and services and how to purchase can have important impacts for equality. The design of goods and services shapes their accessibility and thereby influences equality outcomes. Public purchasing practices can furthermore influence the conditions for the workforce employed in works and services. Especially when contracting for services, where personnel costs often amount to a considerable percentage of total costs, price-led contracting may contribute to the deterioration of wages and working conditions and foster processes of de-skilling (Benjamin, 2015; 2016; Grimshaw *et al.* 2014). Obviously, worsening working conditions and de-skilling have negative impacts for those employed in these contracts. As public and private services have a high importance “in shaping women’s employment opportunities” (Rubery *et al.*, 1998: 3), contracting out has been argued to have resulted in women being “the hardest hit by austerity measures designed to outsource public sector services” (Batt and Appelbaum, 2017: 81). In addition to the impact on the employees delivering the service, working conditions and de-skilling have also been shown to affect the quality of services (Benjamin 2016; Epstein 2013). As a result, they affect the recipients/consumers of services as well as those employed in the delivery of these services. Similar to the situation for employees, where women were disproportionately affected (Corby 2011: 110), the importance attached to the quality and accessibility of services is linked to the societal position of the individual and broader inequalities. For instance, caring services are of particular importance to people with active caring responsibilities, especially if they are the sole or primary carers. As engagement in the paid and unpaid economy is highly gendered, such services are especially (but not only) important for (particularly heterosexual) women (Himmelweit, 2002; Perrons, 1999; author

2012). Yet, the gendered impact of services is not limited to such obvious cases as caring services. Empirical research suggests that the use of services and access to services varies among others by gender (among others Cheung and Phillimore, 2017; dell'Olio et al, 2011; Tastsoglou et al., 2014). Adapting Himmelweit's (2002) argument that efficient and fair economic policy inherently depends on gender analysis, it can be argued that fair and efficient public procurement practices that promote equality rather than reinforce or increase existing inequalities need to account for gendered realities.

Public procurement, the public purchase of goods, works, and services, accounts for an important part of total government spending, about 30% on OECD average (OECD, 2015). Against the background of high amounts of public spending on the purchase of goods, works, and services – and the importance of the works undertaken and the services delivered thereby – public procurement has been labelled “one of state and local governments' most important jobs” (Potoski, 2008: S58). Given the high amount of public spending for purchasing goods, works, and services, it has been widely argued that public administration can use public contracts as a lever to promote the adoption of certain business practices (among others Steurer *et al.* 2012; Wilhaus 2015). In this context, including equality considerations in public procurement has been pointed out as an important lever to foster equality (Callerstig, 2014; European Institute for Gender Equality, 2016). By coupling the award of public contracts, which are sources of profits for companies, public authorities can create a business case in which public contracts act as an incentive for actual and potential bidders to adopt certain measures, in our case of equality considerations this would be measures to promote equality. Legal regulations seeking to use public procurement as a lever for (mainly gender) equality have increasingly spread in different countries (Medina Arnàiz, 2010; Nyeck, 2015; author)

Yet, while public procurement has been highlighted as a driver for change and legal regulations increasingly refer to equality and public procurement, important gaps in knowledge persist, particularly regarding its impact on company behaviour. Individual case studies have analysed single examples of how public administration used their purchasing power to promote access to male-dominated sectors for underrepresented groups (Wright, 2014; Wright & Conley, 2018) and to implement gender mainstreaming in its purchasing practices (Callerstig, 2014). While attention is focused on public administration and its practices on the one hand and successfully implemented equality considerations on the other, the reach and depth of public procurement to incentivise companies to adopt measures to foster equality remains neglected. An important gap in knowledge exists regarding the impact of public purchasing practices on company behaviour more generally

and the question whether and to what extent the inclusion of equality related stipulations acts as an incentive for companies to adopt measures to promote equality more specifically.

Seeking to tackle this gap, this article presents findings from an exploratory study that examines the impact of equality sensitive public procurement on business behaviour. More specifically, we explore the impact that the inclusion of equality related considerations in public procurement has on the behaviour of enterprises as actual or potential providers of goods, works, and services. This article proceeds as follows. Initially, a brief outline of the relationship between public spending for the purchase of goods, works, and services on the one hand, and equality on the other is given. Highlighting the underlying reasoning that public procurement's potential to promote equality is at least partially linked to potential economic benefits for companies, this paper links the study of equality sensitive public procurement to existing research on the economic benefits of gender equality. It points out that while a 'business case for gender equality' has been elaborated upon for some time, little evidence exists regarding its impact on companies' behaviour. Starting with an overview of the legal situation, the following section presents findings from an exploratory study on the impact of gender equality requirements in public procurement on company behaviour in Scotland. The conclusion summarises the findings, links them to existing research, and points to the impact of our findings for research and practice.

2. Public sector, contracting & gender equality

Public spending has major impacts for equality. Budgetary decisions, while seemingly gender neutral, are in effect strongly gendered in their effects. As gender unaware budgetary processes may lead to decisions that reinforce inequalities the public sector exerts a major influence on equalities by financing or neglecting to finance specific issues, which impact differently on different groups (Bjørnholt and McKay, 2014; Elson, 1995, 2016; Himmelweit, 2002; Łapniewska, 2015; O'Hagan, 2016). Certain services, such as public transport, may be more important to specific groups (see dell'Olio et al, 2011). Neglecting to fund these services (adequately) can have tangible equality impacts as they affect some groups stronger than others and may reinforce existing inequalities. Against this background, gender budgeting, the "embedding gender analysis in the budget process of governments and public administration" (O'Hagan, 2016: 38), has received increasing attention. However, is not only by adjusting public budgets that public spending interacts with equality.

