

Transforming Public Procurement – Green Paper Summary

In 2016 following a referendum, the public voted for the UK to leave the EU. Following the end of the Transition period at the 1st January 2021, the UK is no longer bound by the EU and is free to trade in line with the principles of the World Trade Organisation.

As at the 1st January there is limited impact on public sector procurement, with the only change being “Above Threshold” Procurements no longer having the requirement to be advertised in OJEU (Official Journal of the European Union), however there is a requirement to advertise these in a newly developed Find a Tender. Changes have already been made to facilitate this within the EU Supply site used by the OPCC to manage procurement activity.

Whilst the impact at present is minimal, the Government are proposing to develop a new regulatory framework to drive continuous improvement and support resilient and diverse innovative supply chains. Whilst some of the proposed changes are minor with limited impact, others will have more of a significant impact on how we procure and how the organisations interacts and work with Commercial functions.

The Government have produced a Green Paper with details of the proposed changes, which has been issued for consultation. It has been agreed that consultation on behalf of OPCC and Police Forces will be co-ordinated by Bluelight Commercial. The proposal is to comprehensively streamline and simplify regulations.

One of the key aims is to reduce the number of regulations (currently standing at seven – although only one applies to the Police sector) and replace with a single set of rules which will be supplemented with sector specific annexes.

The principles of the regulations will be to continue to support Value for Money, Public Good, Transparency, Integrity, Efficiency, Fair Treatment of suppliers and be Non-discriminatory.

The New Procedures will allow for more negotiation and greater engagement to deliver Innovation and the 7 procedures currently in place will be replaced by 3 Procedures:

- Flexible Procedure – which will give buyers the freedom to negotiate and innovate within a framework to ensure fairness and transparency.
- Open Procedure – for simple off the shelf procurements
- Limited Tendering Procedure – to be used in crisis or urgency (however the use of this will need approval from the Cabinet Office Minister and a notice will need to be published) – Crisis will be included as a new ground (i.e. COVID Pandemic)
- The Light Touch Regime will be removed completely from use.

The idea of the changes is to open public procurement to more diverse supply base with procedures that are quicker and cheaper to participate in, whilst contract information is easier to find. In order to do this the Government intends to:

- establish a single digital platform for suppliers to register on meaning that they will only have to submit data once
- Legislate for a new Dynamic Purchasing System (DPS) – this will be a flexible tool suited to providers of agile online and other dynamic marketplaces. There will be 2 options a closed framework for 4 years or an open one for up to 8 years with an initial 3 year closed period.

- Embed transparency throughout the commercial lifecycle
- Ensure that all Contracting Authorities implement open contracting data standards so that data can be shared and analysed.
- Introduce a requirement for Contracting Authorities to publish Contract Amendment Notices

As part of the proposed changes, Public Procurement must support the Government priorities to boost growth and productivity, help communities recover from Covid and tackle climate change. Social Value will be key.

Value for Money will remain a focus rather than lowest price, however it is proposed that award criteria should include Social Value and will no longer be based on the Most Economically Advantageous Tender (MEAT) but on Most Advantageous Tender (MAT). In addition there are plans to improve the exclusion rules to:

- Include a centrally managed debarment list
- Enable past performance to be taken into account – this can be considered even if it didn't lead to termination. There will be a time limit of 3 years and the decision must be evidence based.

The Government also intend to reform the process of challenging procurement decisions which will include capping damages.

The reforms intend to improve commercial practice by ensuring that commercial teams have the necessary skills and experience. This will be monitored by a Central body within the Cabinet Office who will provide some central monitoring of public sector procurement, including the management of the debarment list.

There will be significant more emphasis on the business working more closely with commercial functions at a much earlier stage in the decision making process one example include the requirement for Commercial Functions to publish an annual pipeline for the period of 18months-5 years.

Legislation will require Contracting Authorities to publish Procurement and contracting data throughout the Commercial Lifecycle. The proposal is that the format will be compliant with Open Contracting Data Standards and all e-procurement systems will need to be complaint with this so that data published on own systems is also published on a Central System. This includes:

- Planning
 - Budgets
 - Project Plans
- Pre-market Engagement
- Tender
 - Spec etc
 - Winning Bidders information
 - Bid Evaluation
 - Values
- Contract
 - Final Details
 - Signed Contract
 - Amendments

- Implementation
 - Payment
 - Policy data
 - Extensions
 - Amendments
 - Completion/Termination
 - KPI Data

The above proposal includes recording and centralising a significant amount more detail than we currently do to improve transparency.

There are no timescales within the consultation paper, however it is anticipated that these proposed changes may come into effect towards the end of 2021 or into 2022. If all of the reforms are taken forward, there will be additional training requirements for the Procurement Function, possible investment in systems to enable the publication of the additional information and a requirement for the business to review their projects to not only ensure that they meet the Local Priorities but also the National Government Priorities. Finally for the business to engage with Procurement/Commercial much earlier in the process to ensure that all of the regulations are achieved.

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