

Appendix 1: Council response to Part 2 Consultation on draft regulations to implement the Procurement Bill

Transforming Public Procurement

Reference documents

Part 2 Consultation on draft regulations to implement the Procurement Bill

Draft Statutory Instrument (SI) (<https://www.gov.uk/government/consultations/part-2-consultation-on-draft-regulations-to-implement-the-procurement-bill>)

Procurement Bill (<https://bills.parliament.uk/bills/3159/publications>)

Useful ref <https://localgovernmentlawyer.co.uk/procurement-and-contracts/308-procurement-features/54744-transparency-in-public-procurement-2>

Purpose of Consultation

This second part of the consultation focuses on the transparency provisions and notices that will be used by contracting authorities to fulfil their legal requirements under the Bill.

It also includes information on the proposed approach to transitional arrangements for procurements already underway at the time that the new regime enters into force and the position on other legislation that will need to be amended in order for the full provisions of the Bill to take effect.

Questions largely seek to understand to what extent the draft secondary legislation provisions implement the policy intent as established in the Bill. Except for where explicitly requested, views are not sought on the policy intent itself which has already been subject to consultation and has been established by the Bill, but on whether the policy intent has been reflected in the drafting of the regulations

Comments should be limited to whether the stated policy intent has been translated into the draft SI and on whether the drafting causes any inconsistencies, gaps or overlaps with provisions elsewhere in the draft SI or the Bill. The exceptions to this are the section on Transitional Provisions and supplementary questions on the preliminary market engagement notice, qualifying utilities dynamic market notice and contract award notice where the questions relate to the policy intent or approach set out in this consultation.

Consultation closes 25 August 2023

Consultation Question	Excerpt / Comment /Note	Response
QUESTION 1: To what extent do you agree or disagree that the pipeline notice, as described in the draft SI, will usefully provide advance notice to suppliers of forthcoming contracting opportunities?	Requirement to publish opportunities of £2m+ 18 mth lead time. The notice must be published within 56 days of the 1st day of the relevant FY Procurement Bill (15 - 17) SI (11)	Agree
QUESTION 2: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA

<p>QUESTION 3: To what extent do you agree or disagree that the contents of the notice described in the draft SI provide the information needed by suppliers to determine their interest in the upcoming procurement that is the subject of the notice?</p>		<p>Agree</p>
<p>QUESTION 4: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so</p>		<p>No response / NA</p>
<p>QUESTION 5: To what extent do you agree or disagree that the notice as set out in the draft SI delivers the policy intention of encouraging the use of preliminary market engagement in an open and transparent way?</p>	<p>Publication of the PME notice should take place prior to publishing a tender notice.</p>	<p>Agree</p>
<p>QUESTION 6: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.</p>		<p>No response / NA</p>
<p>QUESTION 7: To what extent do you agree or disagree that private utilities should be exempted from the preliminary market engagement notice requirements in clause 17 of the Bill?</p>	<p>the UK Government is consulting on this proposed amendment on behalf of reserved private utilities and transferred Northern Ireland authorities</p>	<p>Disagree</p>
<p>QUESTION 8: If you wish to explain why you do not agree that private utilities should be provided with this exemption please do so.</p>		<p>Transforming Public Procurement Part 2 Consultation on draft regulations to implement the Procurement Bill notes that The UK Government is consulting on this proposed amendment on behalf of reserved private utilities and transferred Northern Ireland authorities. The Bill and draft SI reference excepted, reserved and transferred matters which are terms commonly used in relation to the powers of the Northern Ireland Executive. Government needs to provide clarity as to what applies to Local Government i.e. councils in Northern Ireland.</p>
<p>QUESTION 9: To what extent do you agree or disagree that the tender notice as set out in the draft SI enables a contracting authority to effectively advertise and commence a competitive procedure?</p>	<p>SI 13 - 18 13 (z) a description identifying any risk that— (i) the contracting authority considers — could jeopardise the satisfactory performance of the public contract, but because of its nature, may not be addressed in the public contract as awarded,</p>	<p>Agree</p>