2.1 Public Procurement and Gender Equality

The purchase of goods, works, and services is an important part of public expenditure. On average, public procurement accounts for one third of total government spending and about 12% of GDP in the OECD (OECD, 2015) and about 14% in the EU (Cernat and Kutlina-Dimitrova, 2015: 2). The UK government alone spends about £240bn annually for the purchase of goods and services (White *et al.*, 2016: 286) and the annual expenditure public on procurement in Scotland amounts to over £10bn (Scottish Government, 2016). Given the high amount of public spending for procurement, strategic public consumption to foster social goals has increasingly gained importance (author).

Consciously designing the good, building, or services can promote (more) equal access as well as (more) equal outcomes. The most obvious example of how the design of publicly procured items and services affects equality outcomes is maybe the design of buildings, where accessibility is a visible feature. In addition, public authorities can include requirements and obligations relating to the workforce involved in the works or the delivery of services. For instance, public contracts may tackle labour market segmentation by including quotas for underrepresented groups relating to the workforce in construction projects (Wright, 2014; Wright & Conley, 2018). This can open employment opportunities for underrepresented groups in specific fields of the labour market and thereby help to decrease labour market segmentation. In addition, the design of requirements relating to qualifications and training in the execution of public service contracts can open qualification opportunities for specific groups that face additional challenges when seeking employment, for instance members of a countries' migrant population (author). Public authorities can furthermore place specific requirements that seek to increase equality, for instance relating to the design of the service, when procuring services (Callerstig 2014). Thereby, the provision of a service can be used to increase societal equality. By coupling an awareness of the potential impact of (seemingly neutral) requirements with specific requirements relating to gender equality, public procurement can take an intersectional approach to the promotion of equality.

In the context of the literature relating to CSR, it has been highlighted that public authorities can utilise their consumer power to create economic benefits related to the adoption of specific business practices. Public contracts are a profitable source of income for companies. When public contracts include stipulations on distinct measures, this specific market is only or preferably open to companies that fulfil these requirements. Therefore, adopting these measures is linked to the potential to opening a new market (that of publicly purchased goods and services), winning public contracts and making (additional) profits. Public authorities can thereby create a 'business case', which can serve as an incentive to adopt specific business practices (Steurer *et al.*, 2012; Wilhaus, 2015). Focusing on equality,

this means that by including equality related features, public authorities can set incentives for companies to adopt specific practices that foster equality.

While equality considerations increasingly gain importance in public procurement, important gaps in knowledge remain. Whereas individual studies on the implementation of equality stipulations exist (Callerstig, 2014; Wright, 2014; Wright & Conley, 2018), an important gap in knowledge persists regarding the impact of public purchasing practices on companies' behaviour more generally. An evaluation of the public procurement law of the German Federal state of North Rhine Westfalia, which addressed the question, remains rather inconclusive. Asked whether they believed that mandatory stipulations regarding measures to promote equality improves the chances of companies committed to advancing gender equality on the market, only 8% of contracting authorities fully and 25% rather agreed while 38% rather and 29% fully disagreed (Landtagsdrucksache NW 16/2771, 2015: 94). Against this background, it comes as no surprise that only 37% agreed to the statement that the law contributed to fostering gender equality within bidding firms while 20% were convinced that it did not promote gender equality. Nearly half of the contracting authorities (42%) participating in the study did not feel able to estimate whether criteria relating to gender equality had an impact (Landtagsdrucksache NW, 2015: 94). Among the companies participating in the study the conviction that the commitment to equality sensitive tendering had an impact was even less pronounced; only 32% believed that the law raised the chances of companies that have measures to enhance equality in place while 77% did not (Landtagsdrucksache NW, 2015: 96). Consequently, the amount of companies that saw the requirement to including equality consideration in tendering as a contribution to a stronger promotion of equality was also low: While only 15% of the companies agreed that the regulation fostered equality, 85% disagreed (Landtagsdrucksache NW, 2015: 98). While this study seems to point to a limited impact of equality stipulations in practice, to date, no comprehensive study exists that examines the impact of equality sensitive purchasing practices on companies' behaviour. Against this background, further research is needed on the impact that using public procurement to create a 'business case' for equality has on the behaviour of companies, as well of those that participate in public contracts as those who do not (yet) do so. Thereby, it seems indispensable to take into account insights generated by a related field of research, which may give indications on the impact of using public procurement as a means to stipulate a business case for gender equality.

