



Department
of Energy &
Climate Change

Government Response: the DCC's Procurement Strategy and Statement of Service Exemptions

14D/349

22 September 2014



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The response document can be found on DECC's website:

<https://www.gov.uk/government/consultations/dcc-procurement-strategy-and-statement-of-service-exemptions>

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General information

Purpose of this document:

This document concludes the Government's consultation seeking views on two documents produced by Smart DCC (the Procurement Strategy for Relevant Service Capability and its Statement of Service Exemptions). The response concludes that the documents are now fit for approval by the Secretary of State. We will now write to the DCC confirming approval.

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Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Quality assurance:

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.bis.gov.uk/files/file47158.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
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Email: consultation.coordinator@decc.gsi.gov.uk

Introduction and summary

The DCC licence

- 1 Smart Meters are the next generation of gas and electricity meters. They will offer a range of intelligent functions and provide consumers with more accurate information, bringing an end to estimated billing. Consumers will have near real-time information on their energy consumption to help them control and manage their energy use, save money and reduce emissions.
- 2 On 23 September 2013, a new licensed entity, the Data and Communications Company (DCC), was established when the Secretary of State granted Smart DCC Ltd a licence¹ (the 'DCC Licence') to regulate the DCC's activities. The DCC has an obligation in its licence to provide a Smart Meter communications service, which will be the means by which energy suppliers, energy networks and others can communicate remotely with Smart Meters in Great Britain. The DCC will deliver this service by working with its sub-contractors, including the Data Service Provider (DSP) and Communications Service Providers (CSPs).

Consultation on the DCC's Procurement Strategy for Relevant Service Capability and Statement of Service Exemptions

- 3 Under the terms of the DCC Licence the DCC is required to produce a statement of its Procurement Strategy for Relevant Service Capability (the 'Strategy') (Condition 16 Part D) and a Statement of Service Exemptions (Condition 17.20).
- 4 The Strategy sets out the nature and extent of the DCC's procurement activity, including how it intends to determine which capabilities are needed and a forward plan for procurement.
- 5 The Statement of Service Exemptions sets out the characteristics of properties which, for the time being, need not be served by the DCC either because of the geographical area in which they are located or because of some physical characteristics of the property.
- 6 Both documents must be approved by the Secretary of State and put in place within 12 months of licence award (i.e. by 23 September 2014). Before approving these documents, the Secretary of State must consult with relevant stakeholders.
- 7 On 23 July 2014 we published a consultation seeking views on these documents, in particular on whether it would be appropriate for the Secretary of State to approve the documents.
- 8 We received eight responses to the consultation, comprising four large suppliers, two small suppliers, one network respondent and Ofgem. Stakeholders were generally content with the Procurement Strategy subject to a small number of significant comments. Responses were more mixed on the Statement of Service Exemptions, though most respondents did consider that the document was fit for approval. We put all

¹ Available at Ofgem's electronic public register <https://epr.ofgem.gov.uk>

the comments to the DCC and asked it to review its documents in light of the comments received.

9 **Following analysis of stakeholders' comments, and the DCC's subsequent revision of the documents, we have concluded that both of the documents are now fit for approval.**

10 We will write to the DCC to confirm approval.

11 In Chapter 1 we summarise comments on the Procurement Strategy and our response, in Chapter 2 we do likewise for the Statement of Service Exemptions. Annex 1 contains the final, approved, Procurement Strategy and Annex 2 the final, approved, Statement of Service Exemptions.

12 Following our initial approval of the documents regulatory oversight, including responsibility for approval of material changes to the documents, transfers to Ofgem.

1. Procurement Strategy

Introduction

- 13 Condition 16 (Procurement of Relevant Service Capability) of the DCC Licence sets out the DCC's obligations with respect to the procurement of Relevant Service Capability ('RSC'). RSC encompasses all the resources that the DCC procures for the purposes of securing the provision of its Mandatory Business Services².
- 14 The DCC must, in all circumstances, procure a sub-set of RSC known as Fundamental Service Capability ('FSC') on a competitive basis. FSC comprises the capability provided by the CSP and DSP contracts respectively, and any adopted contracts that provide similar capability (C16 Appendix 1).
- 15 In general the DCC must also competitively procure any other RSC, the exception being where such non-competitive procurement would be either the most economical and efficient option or would be immaterial in terms of its value or use of resources (C16.6). The Procurement Strategy must cover all capability, including any such exceptions.

