

Below is the Consortium Procurement response to the 42 questions posed within the Transforming Public Procurement Green Paper, and the proposed changes to Public Contract regulations, following the UK's withdrawal from the EU.

Q1. Do you agree with the proposed legal principles of public procurement?

Yes we agree with the Legal principles, however, with regards to “the public Goods” and supporting the delivery of Strategic National Priorities, we feel this may be aligned more aligned to central government and not other contracting authorities.

Q2. Do you agree there should be a new unit to oversee public procurement with new powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities?

Yes, we feel that a body to oversee public procurement is welcome, however we feel that this should be wholly independent as opposed to supported by an independent body by this we mean no commercial interests, such as the CCS which currently operates a public procurement review service but is also a commercial central purchasing organisation, which we feel can lead to conflicts of interest.

Q3. Where should the members of the proposed panel be drawn from and what sanctions do you think they should have access to in order to ensure the panel is effective?

Drawn from all sectors, all, types of contracting authorities, e.g Registered providers, central purchasing organisations central government, Healthcare, Local authorities etc. Devolved authorities e.g. Greater Manchester, Scotland, Wales. In terms of Sanctions this should be limited to arbitration and remediation as opposed to legal sanctions which should be left in the courts.

Q4. Do you agree with consolidating the current regulations into a single, uniform framework?

Our organisation only operates under PCR so this is already clear for us. If consolidation muddies this for us and means we need to sift through various regs to determine what impacts us, this will be more onerous and increases the risk that of confusion or error so this would concern us. Therefore, we would want this to be clearly written. e.g., a set that would apply to all, and then a set of appendices for specifics e.g., Defence, utilities etc. so those only bound by PCR don't become unworkably complex or onerous. For example, a Defence contract above threshold may look completely different to a cleaning services for a Housing Association and therefore the regulations for one may end up being to onerous for the other.

Q5. Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained?

Q6. Do you agree with the proposed changes to the procurement procedures?

We agree with maintaining the Open Procedure. In principle we agree with the new procedures, but would require further clarification on how this would affect framework/DPS providers, and work in practice with regards to undertake call offs. For example, framework providers would still need to be clear from the outset so that call offs can follow the same procedure, so the benefit of greater innovation is lost somewhat. We would end up still doing an open or a restricted procedure under the new procedure in order to create clarity in the call offs.

Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?

In the light of the last 12 months, and the COVID-19 pandemic this seems sensible.

Q8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?

As with question 6, as a central purchasing organisation it is difficult for us to create innovation anyway as the agreements procured need to be general enough for a large group of authorities to call off, and innovation tends to be specific. Again, we would like to see further clarity on how call offs will operate under the new procedures.

Q9. Are there specific issues you have faced when interacting with contracting authorities that have not been raised here and which inhibit the potential for innovative solutions or ideas?

The ability to create innovation as a framework provider.

Q10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?

We are unable to respond to this question.

Q11. What further measures relating to pre-procurement processes should the Government consider to enable public procurement to be used as a tool to drive innovation in the UK?

Greater clarity and certainty (in timing) over opportunities for purchasing organisations to access funding to support innovation and procurement.

Q12. In light of the new competitive flexible procedure, do you agree that the Light Touch Regime for social, health, education and other services should be removed?

We don't use the Light touch regime ourselves so aren't best placed to answer his question.

Q13. Do you agree that the award of a contract should be based on the "most advantageous tender" rather than "most economically advantageous tender"?

We don't feel the issue of MEAT as opposed to MAT is an issue at all. From our experience contracting authorities are already aware that evaluation criteria is not simply lowest price and already include various criteria for establishing Value for Money. If taking the word Economic out of the definition creates greater clarity then this is fine.

Q14. Do you agree with retaining the basic requirement that award criteria must be linked to the subject matter of the contract but amending it to allow specific exceptions set by the Government?

Yes we agree.

Q15. Do you agree with the proposal for removing the requirement for evaluation to be made solely from the point of view of the contracting authority, but only within a clear framework?

Yes we agree, but only with a clear framework. e.g. national priorities.