3. The 'business case'

In the early 1990s the emerging academic discipline of Human Resource Management (HRM) and the business community, who were aiming to exploit the productive potential of heterogeneous workforces and, in particular, gender balanced management teams, began to discuss equality objectives in terms of 'managing diversity' (Anderson and Metcalf 2003: vii). It has been argued that increasing demographic (largely ethnic, racial and gender) diversity of the workforce helps firms compete in labour and product markets by increasing the available talent pool. Within this context, the argument of a 'business case' for gender equality was born (author). Since then, a rather large body of empirical research has attempted to assess the impact (in)equality in the workplace has for companies and/or to correlate gender equality (however described) to improvements in company performance. Inequality and discrimination have been evidenced to result in higher costs and impact negatively on company performance. Exclusionary and discriminatory practices have been argued to diminish the competitiveness of enterprises, not least in the competition regarding the recruitment of the most talented employees (Krell 2008; Vedder 2006; Hansen and Müller 2003). By increasing the gender balance, companies may increase the talent pool available to them, which may make them more competitive in labour markets (Herring 2009). Gender equality in the workforce has been evidenced to increase employee productivity (Badal and Harter 2014) and engagement (Ellison and Mullin 2014). Inequality and disadvantaging practices have furthermore been connected to higher rates of absenteeism and turnover of staff, which increase companies' costs (Elmerich *et al.* 2007). Against this background, it has been argued that promoting (gender) equality may reduce the costs incurred by discriminatory practices, help attract the most talented employees, stimulate productivity and thereby be economically beneficial to the company. More diverse workforces have been shown to be positively correlated to company performance as they allow companies to draw on a wider range of skills, experiences and perspectives in problem solving, stimulate creativity and enhance the problem-solving competencies of teams (Herring 2009; Krell 2008, Vedder 2006). It has been argued that firms can achieve greater market proximity to female consumers by promoting gender equality (Cunningham and Roberts 2007). In addition, gender balance, or a slight majority (as opposed to the mere presence) of women is argued to limit the potentially negative effects of conflict in heterogeneous groups (Isidro and Sobral 2015).

The 'business case' argument has been put forward, and often evidenced, by academics as well as multi-national corporates and consultants (McKinsey & Company, 2015; Catalyst 2014) and supra-national bodies such as the International Monetary Fund (2013) and the World Economic Forum (2014), who, it could be argued, have a vested interest in maintaining 'voluntarism' with respect to gender equality. While the 'business case' is clearly

palatable to business interests, the efficacy of 'transnational business feminism' (Roberts 2015) to advance equality has been called into question by feminist scholarship (Cullen & Murphy 2017; Elomaki 2015; Roberts 2015). Different critical arguments have been brought forth that raise questions regarding the impact of economic benefits on company behaviour. With this in mind, the business case argument has been described as at best 'contingent' and 'partial' (Dickens 1999). Most importantly, no clear evidence shows that business case arguments led to companies adopting measures to promote equality. Rather, research has shown that employers' main motivations for taking action on gender equality, including on gender pay gap reporting, is the risk of litigation (Kirton and Greene 2010; Close the Gap 2013), which suggests that regulatory frameworks - the 'stick' (Dickens 1994) - may remain more effective than potential business benefits - the 'carrot' - (*Ibid*). Against this background, the question arises whether and how creating a business case by introducing stipulations on equality in public procurement affects companies' behaviour.

4. Case Study: Scotland

Within the EU, all regulations of public procurement have to contend with the framework set by European primary and secondary law. Initially regulated by primary law only (most importantly by the free movement of goods (Article 34 TFEU, previously Article 28 TEC), the freedom to provide services (Article 56 TFEU, previously Article 49 TEC) and the freedom of establishment (Article 49 TFEU, previously Article 43 TEC)), since the 1970s, European secondary law further regulates public procurement. The latest reform of European public procurement in the early to mid-2010s led to the adoption of Directive 2014/23/EU and Directive 2014/24/EU, which together with European primary law lay down the current framework of public contracting in the EU. While firmly embedded in the logic of the single market and based on the principle of non-discrimination of tenderers, since the introduction of Directive 2004/18/EC, European secondary law explicitly accords a place for social policy considerations. These can be included as long as they do not counteract the principles of the single market and are linked to the subject matter of the contract. In a nutshell, European law explicitly acknowledges that social aspects can be an important part of public procurement while at the same time limiting the range of possibilities (author). Most importantly, while public authorities can impose obligations for the workforce delivering a specific service or works project, they cannot require that companies have specific company policies, for instance on equality, in place (specifically for the impact of regulations relating to the potential to include gender equality considerations: author). Within this context, member states are entitled to legislate on social aspects in public procurement. Over the last few decades, legal regulations have been passed that enable or require public authorities to take

into account equality considerations when tendering, in different countries (Medina Arnáiz, 2010; author).

In Great Britain, different legal obligations are in place to foster equality. Among them are legal obligations that require public authorities to include equality considerations in all their actions, including in public procurement. Section 149 of the Equality Act establishes the so-called Public Sector Equality Duty, which requires public authorities to “have due regard” to eliminating discrimination, harassment, victimisation and similar behaviour that is prohibited and to promote equality. The Duty applies to certain protected characteristics, namely age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. In addition, in Scotland, the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 explicitly obliges public authorities to have “due regard to whether award criteria should include considerations to enable it to better perform the equality duty” (9(1)) and “to whether the conditions should include considerations to enable it to better perform the equality duty.” (9(2)). These regulations that require public authorities to have due regard to equality in procurement are of importance as the existing literature seems to suggest that public authorities limit the use of social considerations in public procurement to those that are legally binding (Landtag Rheinland-Pfalz 2015: 39f; Landtag Mecklenburg-Vorpommern 2015: 28). However, this legal obligation is subjected to a provision that provides public authorities with an exit option: “Nothing in this regulation imposes any requirement on a listed authority where in all the circumstances such a requirement would not be related to and proportionate to the subject matter of the proposed agreement.” (9(3)).

