

The Transparency of Suppliers and Government to the Public

Preamble

Public services need to be underpinned by vibrant supplier markets in order to maximise their contributions to the UK's economic and social prosperity.

This contribution is enhanced when public bodies that procure and oversee public services and organisations that deliver public services – whether from the public, private or Voluntary and Community sectors, or new commercial models such as Mutuals – are open about how services are contracted and performing.

Transparency and accountability of public service delivery is key as it builds the public's trust and confidence in public services, enables citizens to see how taxpayers' money is being spent and enables the performance of public services to be independently scrutinised.

Making government the best customer that its suppliers have will be central to achieving this. Government and suppliers need to work together to align and improve their commercial behaviours in order to sharpen transparency and accountability, while ensuring suppliers have the space to innovate. This collaboration will deliver lower costs, greater innovation, better relationships, and strong and profitable markets – all delivering better value for the taxpayer.

Intention of the statement of principles

This statement sets out Government policy on the availability and accuracy of information ("transparency") about the delivery of public services that are publicly funded. It affirms that:

- citizens are entitled to know how taxpayers' money is spent through the disclosure of information and appropriate auditing of public service delivery publicising good performance is integral to spreading good practice
- highlighting underperformance helps hold Government and its suppliers to account
- embedding common transparency standards and practices, and contextualising information where appropriate, makes it easier for the public to access and compare delivery information.
- While recognising that competition:
 - o spreads innovation and raises standards by challenging services to improve their performance
 - o underpins transparency by identifying and rewarding success but to improve services companies' competitiveness needs to be protected.
- Companies that deliver public services must be mindful of their existing legal and other obligations, including (but not limited to):
 - o competition law
 - o contractual obligations and key performance indicators, including the Freedom of Information Act (FoIA) and client confidentiality
 - o the Corporate Governance Code
 - o the Data Protection Act
 - o employment law
 - o Environmental Information Regulations
 - o existing voluntary codes of conduct
 - o Inspection and sector regulatory regimes
 - o public procurement law
 - o tax law

The objectives

This statement aims to:

- ensure the public has access to clear and accurate information pertaining to service delivery
- emphasise the importance of suppliers and Government working together to improve transparency
- highlight the merits of a proactive approach to information management by Government
- advocate a seamless and consistent flow of contracting and service delivery information between Government and suppliers.

The Statement of Principles

Overarching transparency principles:

- All suppliers – whether from the public, private or Voluntary and Community sector, or new commercial models such as Mutuals – will support Government in driving transparency, in order to build public trust in their services.
- There should be a presumption in favour of disclosing information, with exemptions following the provisions of the Freedom of Information Act – for example, on national security or commercial confidentiality grounds. The presumption in favour of disclosure should apply to the vast majority of commercial information about government contracts, with commercial confidentiality being the exception rather than the rule. To achieve this, Government and its suppliers should adopt a limited and precise working definition of commercial confidentiality, encompassing categories of information that would diminish a supplier's competitive edge.
- The following categories of information could be reasonably withheld on the grounds of commercial confidentiality because they would be likely to diminish suppliers' competitive edge:
 - o Pricing. This means the way the supplier has arrived at the price they are charging government in a contract, but should not usually be grounds for withholding the price itself.
 - o Intellectual property. This means the detail of the solution the contractor is deploying for government. This can include technical or service specifications. It shouldn't be grounds for withholding performance information.
 - o Business plans. This can mean the detail of how the contractor expects to yield a financial return from the service. This can include investment plans.
- As early as practicable in a contract and as a matter of good commercial practice, suppliers and Government will agree what categories of information should be exempted and will set out these exemptions in their contracts when feasible. These contracts should be published online on Contracts Finder when the contract is valued over £10,000.
- Government contracts will be subject to audit. Contracts will set out the types of audit envisaged throughout the life of the contract so that suppliers can better price this activity. Contracts over £20m should routinely include an annual audit. This will not limit the rights of the National Audit Office to audit Government contracts
- The Comptroller and Auditor General will have access rights to Government contracts.

Principles governing the proactive release of information to the public

- Suppliers and Government will agree schedules for the Government to proactively release delivery information to the public, within any existing legal framework.
- Published information will be in an accessible format and as easy as possible for the public to understand.
- Government contracts with its suppliers will not, other than in exceptional circumstances, explicitly prohibit or otherwise impede the proactive release of information by suppliers.
- All public services should be transparent about their performance, regardless of their function or delivery model. To support this, all central government contracts over £10,000 will be published online on Contracts Finder in an open and structured format. If information is redacted, there will be a clear explanation of why.

Principles governing the release of information on public request

As early as practicable, Government and suppliers will agree how to manage enquiries from the public. Wherever feasible, this agreement will be set out in a mutually binding contractual clause on transparency.

In addition, Government will:

- be a single point of contact for public enquiries relating to the performance of privately delivered services that they oversee
- decide, in consultation with suppliers, what information is relevant to the contract(s) in question.
- cascade enquiries regarding a service that the Government oversees to the relevant private supplier in a timely fashion
- respond to public enquiries, using information supplied by the relevant supplier(s).

In addition, suppliers will:

- provide Government with information that helps it respond to public enquiries regarding the contract(s) in question.
- supply Government with information that helps it respond to the Government's own transparency obligations
- respond to Government queries that are relevant to the service in question within a reasonable time frame and with due consideration to the urgency of the question.

