



Cabinet Office



Crown  
Commercial  
Service

# **Small Business, Enterprise and Employment Bill**

**Reforms to public procurement  
– analysis of responses to  
consultation**

# Section 1: Summary of the consultation

## **Introduction**

The Government has consulted on a new power in the Small Business, Enterprise and Employment (SBEE) Bill to help small businesses gain better access to public sector contract opportunities. The intended enabling power would allow the Government to introduce a range of measures to streamline procurement and reduce barriers for smaller businesses as the need arises.

The SBEE Bill builds on the progress to date to make public procurement more accessible to small businesses, as well as the recommendations made in Lord Young's 2013 'Growing Your Business' report (<https://www.gov.uk/government/publications/growing-your-business-a-report-on-growing-micro-businesses>), by including a clause that will provide the Government with powers to make regulations about public procurement.

The relevant clause in the Bill could be used to deliver key measures to help to ensure that remaining barriers for small businesses are removed, procurement practices become more streamlined and efficient, and small businesses have better opportunities to grow.

The consultation was launched at 09:00 on Thursday the 16th of October 2014, and closed at 09:00 on Thursday the 13th of November 2014.

## **Summary of responses**

75 responses were judged to be within scope of the consultation questions (a total of 82 responses were received), and there were a range of participants from sectors including;

- Central government
- Local government
- Police, Fire and Health bodies
- Education, qualification and professional bodies
- Organisations representing Voluntary, Community and Social Enterprises (VCSEs)
- Trade bodies
- Broadcasting organisations
- Universities and academics specialising in public procurement
- Lobbying organisations
- Suppliers to government, private businesses and entrepreneurs
- Individuals with an interest in public procurement

We are grateful to all those stakeholders who responded to the consultation paper and/or gave views on the consultation in various meetings. This document summarises the results of the consultation, and shares the key points raised by stakeholders in response to each question. The Government will continue to consider how the points raised in this consultation can be taken forward in due course.

## Section 2: Consultation responses

### **Measure 1 – duties to exercise procurement functions in an efficient and timely manner**

Public procurement should be efficient in order to increase opportunities for small businesses, and reduce burdens and cost to both suppliers and procurers. In addition to specifying that timescales should be proportionate, regulations or guidance could cover other key elements of best practice procurement, such as pre-procurement market engagement and contract management.

Consultation questions on this measure were;

**Q1.** *Please explain the key points which you feel are essential for i) ensuring an efficient and timely process for public sector contracts, and ii) ensuring that the considerations of small businesses are integrated into the procurement strategy.*

**Summary of responses** - Suggestions in response to this question included;

- The need to conduct more pre-market engagement with suppliers
- Adopting a project management approach to procurement
- Using standardised documentation and processes
- Adopting a category management approach to procurement
- Having robust and proportionate timescales for delivering a procurement and an appreciation of whole life costing.

Responses from the Voluntary, Community and Social Enterprise sector called for the enabling power to be broad enough to deliver any recommendations that arise from Lord Young's review of the Social Value Act.

**Q2.** *In 2012 the Minister for the Cabinet Office mandated that Lean sourcing principles should be applied to all procurements across central government, and that all but the most complex procurements be delivered within 120 working days; should this policy be applied across all public sector procurements? Can you identify and explain any scenarios where Lean sourcing principles may not be suitable?*

**Summary of responses** - 40 responses to this question supported the premise of the question, with 22 responses being against the wider application of Lean sourcing principles and 18 responses either being neutral or addressing other issues.

The majority of positive and neutral responses were keen to support Lean sourcing principles, but made the point that a 120 working day timescale would not be suitable in all scenarios. From the responses, there was no agreed definition on what a complex procurement represented, but suggested examples included procurements for information technology or outsourcing.

**Q3.** *Can you identify and explain any existing practices in public sector procurement which result in unnecessary delays or additional costs?*

**Summary of responses** - Examples provided in responses to this question included over complicating requirements and 'gold-plating' specifications, being over prescriptive for lower value procurements, complex tender documentation, and the inappropriate use of frameworks which can be a barrier for small businesses and internal decision making procedures.

**Q4.** *For low value procurements not subject to the EU Public Procurement rules, what do bidders believe is the minimum number of days required for submitting a full Invitation to Tender response? Where there are different scenarios which affect the number of days, can you explain your rationale?*

**Summary of responses** - On the specific question of timescales, responses ranged from suggesting 7 to 30 days for submitting a full Invitation to Tender response. A number of responses noted the importance of considering the complexity of the procurement, rather than the value, when deciding appropriate timescales.

Several responses from outside of local and central government stated that when considering proportionate timescales, contracting authorities should consider the impact on small business resources, and the relative size of a small business bidding team compared to larger competitors.

**Q5.** *Can you identify specific areas of the procurement life cycle (including but not limited to pre-market engagement, commercial strategy, sourcing, tender evaluation, contract management) where you think the public sector can improve? How can the proposed measure in the Bill help deliver these improvements?*

**Summary of responses** - A strong theme that emerged from the consultation was the need for the public sector to have sufficient commercial capability, both in terms of the skill levels of procurement professionals and having sufficient resources in place. More specific suggestions for improvement included the ability to negotiate during the procurement process, better contract management, introducing regulations for an efficient and timely procurement process and more pre-procurement market engagement with suppliers.