4.3 The Impact of Equality Considerations on Companies' Behaviour in Scotland

To examine companies' perceptions of equality stipulations in public procurement and their impact on companies' behaviour, we conducted a quantitative study using online questionnaires sent to companies, who, at the time of this study (November 2017), had signed up to the Scottish Business Pledge (SBP). The SBP is an initiative aimed to foster progressive business practices in Scotland and invites individual businesses to ‘pledge’ their commitment to pay the living wage and meet the requirements of two other ‘pledges’ from a list of nine, which includes ‘making progress on diversity and gender balance’ (SBP 2018). The SPB is directly underpinned by the business case rationale for equality considerations. The selection bias of targeting the SBP employers was intentionally designed to give an indication of the behaviour of private sector employers who are deemed most likely to adopt measures to promote equality. This relatively small group was selected as it can be assumed that registered SBP employers are some of the most aware and progressive when

it comes to diversity and gender issues. It also offered a small enough population to effectively sample and survey within the confines of a small research project. A database of company contact details was constructed from publicly available company information and 397 emails questionnaires were sent out to the companies. In total, 94 surveys were completed, leading to a response rate of 24%. To gain insights into the size of the companies, the respondents were asked to indicate the number of employees. While not all respondents gave an indication, among those companies that gave an indication of companies size (as measured by numbers of employees), the vast majority (72%) were small enterprises (0-49 employees), about a quarter (24%) were medium sized enterprises and 4% were big enterprises with 250+ employees. The comparatively high percentages of small and medium sized enterprises resembles the general Scottish corporate landscape, which consists largely of Small and Medium Sized Enterprises (SMEs) who account for 99% of all private sector enterprises (Scottish Government 2018). The companies participating in this survey came from the private as well as the third sector and from different fields of activity, including advertising, electronics and IT. The low number of responding employers who were engaged in public tendering prohibits the disaggregation of responses by sector or employer size.

As a first step to understanding the impact of equality stipulations in public procurement on companies' behaviour, it is important to assess engagement with public procurement in general. To gain an understanding of the participants' involvement with public procurement, the survey enquired about their engagement with public procurement. Of all respondents, 51 indicated that they had been involved in tendering and/or bidding for public contracts. The vast majority of these 51 companies (75%) were small enterprises (0-49 employees), 21% were classed as medium (50-249 employees) and 4% were large enterprises (250+ employees). When compared with the general distribution by company size in our sample, the percentage of small enterprises was slightly higher among those companies that were involved in public procurement. It has been widely shown that SMEs face particular obstacles in public procurement, which result for instance from a lack of resources (among others Fee et al., 2002; Loader, 2005, 2011), reflected in their share of public contracts. For instance, in 2011/12 only about 10% of central government direct spent in the UK went to SMEs (Booth, 2013). Consequently, a high share of SMEs (and particularly of small enterprises) is likely to impact the level of engagement with public procurement and can explain the low rate of involvement in public procurement in our sample.

In addition to the engagement with public procurement, it is important to gain an understanding of the (perceived) prevalence (and thus importance) of these stipulations in

procurement. The prevalence of equality stipulations may have an impact on the strength of the incentives set. If companies perceive equality stipulations as prevalent and an important part of public procurement practices, adopting measures to foster equality may be perceived as opening more options for economic benefits than if they are only marginally prevalent. Consequently, a high prevalence may be a stronger incentive to adopt measure than a lower prevalence. Against this background, participants were asked to give an indication of how often equality considerations were incorporated into the tendering process. Overall, a majority of respondents indicated that equality considerations were at least 'sometimes' included in public procurement. Yet, only 22% indicated that equality aspects were always incorporated. However, over one third (35%) of respondents said that they were 'rarely' or 'never' included. Given the fact that the Scottish Specific Duties explicitly require public authorities to include equality considerations, the high percentage of companies that indicated that such stipulations were rarely or never present is noteworthy. This perception may on the one hand be due to an important implementation gap (which may be linked to the existing exit option mentioned above). This could be a general feature or related to the specific contracts, the respondents were involved with: As most of the respondents in our sample are SMEs, it is likely that they are engaged in bidding for smaller contracts, which may be less prone to display equality considerations than bigger contracts. A further explanation may be that the impression that equality considerations are not that prevalent are a reflection of the importance attached to equality stipulations, which may create a distorted perception.

Given the low level of engagement with public procurement among our sample as well as the perceived prevalence of equality stipulations in public procurement, the question arises whether the inclusion of equality related considerations in public procurement has affected a change in the behaviour of these companies. To assess the impact that public procurement practices and the inclusion of equality stipulations have on companies' behaviour, those respondents who had indicated that they were involved in public procurement were asked whether and to which extent public tendering requirements affected their behaviour. The vast majority of respondents (75%), who answered this question indicated that they had not taken any specific equality action in response to public contracting. Only about 16% of those companies that had indicated that they were engaged in public procurement, indicated that they had established at least one specific measure to promote gender equality in response to public tendering. Nearly 6% indicated a change in recruitment practice when hiring employees for a specific public contract.

Having established that only a limited number of companies who are engaged in public procurement reported that they introduced changes as a reaction to equality considerations in public procurement, it is important to see the impact of public procurement practices within a broader framework of incentives that may lead to the adoption of measures to foster equality. To be able to compare the impact of equality related stipulations on company behaviour with other factors that can encourage companies to adopt equality related measures, companies were to choose one or more factors that would motivate them to adopt measures to promote equality from a list of factors. Among all companies, the factors chosen were in order of importance: recruitment needs (33%), legal requirements (23%), avoiding financial or reputational risks (17%), benefits to the company (17%), free confidential support (16%), and better chances of obtaining public contracts (11%). 20% of all respondents said that none of these factors would incentivise them to adopt (additional) measure to promote equality (see table 1).

Table 1: Which factors might motivate you to take more action to promote equality?