Required contents of the Procurement Strategy

- 16 Condition 16 Part D (Procurement Strategy for Relevant Service Capability) requires the DCC to produce, and have approved by the Secretary of State, a statement of its Procurement Strategy for Relevant Service Capability (the 'Strategy'). The Strategy must set out the DCC's conclusions with respect to the nature and extent of its procurement activities, with particular reference to (C16.21):
 - a) the determination of the RSC necessary to enable the DCC to exercise its functions;
 - b) the determination of which of those capabilities are to be procured from external service providers by means of a competitive process;
 - c) the determination of how and to what extent the required RSC reflects the guidance contained in any Public Interest Statement issued by the Secretary of State;
 - d) the determination of how the required RSC is to be assembled into discrete contracts; and
 - e) the determination of a forward plan of the procurement activities necessary to secure those contracts.
- 17 The DCC's draft Procurement Strategy was attached to the consultation. We sought views on the document and, in particular, whether it was fit for approval.

² Mandatory Business Services are those services the DCC must provide - its core and elective communications services and enabling services such as enrolment and the provision of communications hubs (Condition 6 of the DCC Licence provides further detail).

Responses to consultation

- 18 We received eight responses to the consultation. Most of the respondents who expressed a view said that they agreed that the document should be approved.
- 19 One small supplier did not agree that the document should be approved as it did not consider that the document set out how the Communications Service Provider (CSP) contracts would provide value for money, it also commented on the DCC's procurement of Communications Hubs.
- 20 Ofgem and a number of large suppliers commented, in particular, on the DCC's self-provision (or provision by a related undertaking such as a parent company) of certain services. Stakeholders were concerned that the DCC did not sufficiently demonstrate how it would ensure that such self-provision was consistent with the licence requirement (C16.6). Under this condition, non-competitive procurement is only allowed when it would be either the most economical and efficient option or immaterial with respect to value or use of resources. In its response on this point, one large supplier asked that evidence be retained and provided to Ofgem to demonstrate compliance with the obligations.
- 21 Other comments included:
- A request that DCC engage with key stakeholders/SEC parties who may be materially impacted by the specific procurement being undertaken to ensure that any current sensitivities or desired improvements are considered as part of the procurement exercise; and
 - An observation that the DCC was approving its own procurement, and a query as to whether any higher authority would be involved.

Government response

- 22 We agreed that further changes to the Procurement Strategy were necessary to address concerns around the approach the DCC will take when considering if it is appropriate for it to not competitively procure services and, therefore, asked the DCC to reconsider its approach. The DCC has now set out a revised approach, making clear the factors that will be taken into account and providing examples of how the decision will be evidenced (see the cross-reference in Section 4.1.2 to the procurement principles in Section 3). The Strategy also now explicitly states the DCC's policy of using competitive procurement unless it is in the interests of stakeholders not to do so. We consider that this revision now addresses the concerns raised.
- 23 Consistent with its licence obligations the DCC has also committed to retaining all key procurement documentation and to making this available to Ofgem. Importantly, its price control reporting will include justifications for any procurement where it has elected not to use a competitive procurement exercise (see Section 4.1.3).
- 24 With respect to the comment from one small supplier that it was unclear how the CSP contracts would provide value for money, we note that the CSP contracts were secured through a major competitive procurement process. In our view this approach ensures value for money from the outset. Furthermore the DCC is under an enduring licence obligation (in particular through the price control conditions in Chapter 9 of the DCC Licence) to demonstrate that its costs are economically and efficiently incurred. Therefore we do not consider that further changes are necessary to the Procurement Strategy in this respect.