Giving more, and better, feedback to bidders for lower value procurements i.e. below the financial thresholds set out in the Public Contract Regulations, was also suggested as a way of helping small businesses.

**Q6.** *What resources e.g. number of people, commercial expertise, frequency of meetings with suppliers, should the public sector commit to the management of contracts? Where there are different scenarios such as contract size or complexity, can you explain your rationale?*

**Summary of responses** - Those responding to the consultation were either reluctant or unable to commit to specific resources for managing contracts. However, several suggestions were made in terms of what the contract management function should look like. These included;

- Adopting a risk based, proportionate approach to contract management.
- Freeing up resources in the public sector to manage contracts, and ensuring the right team of people are in place.
- The importance of regular, recorded meetings.
- Ensuring contract management plans are discussed at contract award stage.

**Q7.** *How can the Government ensure that procurement pipelines showing future business opportunities are made more accessible and relevant?*

**Summary of responses** - Suggestions in response to this question included;

- More frequent updates to the websites publicising government procurement activity.
- Greater transparency of public sector supply chains.
- Making pipelines information more understandable for smaller businesses and the wider supply chain in terms of explaining the procurement processes and identifying live opportunities.
- Widening the mandate of pipelines beyond central government, and considering the mandation of contract updates as well as publication.
- Development of a separate portal.

**Q8.** *Could additional transparency measures, such as rights for public sector organisations to publish pricing data and contract documents, help deliver efficient and timely procurement processes across the public sector? Please explain further.*

**Summary of responses** - Whilst there was widespread support for the principle of transparency in procurement, there were a number of consultation responses that expressed reservations in terms of publishing pricing data. It was suggested that further work would be needed to avoid distorting competition amongst suppliers.

**Measure 2 – a duty to make available, free of charge, information or documents, or processes necessary for any potential supplier to bid for a contract opportunity**

Charging suppliers to access public procurement opportunities and documentation may create a barrier to accessing procurement opportunities for small to medium sized businesses. This duty would help suppliers to access public sector business in a fair, open and transparent manner.

*Consultation questions on this measure were;*

**Q9.** *Is there any justification for applying charges to access information or documents in order to bid for a public sector contract opportunity, or to secure accreditation from a public body? Please explain further and provide examples where possible.*

**Summary of responses** - 56 responses to this question said that there was no justification for applying charges in this area, with 2 responses saying that charges could be justified and 17 responses either being neutral or addressing other issues. Some responses suggested that there may be a justification in instances where the public sector pays for security vetting, requiring registration with CHAS and/or Constructionline and to protect intellectual property.

**Measure 3 – a duty to accept electronic invoices**

The Government wishes to increase take-up of e-invoicing by legislating to ensure that all public authorities are capable of accepting electronic invoices in public procurement, so that there is a more efficient environment for suppliers and improved payment performance. In April this year the European Parliament and Council agreed the directive on e-invoicing in public procurement. A data standard will be tested and formally referenced in the Official Journal of the European Union (OJEU) by the 27<sup>th</sup> of May 2017. The directive sets no intermediate dates before May 2017 for development of a draft standard.

*Consultation questions on this measure are;*

**Q10.** *Can you identify any potential barriers which may prevent i) public sector organisations accepting electronic invoices from suppliers, and ii) small to medium sized businesses having the ability to issue electronic invoices? How can these barriers be removed?*

**Summary of responses** - The consultation response identified potential barriers such as not understanding the costs of procuring the e-invoicing software and the technology itself, the technological capability of suppliers and the public sector, integration costs and internal resources. It was suggested that the barriers could be overcome by using free to use software and web-based systems that allow quick upload from both desktop and mobile devices.

It was suggested within some responses that public sector organisations could also help remove barriers by offering self-service options on their own financial systems or electronic marketplaces.

**Q11.** *Please explain the key points which you feel are essential for delivering an efficient electronic invoicing system for public sector organisations and suppliers.*

**Summary of responses** - Responses suggested that an agreed national or European standard needs to be established so that there is only one format for e-invoicing, and there needs to be an understanding of the technology basis of both the public sector and suppliers. The promotion of e-catalogues and Purchase to Pay systems were seen as being important, as was the ability to control fraudulent invoices and having a smooth electronic data feed.

A number of responses identified that best practice organisations have web-based supplier portals on their company website with clear communication, guidance and training manuals where required.

**Q12.** *Do you believe that electronic invoices will ensure that the public sector pays its suppliers more promptly? Please explain further.*

**Summary of responses** - 36 responses to this question said that electronic invoices would ensure the public sector paid its suppliers more promptly, with 6 responses saying that electronic invoices would not help prompt payment and 33 responses either being neutral or addressing other issues.

Whilst more positive responses suggested that electronic invoicing can lead to greater efficiencies for both contracting authorities and suppliers and would help prompt payment, it was noted from the analysis of consultation responses that the quality and accuracy of invoicing and use of appropriate contact details are also key drivers, more so than the speed of communicating a particular invoice.

A number of consultation responses suggested that a more significant issue identified was subcontracting arrangements and how payments flow through supply chains, rather than electronic invoicing.