	All	Involved in public procurement	Not involved in public procurement
recruitment needs	33%	45%	17%
legal requirements	23%	31%	11%
financial or reputational risks	17%	27%	2%
benefits to the company	17%	25%	7%
free confidential support	16%	22%	9%
nothing	20%	20%	20%
better chances of obtaining public contracts	11%	18%	2%

Interestingly, this question revealed important differences between those companies that were involved in public procurement and those that were not: The share of those saying that a specific factor would influence them to promote equality was consistently higher among the companies that were engaged in public procurement. While our data does not explain this divergence, it may be due to a process of self-selection by which existing equality requirements lead companies that are more eager to promote equality to get more involved in public procurement. A further striking feature in the responses is the rather low percentage of companies who indicate that a better chance of obtaining public contracts, also among those involved in public procurement. Given the fact that the vast majority of these companies are SMES, who oftentimes possess limited resources, this may indicate doubts about the feasibility rather than a lack of willingness. Taken together with the considerable

share of companies stating that free confidential support particularly among the companies that are involved in public procurement, this may suggest that companies, who, like SMEs, have limited resources, lack the adequate knowledge and the resources to implement measures to promote equality. The (perceived) feasibility may in turn affect the impact of stronger requirements in public procurement. The proportion of small enterprises involved in public procurement (75%) is slightly higher than among the companies who are not (72%). Taken together with the fact that for each factor, companies involved in public procurement were more likely to name it as an incentive to adopt measures to foster equality, this might at least partially explain why a higher number of companies involved in public procurement saw support as an incentive (22%) than among those not involved in public procurement (9%). This may suggest that if (perceived) feasibility acts as a disincentive, then strengthening requirements on equality in public procurement may not serve as an incentive if it is not coupled with effective help to devise and implement these measures.

5. Conclusion

Public sector spending decisions have the potential to influence social outcomes (Callerstig, 2014; European Institute for Gender Equality, 2016). Public procurement accounts for a considerable percentage of public spending (OECD, 2015); it has been attributed an important potential as a force to promote equality (Callerstig, 2014; European Institute for Gender Equality, 2016). While legal regulations increasingly bring equality considerations and public purchasing together, the knowledge on their impact in practice remains limited. Bridging the gap between equality sensitive public procurement and the existing literature on the 'business case' for gender equality, this article highlights a gap in knowledge about the impact economic benefits (or the potential for economic benefits) has on business. Seeking to contribute to tackling this gap in knowledge, this article sheds first light on the impact of equality stipulations in public procurement in Scotland.

Based on a survey among Scottish businesses that signed up to the Scottish Business Pledge (SBP), this article first highlights that companies perceive a limited prevalence of equality stipulations in Scottish public procurement practices. Given the legal obligation to have 'due regard' to equality when procuring, this raises the question of how this perception can be explained. This article suggest that it may point to a number of underlying reasons. It may be the result of a major implementation gap, which may be at least partially due to an existing exit option. It could also be caused by the specific contracts the respondents were engaged with: As most of the respondents in our sample are SMEs, it is likely that they are engaged in bidding for smaller contracts, which may be less prone to display equality considerations than bigger contracts. A further explanation may be that the impression that

equality considerations are not that prevalent are the result of a distorted perception. Secondly, the findings presented in this article seem to corroborate the argument that potential business benefits may not provide strong incentives to adopt measures for the promotion of equality (Dickens 1994). Most respondents involved in public procurement did not perceive equality requirements as being always integrated. The perception of a rather low prevalence of equality considerations may have influenced their perception of how much equality measures would improve the chances of obtaining public contracts. Thirdly, however, this article finds that companies who are involved in public procurement were more likely to see a range of different factors (including but not limited to public procurement regulations) as incentives to adopt measures to promote equality. Fourth, this article raises doubts about the potential of public procurement *alone* to generate a business case for equality that incentivises companies to adopt such measures *ex ante*. In this context, it is important to bear in mind that integrating equality considerations in public procurement can undoubtedly have a significant direct impact on equality in the workforce delivering a service or producing a good and equality benefits can derive from the implementation requirements. The introduction of quotas can for instance lead to specific recruitment requirements and thereby indirectly present an incentive to adopt measures that promote equality. In addition, this article highlighted the importance of other incentives such as the availability of free and confidential support. Given the importance a considerable number of respondents attached to the availability of free and confidential support, equality requirements in public procurement should be coupled with other measures that can incentivise companies to adopt measures to foster equality and facilitate their implementation. In brief, the findings suggests that in order for equality stipulation in public procurement to become an effective tool for the promotion of equality, equality considerations in public procurement should be one part of a holistic and comprehensive approach to promoting equality.

Against the background of increasing legislation on equality requirements in public procurement, this article highlighted the importance of examining the impacts of procurement practices on company behaviour. The study is limited by the small sample size and its restriction to the Scottish context. Further research is needed to provide a more robust and comprehensive empirical base. Future research should particularly seek to establish the extent to which equality considerations are included in public procurement and analyse how often and when the option not to include such aspects is taken up by different public authorities and in different sector. As our findings indicate that companies involved in public procurement were more likely to perceive a range of factors as incentives to adopt equality measures, future research should seek to shed light this companies' commitment to promoting equality in relation to their participation in public procurement. Comparative

research could add valuable insights into the factors that contribute to the success of public procurement as an incentive to promote equality to thereby facilitate the successful implementation of equality sensitive public procurement.