- 25 We also do not consider that further changes are necessary following comments received on Communications Hubs. The policy on Communications Hubs, and the specific legal drafting associated with them, was outside of the scope of this consultation and is instead covered elsewhere (for example the consultation on stage 4 of the SEC³).
- 26 The DCC has made further minor changes to the Strategy following consideration of stakeholder responses, including a reference to the need to consult with stakeholders before procurement exercises where appropriate (Section 4.1.1). It has also made it clear, with reference to the comment in paragraph 21 above, that approval to award a contract will be taken by the Smart DCC Board (or by a defined delegated authority approved by that board). Further to this point we also note that ultimate oversight of DCC procurement, and whether it has met the requirements of the DCC Licence, rests with Ofgem.

Secretary of State approval of the Procurement Strategy

- 27 Following consideration of stakeholder comments, and the DCC's revised Procurement Strategy that has taken account of these comments, we can confirm that the Secretary of State will approve the Procurement Strategy. The approved final version is at Annex 1.

Future revisions of the Procurement Strategy

- 28 After the Secretary of State's initial approval, the DCC is obliged to review its Strategy at least once a year. The purpose of this review is to ensure that the Strategy continues to meet the requirements of Condition 16. If the DCC considers it necessary, it should submit any proposals for revisions of the Strategy to Ofgem (C16.24). In turn Ofgem may, at any time (following consultation), direct the DCC to revise the Strategy (C16.25).
- 29 Under Condition 16 the DCC must also take account of any guidance given in a Public Interest Statement issued by the Secretary of State. Such guidance would be with respect to the public interest considerations that may need to be reflected in the scope and functionality of FSC procured by the DCC (C16.16). At the present time the Secretary of State has not issued such guidance, but may do so in future.

³ See <https://www.gov.uk/government/consultations/new-smart-energy-code-content-stage-4>

2. Statement of Service Exemptions

Introduction

- 30 Condition 17 of the DCC licence obliges it to provide services, or to offer terms for services, in accordance with the requirements of that condition and as further detailed in the Smart Energy Code (SEC).
- 31 However, the DCC is not obliged to enrol Smart Meters (and therefore to provide other services to them) that fall within the categories specified in its Statement of Service Exemptions (C17 Appendix 1).
- 32 As set out in the November 2012 Government Response to the consultation on the draft DCC Licence⁴, the purpose of the Statement of Service Exemptions ('the Statement') is to identify those categories of property (including by reference to geographical area) at which it would be disproportionately costly or technically unfeasible for the DCC to provide services to Smart Meters and what proportionate steps the DCC proposes to eventually provide services to them.
- 33 The first Statement must be approved by the Secretary of State and in place within 12 months of licence award (i.e. by 23 September 2014). Before approving it the Secretary of State must consult with relevant stakeholders.

Required contents of the Statement of Service Exemptions

- 34 The Statement (C17 Appendix 1 Part A) must set out, in appropriate detail, two service exemption categories:
- Service Exemption Category 1: this must specify any types or configurations of premises to which a Smart Meter Communication Service need not for the time being be provided because it is either technically impracticable or could only be achieved at disproportionate cost; and
 - Service Exemption Category 2: this must specify any geographical areas in Great Britain within which a Smart Meter Communication Service need not for the time being be provided to premises, again because it is either technically impracticable or could only be achieved at disproportionate cost.
- 35 The Statement must also set out the steps the DCC proposes to take in order to secure the eventual provision of services to those meters that fall within either of the exemption categories (C17 Appendix 1 A6).
- 36 The consultation asked for comments on the Statement including, in particular
- Whether the Statement met the requirements of the DCC licence;
 - Whether stakeholders agreed that it is reasonable that more detail is provided as the DCC and its CSPs learn from operational experience; and

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43050/6894-gov-resp-consultation-dcc-lic.pdf

- If stakeholders agreed that the Statement was suitable for approval by the Secretary of State.

