



Cabinet Office



Crown
Commercial
Service

CONSULTATION DOCUMENT:

Small Business, Enterprise and Employment Bill

Reforms to public procurement

This consultation begins at 09:00 on Thursday 16th of October 2014

This consultation ends at 09:00 on Thursday 13th of November 2014

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Section 1: The Consultation

Introduction

The Government is consulting 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 as the need arises.

Background

With an annual spend of £230bn, public sector procurement has the potential to create significant business and growth opportunities through increased participation for small and medium sized businesses, as well as improving the public sector's access to their creativity and innovation. However, in the past small businesses have found bidding for public sector contracts excessively, and sometimes prohibitively, bureaucratic, time-consuming and expensive.

Since 2010 there has been considerable progress in central government and many other parts of the public sector in opening up the procurement process to small businesses. For example, burdensome Pre-Qualification Questionnaires (PQQs) have been removed for almost all central government contracts below £100,000, and the adoption of lean procurement methods and lean sourcing training courses have reduced timescales. These reforms have stripped out unnecessary waste from the procurement process, thus delivering benefits to public authorities and the businesses that bid for and win these contracts.

The Government also introduced pipelines on the Contracts Finder digital tool in November 2011 as a way of increasing certainty about future buying decisions. They provide a sectoral and strategic approach to support the efficient management of supply markets, and improved visibility of opportunity to those suppliers who may in the past have found it harder to access UK public sector tendering opportunities.

Following Lord Young's *Growing Your Business* report, an initial set of procurement reforms will be implemented as part of the new public contract regulations to ensure a simple and consistent approach to procurement across all public sector authorities, so that small businesses can gain better and more direct access to the market. The initial set of reforms will ensure that all procurement opportunities are advertised in one place, burdensome PQQs for lower value procurements are removed and suppliers are paid promptly, with 30 day contract terms being passed all the way down the supply chain.

The SBEE Bill builds on the progress to date by including a clause that will provide the Government with powers to make regulations about public procurement. The relevant clause in the Bill, which is currently before Parliament, could be used to deliver key measures to help to ensure that remaining barriers for small businesses are removed, procurement practices become more efficient and small businesses have better opportunities to grow.

Why consult

The clause in the SBEE Bill will, subject to Parliamentary procedure, give the Government the ability to implement further measures relating to public procurement in the future. It will provide the Government with the ability to make provision in secondary legislation imposing duties on procuring authorities in relation to procurement.

The clause also enables the Government to issue guidance relating to the regulations, to which procuring authorities will be obliged to have regard. The Government is now consulting on how the power could in particular be used to require procuring authorities to;

- run an efficient and timely procurement process;
- make available, free of charge, information or documents, or processes necessary for any potential supplier to bid for a contract opportunity;
- accept electronic invoices.

These measures will apply to “contracting authorities” as defined in the Public Contracts Regulations 2006, with an exception for bodies whose functions are wholly or mainly devolved functions.

By their nature, small businesses are more likely to be attracted to public procurement opportunities which are of a lower value and below the relevant financial thresholds. The Government is using the consultation exercise to get the views of buyers, suppliers and other stakeholders to ensure that the regulations made under the power in the SBEE Bill help create a simple and consistent approach to procurement across the public sector so that small businesses can gain better and more direct access to this market. You are therefore encouraged to participate in this consultation.

Scope

This is a UK wide public consultation and is open to anyone; receipt of all responses will be acknowledged, and the content will be considered. The consultation document has also been issued directly to a number of known stakeholders, and is also made publicly available at <http://www.gov.uk/government/consultations/reforms-to-public-procurement>.

Timing

This consultation will run for a period of 4 weeks from 09:00 on Thursday the 16th of October 2014 until 09:00 on Thursday the 13th of November 2014, and your input is welcomed. As the issues set out in this consultation are not major policy changes, a 4 week consultation period has been considered appropriate. Following the analysis of all responses, results of the consultation will be published in December 2014.

Responses

Thank you for taking the time to read this document and participate in the consultation. To respond to this consultation, please answer the questions within the response form at Annex A and e-mail a copy of this document to;

procurementreformconsultation@cabinet-office.gsi.gov.uk

There is no word limit on responses, and the tables in Annex A should be expanded as necessary. Alternatively, you may post your consultation response to the following address;

Service Desk, Crown Commercial Service

Rosebery Court

St Andrews Business Park

Norwich

NR7 0HS

This exercise is being conducted in line with the Government's key consultation principles. If you have any questions, comments or complaints about the consultation process itself, or have any specific accessibility requirements, please use the contact details above.

Please state whether you are responding as an individual, or representing the views of an organisation or group. If responding on behalf of a larger organisation or group, please make it clear who the organisation or group represents and, where applicable, how the views of members were coordinated.

Handling of information from individuals

The information you send may need to be shared with other government departments, and may be published in full or in a summary of responses. All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want your response to remain confidential, you should explain why confidentiality is necessary; depending on the circumstances, there is no guarantee that confidentiality will be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Contributions to the consultation will be anonymised if they are quoted, and individual contributions will not be acknowledged unless specifically requested.

Section 2: Consultation Questions

This section of the consultation document seeks feedback on specific questions on the following proposed measures that could be made under the SBEE Bill.

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

Public procurement needs to 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-market engagement, contract management and prompt payment.

Consultation questions on this measure are;

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.

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?

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

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?

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?

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?

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

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.

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 is a barrier for small to medium sized businesses. This requirement on public authorities will help suppliers to access public sector business in a fair, open and transparent manner.

Consultation questions on this measure are;

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.

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 27th 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?

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

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

Annex A: Consultation response form

Consultation question	Response
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Annex B: Internet links

Supporting Small to Medium-sized Enterprises

<https://ccs.cabinetoffice.gov.uk/i-am-supplier/find-opportunity/help-smes>

Lean sourcing

<http://ccs.cabinetoffice.gov.uk/about-government-procurement-service/commercial-capability/government-procurement-training/lean>

Procurement pipelines

<https://ccs.cabinetoffice.gov.uk/i-am-buyer/procurement-pipeline>

Consultation principles and guidance

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Small Business, Enterprise and Employment Bill

<http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

Current text of the Bill

<http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0011/15011.pdf>

Consultation outcome - Making public sector procurement more accessible to SMEs

<https://www.gov.uk/government/consultations/making-public-sector-procurement-more-accessible-to-smes>