6. References

- Aiton, A. (2018a) *Labour Market Update: May 2018* Edinburgh: Scottish Parliament
- Aiton, A. (2018b) *Labour Market Update: June 2018* Edinburgh: Scottish Parliament
- Ali, M., Kulik, C.T. & Metz, I. (2011) "The gender diversity-performance relationship in services and manufacturing organizations" *The International Journal of Human Resource Management* 22 (7) pp 1464-1485
- Anderson, T and H Metcalf (2003) *Diversity: Stacking up the Evidence*. London: Chartered Institute of Personnel and Development
- Annual Population Survey (2018) Workplace Analysis nomisweb data query 26th May 2018
- Badal, S. & Harter, J.K. (2014) "Gender Diversity, Business-Unit Engagement, and Performance" *Journal of Leadership & Organizational Studies* 21 (4) pp 354-365
- Batt, R. and Appelbaum, E. (2017): The networked organisation: implications for jobs and inequality. In Grimshaw, D., Fagan, C., Hebson, G., and Tavora, I. (eds.): Making work more equal. A new labour market segmentation approach. Manchester: Manchester University Press, 70-89.
- Benjamin, O. (2015) "Time is Money: Deskillling Caring Work Through Time Allocation in Services Procurement" In: *WAGADU: A Journal of Transnational Women's and Gender Studies* 14 pp.85-110 (<http://webhost1.cortland.edu/wagadu>)
- Benjamin, O. (2016): *Gendering Israel's Outsourcing. The Erasure of Employees' Caring Skills*. Cham: Palgrave Macmillan
- Bjørnholt, M. and McKay, A. (2014): "Advances in Feminist Economics in Times of Economic Crisis" In: Bjørnholt, M. and McKay, A. (eds.): *Counting on Marilyn Waring. New Advances in Feminist Economics* Bradford: Demeter Press pp 7-20
- Booth, L (2013): Public procurement: small businesses and savings. House of Commons. Standard note. researchbriefings.files.parliament.uk/documents/SN06069/SN06069.pdf
- Callerstig, A. (2014), Can public procurement be an instrument for policy learning in gender mainstreaming? *Scandinavian Journal of Public Administration* 18 (4) pp 51-71
- Catalyst (2014) *Increasing Gender Diversity on Boards: Current Index of Formal Approaches* New York: Catalyst
- Cernat, L., Kutlina-Dimitrova, Z. (2015): "International Public Procurement: From Scant Facts to Hard Data." Chief Economist Note, Issue 1, April 2015. Available online: http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153347.pdf

- Cheung, Sin Yi and Phillimore, Jenny (2017): Gender and Refugee Integration: a Quantitative Analysis of Integration and Social Policy Outcomes. *Journal of Social Policy*, 46, 2: 211-230.
- Close the Gap (2013) Missing out on the benefits: Summary of research on the reporting of the gender pay gap in Scotland available at https://www.closesthegap.org.uk/content/resources/1376469709_Missingoutonthebenefits-CTG.pdf [last accessed 13th March 2017]
- Close the Gap (2018) The Gender Penalty: Exploring the Causes and Solutions of Scotland's Gender Pay Gap available at <https://www.closesthegap.org.uk/content/resources/The-Gender-Penalty-Feb-2018.pdf> [last accessed June 29th 2018]
- Corby, Susan. 2011. "Equality in the Public Sector: The Sky Darkens." In Corby, Susan and Graham Symon (eds.) *Working for the State. Employment Relations in Public Services*. Basingstoke: Palgrave MacMillan, pp 108-125
- Cullen, P and M P Murphy (2017) "Leading the debate for the business case for gender equality, perilous and for whom?" *Gender, Work and Organization* 25(2) pp 1-16
- Cunningham, J and Roberts, P (2007), *Inside Her Pretty Little Head: A New Theory of Female Motivation and What it Means for Marketing* New York: Cyan Books Marshall Cavendish
- Dell'Olio, L., Ibeas, A. and Cecin, P (2011): The quality of Service desired by public transport users. *Transport Policy*, 18, 217-227.
- Dickens, Linda (1994), "The business case for women's equality: Is the carrot better than the stick?" *Employee Relations* 16 (8) pp 5-19
- Dickens, Linda (1999), "Beyond the business case: A three-pronged approach to equality action" *Human Resource Management Journal* 9 (1) pp 9-19
- Dube, Arindrajit and Ethan Kaplan (2010) "Does Outsourcing Reduce Wages in the Low-wage Service Occupations? Evidence from Janitors and Guards" *Industrial and Labour Relations Review* 63(2) pp 287-306
- Ellison, S.F. & Mullin, W.P. (2014) "Diversity, Social Goods Provision, and Performance in the Firm" *Journal of Economics & Management Strategy* 23 (2) pp 465-481
- Elomaki, A (2015) "The Economic Case for gender equality in the European Union: Selling gender equality to decision-makers and neoliberalism to women's organizations" *European Journal of Women's Studies* 22(3) pp 288-302
- Elson, D. (2016): In: Campbell, J. and Gillespie, M. (eds.): *Feminist Economics and Public Policy. Reflections on the work and impact of Ailsa McKay*. London: Routledge, pp 27-37
- Elson, D. (1995) *Male bias in the development process* Manchester: Manchester University Press
- Elmerich, K., Hornberger, S., Karl, D. and Watriner, C. (2007): „Diversity-Management als personalpolitisches und strategisches Konzept- Inhalts- und Wirkungsanalyse von Leitbildern unter dem Aspekt Managing Diversity.“ In: Wagner, D. and Vogel, B. (eds.):

Diversity-Management als Leitbild von Personalpolitik. Beiträge zum Diversity-Management, 17.38. Wiesbaden: Deutscher Universitätsverlag

Engström, A K and R Axelsson (2010) "The double spiral of change – Experiences of privatization in a Swedish Hospital." *International Journal of Health Planning and Management*, 25(2) pp 156-168

European Institute for Gender Equality (2016) "Gender Procurement." Available online: <http://eige.europa.eu/gender-mainstreaming/tools-and-methods/gender-procurement> (16.09.2016)

European Parliament and Council of the European Union: Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, *Official Journal of the European Union*, 47, pp. L134/114–L134/240.