The Financial Transparency of Strategic Suppliers to Government

1. Government and business commit jointly to improving Government's understanding of suppliers' costs, revenues and margins. This will be achieved by strategic suppliers providing the Crown Commercial Service with aggregated financial at regular, pre-agreed intervals over a contracts' life.
2. Government believes that it is mutually beneficial for suppliers to make a healthy and competitive return. Government seeks to be a principled, experienced and responsible customer, and will treat all financial data responsibly. Government is not looking to introduce burdensome reporting requirements, but rather to see data that suppliers should already hold on contracts for their own internal reporting and monitoring purposes.
3. With effective financial transparency in place, the supplier and the contracting authority will also be better able to demonstrate the quality and value of the services they provide, and better placed to challenge each other with ideas for efficiency and service improvements during the lifetime of contracts.
4. Government as a 'single customer' wishes to be assured that the supplier's business with Government as a whole is healthy and sustainable, with particular attention paid to overhead allocation and profit margins across strategic suppliers' central government contracts. This is whether the Strategic Supplier is acting as a prime or main sub-contractor. To enable this, government would need an understanding of revenue, gross margin and operating margin at a contract, departmental, and service line level for suppliers' central government business. For main sub-contracts, government requires only revenue data at contract level.

Government commitments in respect of financial data

5. Government will:
 - Treat data sensitively and responsibly;
 - Only share data within the crown and with those that need to see it;
 - Ensure that data is stored securely;
 - Improve the capability and understanding of Civil Servants handling the data;
 - Ensure that measures introduced to simplify procurement are followed through so that bid costs are reduced;
 - Nominate a single point of contact for financial data returns.
6. Government will not:
 - Use financial data to drive profit to zero;
 - Seek to gain an unfair advantage through access to financial data;
 - Disclose financial data to the public.

Annex A: Definitions

Strategic Suppliers to Government will supply data on a contract basis that is then aggregated to the departmental level and aggregated again to the Government level. Data on individual contracts and main subcontracts should only be provided where the value of the contract is at least £20m per annum. Subcontract data should be provided via the prime contractor.

Individual contract data (both prime and main subcontractor) above the £20m threshold should be provided on a 6-monthly basis, commencing March/April 2015. Aggregated data, including smaller contracts help by Primes, should be included in the aggregated totals. should be provided on an annual basis as a minimum, commencing March/April 2015.

Financial returns would include an optional narrative reporting section, in which suppliers could choose to include additional information such as bid costs and performance.

We are ideally looking to obtain the following information for government contracts worth over £20m per annum, in order of importance:

1. revenue,
2. gross margin, and
3. operating margin.

- **Revenue** is the straightforward definition on an annual basis, preferably according to the government fiscal year (1 April to 31 March). If reporting data for the Government financial year creates a disproportionate amount of work, calendar year or the supplier's financial year will suffice. The supplier should provide revenue data for its work as a prime contractor; where it is acting as a subcontractor and holds subcontracts over the £20m threshold, then this information should be provided via the prime contractor.
- **Gross Margin** is the excess of revenues over the cost of revenues, meaning the direct costs associated with the labour and materials required to perform the contract. This would mirror the exact definition in how the supplier's accountants would calculate the gross margin for the overall business, so should be straight forward. If there are anomalies to this calculation, they can be stated rather than re-calculated if easier.
- **Operating Margin** should reflect all of the sales, general and administrative costs as well as any additional costs, depreciation (if relevant) and overheads in an itemised manner. This calculation should be consistent with the manner in which the supplier's accountants would calculate the corporate operating margin. If the supplier feels this calculation does not accurately reflect the commercial situation, additional costs may be added or explained to accurately reflect the situation. We want to review the financial situation in the closest way possible to the way in which the supplier views their commercial activity with government. If a supplier does not have a policy to allocate overheads by contract or client, this can be stated and will be considered.

We recognise that there are always exceptions to the rule and not every supplier accounts for contracts in the same manner due to the nature of the contract and the type of product or service provided. We also recognise that margins can vastly fluctuate over the period of the contract and this is expected. This is also why we would like to see annual reporting over the lifetime of the contract.

Annex C - Safety Valves

1. At the round table co-chaired by Francis Maude and John Cridland on 1 May, some suppliers felt departments were in some instances making requests of contractors that would lead to increased costs for both Government and suppliers, and which did not add any value. Suppliers called for a safety valve to enable such issues to be raised with the centre and to enable action to be taken.
2. We recommend that suppliers that receive a request during the life of a contract that they believe to be unreasonable or to represent poor contract management practice should alert Cabinet Office as follows:
 - suppliers that are not strategic suppliers to Government should raise any such request with the Crown Commercial Service's Mystery Shopper Service.¹
 - strategic suppliers should either:
 - i. refer requests to the Mystery Shopper Service where they believe them to be minor or
 - ii. Where the request would involve the supplier incurring significant cost or where the same department has made a series of requests that a supplier believes to be unreasonable or to represent poor practice, refer the matter to the relevant Crown Representative.
 - if the Crown Representative has been unable to resolve the issue, suppliers should contact the Government's Chief Commercial Officer.
3. The Mystery Shopper Service can be contacted at MysteryShopper@cabinet-office.gsi.gov.uk, and more information can be found at <https://www.gov.uk/government/publications/mystery-shopper-scope-and-remit>

¹ The Mystery Shopper Service was launched by the Prime Minister and Minister for the Cabinet Office in 2011 to investigate issues of perceived poor procurement practice. The Service investigates complaints as well as carrying out spot checks on public procurement, and makes recommendations to the public body being investigated. The Service has achieved a 79% success rate in over 600 investigations concluded to date.