	<p>and (ii) may require a subsequent modification to the public contract under paragraph 5 of Schedule 8 to the Procurement Act 2023 (modification of contract following materialisation of a known risk). What is the purpose of the clause? does this leave BCC liable if we don't identify a risk?</p> <p>Open Procedure (13t) references but does not restrict / reserved contracts Competitive flexible procedure (2 stage) (14G) allows for reserving of contracts</p> <p>Frameworks (15i) requirement to state single, maximum number or unlimited number of suppliers</p>	
QUESTION 10: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 11: To what extent do you agree or disagree that the DM notice as set out in the draft SI permits a contracting authority to effectively create a dynamic market (including a utilities dynamic marketplace) for the future award of public contracts?		Agree
QUESTION 12: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 13: To what extent do you agree or disagree that the QUDM notice as set out in the draft SI permits a contracting authority to effectively create a utilities dynamic marketplace that maintains the effect of a qualification system under the existing rules?		Agree
QUESTION 14: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
transparency notice the transparency notice is mandated (except for direct award: user choice contracts) It is used in conjunction with the contract award notice, which is required prior to the contracting authority entering into the contract and will (in most cases) start the standstill period		
QUESTION 15: To what extent do you agree or disagree that the transparency notice as set out in the draft SI will provide visibility of upcoming	Agree – impact on BCC process eg Requirement to publish a transparency notice before awarding	Agree

<p>procurements to be awarded using the direct award procedure.</p>	<p>a contract under direct award (STA) provisions (SI 19 1); and rational for awarding (SI 19 3h)</p> <p>Include in STA report?</p> <p>SI 19(o) Risk (see also Q 9)</p>	
<p>QUESTION 16: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so</p>		<p>No response / NA</p>
<p>Procurement termination notice informs the market that a contracting authority has decided not to proceed with a procurement. It is only necessary to publish if a tender notice or transparency notice had been published</p>		
<p>QUESTION 17: To what extent do you agree or disagree that the contents of the termination notice, as set out in the draft SI, provide greater transparency about procurement processes that have not resulted in a contract?</p>		<p>Agree</p>
<p>QUESTION 18: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so</p>		<p>No response / NA</p>
<p>QUESTION 19: To what extent do you agree or disagree that the contents of the assessment summary (along with the provision of the successful supplier's assessment summary) will provide adequate information to suppliers so that they can reasonably understand why they did or did not win the contract while reducing the time it takes for contracting authorities to provide this information?</p>	<p>assessment summary is not mandated when awarding a call-off contract under a framework although encouraged</p> <p>SI 21</p>	<p>Agree</p>
<p>QUESTION 20: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.</p>		<p>No response / NA</p>
<p>QUESTION 21: To what extent do you agree or disagree that the contract award notice as set out in the draft SI will be a suitable vehicle for alerting the market to the contracting authority's intent to enter into a public contract and triggering the standstill period?</p>	<p>Starts standstill period not permissible to enter into a contract awarded following a competitive tender procedure without having first published the contract award notice and issuing the assessment summaries in relation to tenders included in the final assessment required for frameworks both open & closed</p> <p>SI 20</p>	<p>Agree</p>

QUESTION 22: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 23: To what extent do you agree or disagree that it is appropriate for private utilities to publish a reduced version of the contract award notice for contracts awarded under a framework?		Agree
QUESTION 24: If you wish to explain why you disagree with this approach please do so		No response / NA
QUESTION 25: To what extent do you agree or disagree that the contents of the contract details notice, as set out in the draft SI, will give the required level of transparency of the existence and substance of government contracts?	<p>Advise market that contract has been entered into - requires prior contract award notice, standstill & issue of assessment summary Published within 30 days of contract being signed framework 'call-offs' requirement to publish this notice. £5m+ requirement to publish copy of contract (Procurement Bill 53(3)) KPI publication contracts of £5m+ (SI 22(p-q))</p> <p>Additionally, the Welsh Government and Northern Ireland Executive have taken a decision to derogate from the requirement to publish contracts for their devolved and transferred authorities.</p> <p>Regulated Below threshold contracts (procurement Bill 84-87) Procedure inc requirement to publish notices & implied payment terms</p>	Disagree
QUESTION 26: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		Transforming Public Procurement Part 2 Consultation on draft regulations to implement the Procurement Bill notes that the.... Northern Ireland Executive have taken a decision to derogate from the requirement to publish contracts for their devolved and transferred authorities. The Bill and draft SI reference excepted, reserved and transferred matters which are terms commonly used in relation to the powers of the Northern Ireland Executive. Government needs to provide clarity as to