Q16. Do you agree that, subject to self-cleaning fraud against the UK's financial interests and non-disclosure of beneficial ownership should fall within the mandatory exclusion grounds?

Yes

Q17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?

Yes.

Q18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?

Yes

Q19. Do you agree that non-payment of taxes in regulation 57(3) should be combined into the mandatory exclusions at regulation 57(1) and the discretionary exclusions at regulation 57(8)?

Yes

Q20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?

Yes

Q21. Do you agree with the proposal for a centrally managed debarment list?

Yes in principle, but we would like clarity on how this would work in practice.

Q22. Do you agree with the proposal to make past performance easier to consider?

Yes.

Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

Yes.

Q24. Q24. Do you agree that the limits on information that can be requested to verify supplier self-assessments in regulation 60, should be removed?

Yes.

Q25. Do you agree with the proposed new DPS+?

Yes we agree in principle with the DPS+ as the changes from the current DPS route wouldn't have a major impact on us. The DPS+ wouldn't make it more likely for us to use a multi-use list, nor would it restrict us. We would still make a commercial decision based on best fit to expected procuring organisation requirements as to whether this is the optimal route over a traditional framework, but it certainly isn't a barrier.

Q26. Do you agree with the proposals for the Open and Closed Frameworks?

Yes in principle, because the open route provides us with further options, but doesn't remove the option to use the closed route, so we could still use it if we wanted to. We require further clarity on how the open would work in practices as some of the practicalities are unclear.

However, we have concerns with regards to charging. As a not-for-profit central purchasing membership organisation we charge suppliers a membership fee for a position on a framework for its entire term regardless of whether they have been awarded a contract. This membership fee helps to cover the cost of our business operations. The proposal indicates that this may change, and would be a significant risk to our income and funding model. We would potentially seek to increase commission to the supplier to cover costs and there is a risk that this increase might be passed on by the suppliers to the contracting authority calling off which would defeat the purpose of Value for Money principles.

Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?

We need greater clarity before being able to make an informed response. In principle we agree transparency is important in procurement in terms of advertising, award, and variation. However in terms of performance and planning

this is maybe unclear. If we submit a pipeline of planned contracts, how much are we going to be bound by that. Plans change at constant rates. Further, if we say we plan to in a 12 month period, procure 4 frameworks, do we also have to state how many planned call offs would be made.

Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?

We require further clarity on a) the types of contracting authorities that would be bound by this. E.g as a central purchasing organisation who are a Ltd company, should we be expected in the planning stage to disclose our budgets, or is this just a requirement for the contracting authorities calling off the framework and b) how much more onerous is this on authorities? Will it replace existing notices or will it be additional? C) the requirement to upload a signed copy of the contract would possibly breach confidentiality and could contain commercially sensitive information.

Q29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?

Parts of this proposal we agree with, and may be useful, however there are parts that may need further clarity on who applicable authorities are, what will be visible and the impacts on commercial interests. For example, how much detail will need to be disclosed?

Qs 30-38

- a. We are not able to provide a fully informed response to all of these questions, but in summary we welcome capping level of damages to reduce speculative claims. An expedited tailored process dependent on the nature of the case would be welcomed. We agree in principle with removal of the debrief letters, but in practice it seems that debrief letters will become best practice, so will we need to provide the information as well as on the transparency tool? We envisage suppliers will still want as much information. We don't think this would lead to a reduction in work for authorities and could well lead to an increase in work.

Q39. Do you agree that:

- businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?
Yes
- There should be a specific right for public bodies to look at the payment performance of any supplier in a public sector contract supply chain?
Yes, for payments relevant to that supply chain.
- private and public sector payment reporting requirements should be aligned and published in one place?
Yes, although with clarity over thresholds of private sector companies that are required to report. Creating additional administration for smaller private SME's could be onerous and potentially outweigh the benefits of greater payment chain visibility and communication created by it.

Q40. Do you agree with the proposed changes to amending contracts?

- a. Yes, as long as this is clear in the regulations.

Q41. Do you agree that contract amendment notices (other than certain exemptions) must be published?

- a. Yes

Q42. Do you agree that contract extensions which are entered into because an incumbent supplier has challenged a new contract award, should be subject to a cap on profits?

- a. Yes