

Transforming public procurement: the Green Paper



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Current time line

- Consultation ran from 15 December 2020 – 11 March 2021
- Queen’s Speech on 15 May 2021 indicated that a Procurement Bill will be introduced containing “laws to simplify procurement”
- Indications from Cabinet Office are that the Bill may be introduced as early as September 2021

The proposed new procurement principles: broadly based on the WTO GPA

- Public good
- Value for money
- Transparency
- Integrity
- Fair treatment of suppliers
- Non discrimination

A new National Procurement Policy Statement – increasing intervention by central Government in local procurement decisions?

“The Government will separately set out plans to legislate to require contracting authorities to have regard to national priorities of strategic importance in public procurement”

Enforcement by a new central oversight unit with powers of intervention including improvement notices and “spending controls”

A simpler regulatory framework

- Consolidation of the PCRs/UCRs/CCRs/DSPCRs into one set of regulations with sector specific sections
- Replacement of the 7 procurement procedures with 3 new procedures:
 - A new competitive, flexible procedure
 - Open procedure
 - The “limited tendering procedure”

Changes to the award, selection and exclusion rules

- Most Economically Advantageous Tender becomes “Most Advantageous Tender”
- Opportunities to “break the link” with subject matter of the contract – greater scope to take into account poor prior performance
- Additions to mandatory exclusion grounds: fraud/non-disclosure of beneficial ownership, and tax evasion
- Greater flexibility in terms of information required to verify financial standing etc
- A new central debarment list

A new Dynamic Purchasing System + and “open” frameworks

- DPS will be available to all types of procurements not just goods and services generally available on the market
- Longer maximum terms for frameworks (4 years and 8 years), and new suppliers can join at defined points

Embedding transparency: greater emphasis on standardised contemporaneous record keeping throughout commercial lifecycle

“The Government proposes legislating to embed transparency by default throughout the commercial lifecycle from planning through procurement, contract award and performance. Contracting authorities would be required to disclose procurement and contract data as soon as practically possible and significantly increase transparency in the public procurement regime. Contracting authorities would be required to declare in their tender documents when information would be disclosed and justify what, if any, information is to be treated as commercially sensitive. Suppliers would be able to bid with a better understanding of the expected transparency requirements and the timetable for when data should be released.”

Compliance with **Open Contracting Data Standard** will now be mandatory

Debrief letters post award may no longer be mandatory in light of more information being provided at contract award

Publication of contract amendment notices – will be required for majority of contract amendments (replaces the VEAT/VTN system)

A new remedies regime: some fundamental changes

- Greater emphasis on pre-contractual remedies and quicker trials
- **Tweaks to procedure in the TCC**, including mandatory initial disclosure requirements
- **Capping the level of damages** available to aggrieved bidders to legal fees and 1.5x bid costs
- Possibility of transferring a set of procurement challenges to **a tribunal-based system** – “in flight” challenges could use this route. Thresholds not clear.
- “Independent contracting authority review”. Not clear if this is by contracting authority itself or external body.
- **Test to lift automatic suspensions** may be changed.

Thank you for listening

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