		what applies to Local Government ie councils in Northern Ireland.
QUESTION 27: To what extent do you agree or disagree that the payments compliance notice provides the transparency necessary to hold the public sector to account for its performance in paying suppliers on time?	<p>requirements publish specified information every six months detailing how quickly they have paid their suppliers</p> <p>The Northern Ireland Executive has taken a decision to derogate from this requirement for their transferred authorities.</p> <p>Implications for BCC Finance. Requires clarity re publisher role? Contract manager CPS, Finance</p>	Disagree
QUESTION 28: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		<p>Transforming Public Procurement Part 2 Consultation on draft regulations to implement the Procurement Bill notes that The Northern Ireland Executive has taken a decision to derogate from this requirement for their transferred authorities. The Bill and draft SI reference excepted, reserved and transferred matters which are terms commonly used in relation to the powers of the Northern Ireland Executive.</p> <p>Government needs to provide clarity as to what applies to Local Government i.e. councils in Northern Ireland.</p>
QUESTION 29: To what extent do you agree or disagree that the Contract Performance notice will provide adequate information about a supplier's performance on a contract?	Requirement to set & publish 3 KPI for contract with an estimated value of more than £5m (Procurement Bill 52 (2).. does not apply if the contracting authority considers that the supplier's performance under the contract could not appropriately be assessed by reference to key performance indicators.	Agree
QUESTION 30: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 31: To what extent do you agree or disagree that the Contract Performance notice will provide adequate information relating to a serious breach of contract by a supplier?		Agree

<p>QUESTION 32: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so</p>		<p>No response / NA</p>
<p>QUESTION 33: To what extent do you agree or disagree that the contents of the contract change notice will provide greater transparency of the proper management of government contracts?</p>	<p>Required for contracts of more than £5m (procurement bill 77) (2)(b) SI 75(6) This section does not apply in relation to a modification of a contract that .. (d) was awarded by a transferred Northern Ireland authority, unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement, or (e) was awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.</p> <p>Procurement bill (76) allows for a voluntary stand still period (min of 8 working days)</p>	<p>Disagree</p>
<p>QUESTION 34: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.</p>		<p>Transforming Public Procurement Part 2 Consultation on draft regulations to implement the Procurement Bill notes that The Northern Ireland Executive has taken a decision to derogate from both the requirement to publish CCNs and the requirement to publish the modifications/modified contracts for their transferred and devolved authorities.</p> <p>The Bill and draft SI reference excepted, reserved and transferred matters which are terms commonly used in relation to the powers of the Northern Ireland Executive. Government needs to provide clarity as to what applies to Local Government i.e. councils in Northern Ireland</p>
<p>QUESTION 35: To what extent do you agree or disagree that the contents of the contract termination notice, as set out in the draft SI, will give greater clarity and transparency about which government contracts are still in force?</p>		<p>Agree</p>

QUESTION 36: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so		No response / NA
QUESTION 37: To what extent do you agree or disagree that the SI drafting provides clarity about the operation of the central digital platform?	How will CDP align to Esourcing? Requirement to publish on CPD and then wait 48 hours before publishing on Esourcing (SI 6) SI 5	Disagree
QUESTION 38: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		Draft SI provides detail of the information (notices, notice content, time frames, supplier information etc) that is required to be published but does not provide clarity about the day to day operation for end users of the Central Digital Platform The link in the draft SI 5(2) doesn't work (http://www.gov.uk%28a/) and the required information in the foot note has been omitted. Government needs to provide a link to the central digital platform
QUESTION 39: To what extent do you agree or disagree that the workaround procedure provides a viable alternative in the event of a failure in the central digital platform	SI 5 (5 – 11) What is BCCs 'alternative online system' that meets the requirement of SI 5(9) Is Esourcing accessible to people with disabilities?	Agree
? QUESTION 40: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 41: To what extent do you agree or disagree that the information required by the draft SI to be obtained via the central digital platform will save duplication and re-submission time by suppliers bidding for multiple government contracts?	Note there is no requirement on the supplier to keep the information up to date. Will require BCC due diligence and reliance on (SI 6(3)) ie take into account updated or corrected core supplier information where the information submitted ...is no longer up to date or correct (however that updated or corrected information is shared with the contracting authority). Impact on SME's - dependent on education on use and usability of CPD	Agree

QUESTION 42: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 43: To what extent do you agree or disagree that use of the Central Digital Platform: Supplier Information should be mandatory during the tendering period and that, until the end of the tendering period, contracting authorities may only use the registered core supplier information submitted to the platform?		Agree
QUESTION 44: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 45: To what extent do you agree or disagree that the provisions on unique identifiers will enable tracking of procurement data?		Agree
QUESTION 46: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.		No response / NA
QUESTION 47: To what extent do you agree or disagree with the approach to transitional arrangements set out in this consultation?	Transforming Public Procurement Part 2 Section 22 Note delay to publishing payment compliance notice (& possibly the publishing of KPI performance) until 'later in 2024'	Agee
QUESTION 48: If you wish to explain why you do not agree with the approach described above, please do so.		No response / NA
QUESTION 49: To what extent do you agree or disagree that the list of defence authorities in the draft SI accurately captures the organisations that should be included within the definition?		NA
QUESTION 50: If you wish to explain why you do not agree with the list, please do so		No response / NA