European Parliament and Council of the European Union: Directive 2014/23/EU of the European parliament and of the council of 26 February 2014 on the award of concession contracts, *Official Journal of the European Union*, 57, pp. L94/1-L94/64.

European Parliament and Council of the European Union: Directive 2014/24/EU of the European parliament and of the council of 26 February 2014 on public procurement and repealing directive 2004/18/EC, *Official Journal of the European Union*, 57, pp. L94/65-94/242.

Fee, R, Erridge, A and Hennigan, S (2002): SMEs and government purchasing in Northern Ireland: problem and opportunities. In: *European Business Review*, 14:5m, 326-334.

Flecker, J and C Hermann (2011) "The liberalization of public services: Company reactions and consequences for employment and working conditions." *Economic and Industrial Democracy* 32(3) pp 523-544

Hansen, K. and Müller, U. (2003): „Diversity in Arbeits- und Bildungsorganisationen. Aspekte von Globalisierung, Geschlecht und Organisationsreform.“ In: Belinszki, E., Hansen, K. and Müller, U. (eds.): *Diversity Management. Best Practices im internationalen Feld*: 9-60. Münster: Lit Verlag

Herring, C. (2009) "Does Diversity Pay?: Race, Gender, and the Business Case for Diversity" *American Sociological Review* 74 (2) pp 208-224

Himmelweit, S. (2002): Making Visible the Hidden Economy: The Case for Gender-Impact Analysis of Economic Policy. *Feminist Economics* 8(1), 49-70.

International Monetary Fund (2013) Women, Work, and the Economy: Macroeconomic gains from gender equity IMF Discussion Note SDN/13/10 available at www.imf.org/external/pubs/ft/sdn/2013/sdn1310.pdf [last accessed 10 January 2018]

Isidro, H., & Sobral, M. (2015) "The Effects of Women on Corporate Boards on Firm Value, Financial Performance, and Ethical and Social Compliance" *Journal of Business Ethics* 132 pp1-19

- Kirton, G and A-M Greene (2010) „What Does Diversity Management Mean for the Gender Equality Project in the United Kingdom? Views and Experiences of Organizational „Actors“ *Canadian Journal of Administrative Sciences* 27(3) pp 249-262
- Krell, G. (2008): „Diversity Management: Chancengleichheit für alle und auch als Wettbewerbsfaktor.“ In: Krell, G. (ed): *Chancengleichheit durch Personalpolitik*: 63-80. Wiesbaden: Gabler
- Landtag Mecklenburg-Vorpommern. 2015. Gutachten „Evaluierung des Vergabegesetzes Mecklenburg-Vorpommern“. *Unterrichtung durch die Landesregierung‘ Landtagsdrucksache Mecklenburg-Vorpommern* 6/3887 v. 9.4.2015
- Landtag Rheinland-Pfalz. 2015. Bericht der Landesregierung über die Auswirkungen des Landesgesetzes zur Schaffung tariftreuerechtlicher Regelungen (Evaluation des Landesgesetzes zur Schaffung tariftreuerechtlicher Regelungen) nach Artikel 3 des Landesgesetzes zur Schaffung tariftreuerechtlicher Regelungen vom 1. Dezember 2010. Unterrichtung durch die Landesregierung‘ Landtagsdrucksache Rheinland-Pfalz 16/4799 v. 25.3.2015
- Landtagsdrucksache Nordrhein-Westfalen (2015): Endbericht Teilbereich Evaluierung »Konnexitätsfolgenausgleich und Evaluierung Tariftreue- und Vergabegesetz Nordrhein-Westfalen (TVgG-NRW). Forschungsvorhaben im Auftrag des Ministeriums für Wirtschaft, Energie, Industrie, Mittelstand und Handwerk des Landes Nordrhein-Westfalen. Landtagsdrucksache 16/2711 v. 18.3.2015
- Łapniewska, Z. (2015): Gender budgeting. Rudas-Grodzka, M. (ed.): *Encyklopedia gender: Polec w kulturze*, 159-160
- Loader, K. (2011) Are public sector procurement models and practices hindering small and medium suppliers? In: *Public Money & Management*, 31:4, 287-294
- Loader, K. (2005): Supporting SMEs through government purchasing activity. In: *International Journal of Entrepreneurship and Innovation*, 6:1, 17-26
- Medina Arnáiz, Teresa (2010) “Integrating Gender Equality in Public Procurement: The Spanish Case” *Journal of Public Procurement*, 10(4) pp 541-563
- McKinsey & Company (2015) *The Power of Parity. How advancing women's equality can add \$12 trillion to global growth* McKinsey Global Institute
- Nyeck, S.N. (2015): (Out)Bidding Women: Public Procurement Reform Diffusion and Gender Equality in Africa. *WAGADU. Journal of Transnational Women's and Gender Studies*, 14, 13-56. (<http://webhost1.cortland.edu/wagadu>)
- OECD (2015): Government at a Glance. General government procurement as percentage of GDP and as share of total government expenditures, 2013. DOI: 10.1787/gov_glance-2015-graph88-en. (17.2.2016)
- O'Hagan, Angela (2016): Challenging the Norms: Gender budgeting as feminist policy change. In: Campbell, J. and Gillespie, M. (eds.): *Feminist Economics and Public Policy. Reflections on the work and impact of Ailsa McKay*. London: Routledge, pp 38-45