Responses to consultation

- 37 We received eight responses to the consultation. Most respondents agreed that the Statement was fit for approval. A number welcomed the commitment to provide further information in future iterations of the Statement, in light of the operational experience of the DCC, CSPs and suppliers.
- 38 Two large suppliers did not agree. One considered that the references to 'Coverage Area' and 'Coverage Region' were inconsistent and, in its view, meant that there was an undefined number of properties that would be excluded.
- 39 The other large supplier that did not agree that the Statement was ready for approval made various comments including that:
- there was insufficient detail on why particular properties would not be able to connect to the WAN;
 - it expected to see postcode level information accompanying the Statement;
 - it expected to see a full explanation as to what areas of the country would not be served by the WAN and why, including details of the different technology deployed;
 - it noted a sudden jump in target coverage in the Southern / Central regions, from 80% in October 2016 to 97.5% in January 2017, commenting that this was difficult to understand with no explanation given; and
 - the respondent did not think the document would help energy suppliers in providing information about the service being provided.
- 40 Other comments included:
- an observation that the document did not set out how the DCC will report on whether the targets had been hit;
 - an observation that the targets in the table with respect to the Northern Region conflicted with information that had been provided in an industry forum; and
 - a suggestion that a minimum level of HAN connectivity be included in the Statement.

Government response

- 41 We agree that there was potentially confusing use of the terms Coverage Area and Coverage Region in the draft Statement. The DCC has now revised the Statement and corrected these references. As a consequence we consider that the concern expressed by one large supplier that there was a potentially 'undefined' number of properties that would not be served by the DCC has been addressed. The Statement provides clear obligations as to the proportion of properties that the DCC must serve in each Coverage Region and there is no 'undefined' number of exempted properties.
- 42 We do not think it appropriate or practical that the Statement is accompanied by postcode level data on the types of properties that will be excluded. This information will be provided, dynamically, under the DCC's SEC obligations to provide WAN coverage

information (including with respect to the type of technology that will be deployed). This will be delivered (on an enduring basis) through the DCC's self-service interface or similar electronic system. We consider that this also addresses the concern regarding a lack of information as to what areas will fall outside of WAN coverage.

- 43 With respect to the comment that coverage targets in the Southern and Central region jump sharply between late 2016 /early 2017, the DCC has confirmed that this is because the targets reflect minimum contractual obligations on the part of the CSP; these targets were agreed during the procurement process and the CSPs remain committed to meeting them. In practice the actual coverage is likely to vary (though not fall beneath the minimum coverage required).
- 44 As set out in the consultation document we consider that it is reasonable that the DCC continues to develop the Statement in future iterations, in particular with respect to the level of information it provides on the types of property likely to fall within Exemption Category 1. We note that most respondents agreed with this approach and continue to think it is reasonable.
- 45 We note the comment that it would be appropriate to include reference to a minimum level of HAN connectivity in the Statement. However, there is no obligation on the DCC under its Licence to provide HAN connectivity, nor is there an obligation to reference such connectivity in the Statement. Therefore we do not consider that such information is necessary in order for the Statement to be approved.
- 46 The DCC confirmed that the coverage targets for the Northern region do correctly reflect the current CSP contract. It noted that slightly different numbers had been discussed in industry forums but that these reflected previous contractual obligations that have now changed as a result of industry re-planning activity.
- 47 Finally, we note and welcome the DCC's commitment to report on progress against previous years' targets in future iterations of the Statement. As set out in the consultation, the DCC is obliged to review the Statement each year and submit the revised Statement to Ofgem.

Secretary of State approval of the Statement of Service Exemptions

- 48 Following consideration of stakeholder comments, and the DCC's revised Statement that has taken account of these comments, we can confirm that the Secretary of State will approve the Statement of Service Exemptions. The approved final version is at Annex 2.

Future revisions of the Procurement Strategy

- 49 As set out above, the DCC is obliged to review the Statement each year. It must submit any proposed modifications to Ofgem (C17 Appendix 1 A8). Ofgem may direct that the DCC revise its Statement in such a manner, and to such extent, as is set out in the direction (C17 Appendix 1 A9).

Annex 1: DCC Procurement Strategy

- 50 The DCC's Procurement Strategy for Relevant Service Capability is published separately alongside this document at <https://www.gov.uk/government/consultations/dcc-procurement-strategy-and-statement-of-service-exemptions>.

Annex 2: Statement of Service Exemptions

- 51 The DCC's Statement of Service Exemptions is published separately alongside this document at <https://www.gov.uk/government/consultations/dcc-procurement-strategy-and-statement-of-service-exemptions>.

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