

THE PROCUREMENT BILL

Benefits for Prospective Suppliers
to the Public Sector



Introduction

The **Procurement Bill**, currently passing through Parliament, will make it easier for businesses to enter public sector supply-chains and this will benefit Small and Medium Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs), both of which have historically faced barriers in working with central government and wider public sector.

The Procurement Bill is therefore an opportunity to make it easier to do business with the public sector.

Subject to any changes that might be made to the Bill during that Parliamentary process, the new regime should deliver a range of benefits for suppliers wishing to deliver contracts for the public sector, as detailed below.

The Bill includes a new duty on contracting authorities to have regard to the particular barriers facing SMEs, and to consider what can be done to overcome them. This applies throughout the procurement lifecycle, so in practical terms, it means that contracting authorities will, for example, need to specifically consider through an SME lens:

- whether the requirements they are asking for are proportionate to the contract
- whether the bidding times are realistic, including for businesses that do not have dedicated bidding teams
- whether there is a diverse representation of businesses in pre-market engagement to make sure a contracting authority is reaching a wide range of suppliers.

In addition to this overarching duty, the new regime will, at various points in the procurement lifecycle, enable and require practice which benefits suppliers in general and potential new entrants in particular.

Benefits for Prospective Suppliers to the Public Sector

1. Commercial Pipelines

Visibility of an authority's pipeline of upcoming contracts has historically been challenging. Whilst there is some good practice in some sectors - for example, central government departments and many local authorities publish a pipeline of larger opportunities - there is no legislative requirement to do so and no central place for businesses to analyse these pipelines.

The Procurement Bill will require large contracting authorities to publish a pipeline notice forward look for 18 months for opportunities over £2m. This will mean that suppliers have more time to gear up to deliver, either as prime contractors, members of consortia or sub-contractors in the supply chain.



Businesses will be able to view at least 18 months' worth of planned procurements on the central platform from larger organisations. This will be mapped by region and category so for example, a new SME technology firm in North West England will be able to run a search on technology opportunities in the region and it will generate a list of upcoming opportunities. They will then be able to map their capability and business plans against this list and make strategic decisions about which opportunities to bid for.

2. Preliminary Market Engagement

Procurers can be risk averse when considering whether to engage widely with the market ahead of releasing a tender. The regulations can make it difficult to know how and when an authority can engage with the market and this can lead to a lack of engagement.

In practice, many organisations do engage with the market, however there is a tendency to use established lists of suppliers or networks which can make it difficult for new entrants to find out about opportunities.

The Procurement Bill will put clear rules around pre-market engagement and contracting authorities will be able to publish notices signposting this activity and how suppliers can participate.

This means that an authority for example would be able to more confidently run events, invite new entrants and present a “blank sheet of paper” approach to encourage innovative ideas. This will be of particular use in sectors where research and development is key such as energy solutions or defence.

3. Invitation to Tender

Throughout the procurement lifecycle, the Procurement Bill embeds transparency and this is key for new entrants. Once a contracting authority is ready to go to market with their tenders (above a certain threshold), a tender notice will be published on a centralised platform with all of the key information required for a potential supplier to bid. Businesses will be able to set up email search notifications so they are immediately informed when new opportunities that they might be interested in become available.

4. Supplier Registration and Bidding

A key challenge at the moment for SMEs and new entrants is the number of platforms on which they are required to register: if a construction business wishes to bid for contracts across the public sector, they may need to sign up to NHS, local authority, housing associations and universities separately. This takes time and resources and each system will require similar information being inputted each time the supplier wishes to bid.

The new supplier registration system will allow suppliers to “tell us once”. All of their information will be kept in an evidence locker which can then be integrated with individual procurement systems. This will make it very clear for smaller suppliers looking across the public sector where sign-up will be required and what information needs to be kept up to date.

The Bill has also made provisions about ensuring barriers are not put in place for smaller businesses who want to bid for contracts, for example, the Bill prohibits contracting authorities from requiring the provision only of audited accounts to test the financial standing of bidders (except where they are already required to under the Companies Act 2006). This ensures that start ups and SMEs, who are not legally required to file audited accounts due to their size or age, will not be shut out of procurements and will be able to demonstrate their financial capacity by other reliable means.

Additionally, the Bill reduces unnecessary costs on businesses by preventing contracting authorities from requiring insurance relating to the performance of the contract to be in place prior to award. This means that prospective suppliers will not have to incur unnecessary costs in taking out insurance cover when they have no guarantee of winning the contract.

5. Procurement

There are numerous ways in which new entrants will benefit from a more flexible approach to awarding contracts. For example, under the new Competitive Flexible procedure, a contracting authority will be able to design their own procurement process and this will be particularly beneficial for complex, high tech or innovative solutions. This would allow them to include in their bids components which will draw on the strengths of a new specialist entrant to the market - for example, a cyber security company working with cutting edge technology and looking for entry into public sector supply-chains would benefit from site visits, supplier presentations, being able to offer a variant bid to demonstrate additional innovation, working closely with the contracting authority to develop requirements and the use of funded bids. All of this is currently very challenging under the existing regulations.

This approach will not be applicable for every area of spend; where there are less complex, transactional procurements, contracting authorities can use an open procedure which would not require any down-selection. This may be helpful for SMEs who often have lower overheads and therefore are able to compete on price and quality against larger firms. This agility will be encouraged in certain areas of spend.

Alternatively, the contracting authority could let a framework to provide for the future award of contracts. Historically a key challenge for new entrants is being “locked out” of long-term frameworks - essentially a business may put effort into winning a place but be unsuccessful, meaning they then wait for at least 4 years for it to open up again.

The Procurement Bill will include an enhanced commercial tool called a Dynamic Market that will allow suppliers to join at any time and which the buyer can use to run quick competitions. This will be an ideal way for a smaller works contractor in a specific location for example to win competitions for a housing association or local authority.

The new legislation also provides for a longer-term framework option for 8 years but with an opening point which will give suppliers the opportunity to try again. This will mitigate the effect of suppliers being locked out of frameworks for the duration.

Visibility of these frameworks is key and a new register of tools will show which frameworks and Dynamic Markets are available, allowing suppliers to identify opportunities and research the options for bidding on these in the future.

6. Feedback if bid is not successful

A new entrant isn't always going to be successful in bids and a key complaint at the moment is that feedback via debrief letters is inconsistent and not always useful. Under the new Procurement Bill, tenderers who are unsuccessful will receive an assessment summary which will show them directly how their bid compared to the winner. This would allow a construction company, for example, which is keen to diversify to fully understand where it missed out on the opportunity and identify areas which they can improve in the future. This allows organisational development and should be a real spur to new entrants to keep trying to win business.

7. Contract Management

The benefits of the legislation extend beyond contract award: if a new entrant wins a contract, there are some useful additions which will help them deliver and be supported. For example, 30 day payment terms will apply throughout public sector supply chains - regardless of whether they are written into the contract. Prime contractors who may be working with smaller businesses in supply-chains will be required to follow this rule, changing payment behaviours in complex public sector supply-chains.

Conclusion

The **Procurement Bill** will make it significantly easier for new entrants to public sector supply-chains to bid for public contracts.

There are also cultural changes which can be encouraged through effective learning and development, supporting communities of practice to share commercial ideas and collaborating to maximise benefit from the marketplace.

The Procurement Bill and wider reform programme is therefore an opportunity to emphasise this and re-set some of the thinking and approach to risk on contracts which has created barriers to date.