- Office for National Statistics (2017) Annual Survey of Hours and Earnings Gender Pay Gap Data Set available at <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/annualsurveyofhoursandearningsashegenderpaygaptables> [last accessed 23rd May 2018]
- Perrons, D (2005) "Gender mainstreaming and gender equality in the new (market) economy: An analysis of contradictions" *Social Politics* 12 (3) pp 389-411
- Perrons, Diane (1999): Flexible Working Patterns and Equal Opportunities in the European Union. Conflict or Compatibility? *European Journal of Women's Studies* 6(4), 391-418.
- Potoski, M (2008): "State and Local Government and the Winter Commission." *Public Administration Review*, S1, S58-S69
- Roberts, A (2015) "The Political Economy of "Transnational Business Feminism", *International Journal of Politics* 17(2) pp 209-231
- Rodríguez-Domínguez, L., García-Sánchez, I. & Gallego-Álvarez, I. (2010) "Explanatory factors of the relationship between gender diversity and corporate performance" *European Journal of Law and Economics*, 33 (3) pp 603-620
- Rubery, J. (2013). Public sector adjustment and the threat to gender equality. In D. Vaughan-Whitehead (Ed.), *Public sector shock. The impact of policy retrenchment in Europe* Cheltenham: Edward Elgar Publishing pp 43-83
- Rubery, J.; Smith, M., Fagan, C., and Grimshaw, D. (1998): introduction in. Rubery, J.; Smith, M., Fagan, C., and Grimshaw, D. (eds.) *Women and European Employment*. Routledge
- Sack, D. and Sarter, E.K. (2016): „Der Europäische Gerichtshof und die deutschen Bundesländer – Sozialpolitisierung und Rechtsunsicherheit im europäisierten Föderalismus.“ In: Rehder, B. and Schneider, I. (eds.): *Gerichtsverbände, Grundrechte und Politikfelder in Europa*. Baden-Baden: Nomos, 343-366
- Scottish Business Pledge (2018) available at <https://scottishbusinesspledge.scot> [accessed 14th June 2018]
- Scottish Government (2016): *Public Sector Procurement in Scotland*. Available online: <http://www.gov.scot/Topics/Government/Procurement> (last accessed 15th February 2016)
- Scottish Government (2018) *Businesses in Scotland The Headline Figures* available at <http://www.gov.scot/Topics/Statistics/Browse/Business/Corporate/KeyFacts> [last accessed 23rd May 2018]
- Steurer, R, Martinuzzi, A and Margula, S (2012) "Public Policies on CSR in Europe: Themes, Instruments, and Regional Differences" *Corporate Social Responsibility and Environment Management* 19(4) pp 206-227
- Tastsoglou, Evangelia, Baillie Abidi, Catherin, Brigham, Susan and Lange, Elizabeth (2014): (En)gendering Vulnerability: Immigrant Service Providers' Perception of Needs, Policies, and Practices Related to Gender and Women Refugee Claimants in Atlantic Canada. *Refuge: Canada's Journal on Refugees* 30 (2), 67-78.
- Vedder, G. (2005): „Denkanstöße zum Diversity Management.“ In: *Arbeit* 14 (1) pp 34-43

- Verband der Bayerischen Wirtschaft. (Ed.). (2013). Grenzen für Tariftreue-, Mindestlohn- und Quotenregelungen im Landesvergaberecht. Retrieved from: <http://goo.gl/RLM3Q5>
- Vrangbæk, Karsten, Petersen, Ole Helby and Ulf Hjelmar. 2015. "Is Contracting Out Good or Bad for Employees? A Review of International Experience." *Review of Personnel Administration*, 35(1) pp 2-23
- WBG UK (2017) *Intersecting Inequalities: the impact of austerity on BME women in the UK* available at <https://wbg.org.uk/main-feature/intersecting-inequalities-impact-austerity-bme-women-uk/> [accessed 14th June 2018]
- Webb, J (1997) "The Politics of Equal Opportunity" in *Gender, Work and Organisation* 4(3) pp 159-169
- White, G., Parfitt, S., Lee, C., and Mason-Jones, R. (2016) "Challenges to the Development of Strategic Procurement: A Meta-Analysis of Organizations in the Public and Private Sectors" *Strategic Change*, 25 pp 285-298
- Wilhaus, A (2015) „CSR and Vergaberecht: Nachhaltige öffentliche Beschaffung als Treiber für CSR.“ In: Walden, D. and Depping, A. (eds.) *CSR und Recht. Juristische Aspekte nachhaltiger Unternehmensführung erkennen und verstehen*. Berlin: Springer, 173-189
- World Economic Forum (2014) *The Case for Gender Equality: The Global Gender Gap Index 2014* available at <http://reports.weforum.org/global-gender-gap-report-2014/part-1/the-case-for-gender-equality/> [last accessed 10 January 2018]
- Wright, T. (2014), *The Women into Construction Project: an Assessment of a model for increasing women's participation in construction*. Centre for Research in Equality and Diversity/ School for Business and Management Queen Mary University London. London. Available online: <http://www.busman.qmul.ac.uk/media/sbm/research/researchcentres/cred/impact-reports/Wright.pdf>
- Wright, T and H Conley (2018) "Advancing gender equality in the construction sector through public procurement: Making effective use of responsive regulation" *Economic and Industrial Democracy* March 2018 pp1-22