

Cabinet Office Consultation: Public Procurement: Growing British industry, jobs and skills - Response from the Competition and Markets Authority (CMA)

Overview

1. The CMA is the UK's principal competition and consumer authority. It is an independent non-ministerial UK government department, and its responsibilities include carrying out investigations into mergers and markets, and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. The CMA has a role in providing information and advice to government and public authorities.² The CMA's advice and recommendations are intended to promote the interests of consumers and harness the power of competition to deliver long-term growth and prosperity for the UK.³
3. Economic growth – including unlocking opportunities for UK firms to scale and succeed – are critical national priorities, strongly supported by the CMA. Over the last year, we have applied a concerted pro-growth lens to our work, actively seeking opportunities to tackle barriers and support drivers of innovation, investment, productivity and economic dynamism.
4. The CMA's view is that public procurement represents a potentially powerful policy lever for advancing economic objectives. Our engagement with startups, scale-ups and investors consistently highlights that systemic incumbency advantages in public procurement processes can create significant barriers to their growth.⁴ Reforming these processes could become one of the most powerful tools for enabling startup success. In today's economic climate, where access to finance is constrained and capital more costly, firms increasingly tell us that securing revenue-generating contracts is what unlocks financing – not the other way

¹ The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, "on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law)."

³ [CMA Annual Plan 2025 to 2026](#).

⁴ The CMA regularly engages with the investment, startup and scale-up communities both through casework and senior level engagement. The CMA's Growth and Investment Council includes the BVCA, Founders Forum Group, LSEG, Startup Coalition and the ScaleUp Institute, alongside regular bilaterals with industry bodies and a series of roundtables with private equity and venture capital investors.

around. Public procurement therefore represents a £385bn opportunity to tackle the UK's scale up challenge.

5. At a macro level, government is a strategically significant purchaser across many critical sectors – the most significant in several. Past CMA work has shown how government shapes and influences industry structures, and the parameters of competition, through its procurement practices.
6. The launch of the government's modern industrial strategy presents a potentially transformational opportunity to harness this 'market shaping' ability, spurring economic growth over both the immediate and longer term. The size of procurement budgets make them a powerful tool to shape markets for innovation - particularly given constraints on innovation funding. A fragmented or un-strategic approach to procurement risks failing to capitalise on this potential impact. This could mean missed opportunities in the short term and poorer outcomes in years to come.
7. Finally, the corollary of securing economic growth through public procurement must be securing taxpayer value for money. This is a central objective of public procurement processes but is directly counteracted by anti-competitive conduct, notably bid-rigging. Bid-rigging occurs when suppliers collude during a procurement process, resulting in the reduction of fair competition. Evidence suggests that, where it is present, bid-rigging can artificially raise prices by 20% or more.⁵
8. The CMA has a track record of both detection and deterrence in this sector.⁶ Our capabilities to detect collusion in tenders across the public sector have been considerably enhanced through use of data science expertise and we are optimistic about the potential to save billions in avertable losses to the public purse. Scaling our current activities in this space would require collaboration and more systematic data collection from procuring authorities. We set out further detail in Annex 1.
9. Accordingly, the CMA welcomes the government's recognition that strategically leveraging its procurement spend, and harnessing its distinct position as a buyer, can help to deliver economic policy goals, including growth, jobs and opportunities.⁷ The CMA has previously provided advice about the benefits of integrating pro-competitive principles into public procurement process in our 2021 response,⁸ and we have supported production of the Cabinet Office's Market Management guidance.⁹ We stand ready to work with government as it takes

⁵ OECD, [Fighting Bid Rigging in Public Procurement](#)

⁶ For example [Construction firms fined nearly £60 million for breaking competition law by bid-rigging](#)

⁷ [Public Procurement: Growing British industry, jobs and skills - consultation on further reforms to public procurement](#), page 4

⁸ [CMA's response to transforming public procurement - GOV.UK](#)

⁹ Cabinet Office, [Market Management](#)

forwards it reforms and more broadly welcomes opportunities to help UK government, Devolved Administrations and other public bodies to incorporate market shaping into public procurement.¹⁰

Box 1: How the CMA's work interacts with public procurement

Analysing the impact of government procurement in specific markets

The CMA has tackled and advised government on the impact of public procurement processes on dynamics and outcomes in specific markets. This has included the 2022 [Children's Social Care market study](#); the 2023 [market investigation into Motorola/Airwave's](#) supply of the land mobile radio network service for public safety; the 2024 [Infant Formula market study](#); and the 2025 [market investigation in to supply of public cloud infrastructure services](#). Our ongoing [civil engineering](#) market study, launched in June 2025, is looking at the design, planning and delivery of railway and public road infrastructure by government and the civil engineering sector across the UK. Early indications suggest the most likely outcome from this work is recommendations to government and public authorities around public procurement.

Public bodies are often a critical (in some cases sole) customer capable of shaping how these markets work. In many cases, procurement approaches contributed to the issues we found. A common theme is often a disconnect between these processes and long-term policy objectives, such as market-shaping. In part, this reflects the capacity of procurement teams, the incentives they face and the mix of objectives placed on public procurement.

Providing advice to government

As part of our statutory role providing information and advice to government and public authorities, the CMA has drawn on learnings from our casework relating to public procurement. For example, we supported production of the Cabinet Office's '[Market Management Guidance Note](#)' as part of the [Sourcing Playbook](#), which sets out to procurers how to monitor and promote healthy markets. More recently, in the context of the Industrial Strategy, we have committed to support the government in monitoring competition and supply chain structures in the defence sector, and assist a review of defence contracting. We also worked closely with Cabinet Office in relation to the roll-out of the new exclusion and debarment regime in the Procurement Act (2023).

Economic research and public policy

The CMA's Public Policy team and Microeconomics Unit are taking forward work around how competition can help tackle the UK's scale up challenge. We have published a new

¹⁰ The CMA has, for example, worked with local transport authorities and the Welsh Government on procurement and market shaping in the context of bus franchising. The CMA published [advice in 2024 for local transport authorities](#).

discussion paper on this topic which includes seeking views on procurement practices that hold back high-growth firms.¹¹ We place particular focus on the 8 priority sectors under the Industrial Strategy.

Tackling bid-rigging in public sector contracts

Bid-rigging is illegal under UK competition law and the CMA has taken enforcement action against it, including in markets where government is a major purchaser. This has included the CMA fining 10 construction firms a total of nearly £60 million in 2023 for illegally colluding to rig bids for demolition and asbestos removal contracts (which included contracts for the London Mayor's office, Bow Street Magistrates Court and Met Policy Training College)¹² and an ongoing investigation into possible bid-rigging to secure contracts to carry out essential building improvements to schools through the government's Condition Improvement Fund.¹³ We believe this represents a potentially sizeable opportunity to support public sector efficiency and productivity, as well as to create a level playing field for fair-dealing firms.

10. Our response to the consultation is structured as follows:

- (a) **Section 1 – market shaping and public procurement:** in line with the consultation's aim to ensure public procurement delivers wider economic objectives, we propose that it should be used to proactively shape markets. We also set out in practical terms how this can be done and consider the trade-offs.
- (b) **Section 2 – views on proposals in the consultation:** many of the lessons and approaches covered in section 1 are already reflected in government guidance and best practice. However too often, in the CMA's experience, market shaping and long-term health is considered after problems have occurred and markets have been allowed to develop in a suboptimal way. Given this we respond to two key questions put forward and propose:
 - (i) more explicitly embedding market shaping into public procurement processes, for example by incorporating this into the proposed minimum weighting of social value criteria.
 - (ii) adding a question to the proposed public interest test for outsourcing asking whether in-house provision could help promote competition in

¹¹ [Competition, investment and scale-ups](#) – CMA collection.

¹² [CMA press release](#): Construction firms fined nearly £60 million for breaking competition law by bid rigging (March 2023)

¹³ [CMA press release](#): CMA probes possible bid-rigging in relation to school improvement fund (December 2024)

the market (for example by providing a credible supply option to other buyers).

Section 1 – Market Shaping and public procurement

How does public procurement shape markets?

11. Government's influence over the markets it procures from can derive from two sources:
 - the public sector may account for a significant share of overall demand in a market;
 - government may be a strategically important customer for its suppliers.
12. Where one or both of these features is present, government's approach to procurement can influence:
 - **Industry structure:** government can set procurement specifications that influence the number, size, and diversity of firms in the market.
 - **Parameters of competition:** through weights allocated to price, quality, innovation, safety, and other specifications, government can influence the factors firms compete on and invest in improving.

Why proactively shape markets through public procurement?

13. Government's ability to shape markets through public procurement creates opportunities for it to do so proactively and strategically in support of goals beyond the immediate procurement exercise. For example, it can use public procurement to:
 - (a) **Encourage scale-ups and drive market dynamism.** Procurement can be designed and targeted to address barriers to growth faced by certain types of firms – for example, it can provide a predictable source of demand for new or innovative services, or address particular issues scale-ups may encounter in supplying to the public sector. Guaranteed revenue sources can provide a degree of certainty that helps to unlock business access to finance, enabling firms to invest in growing their business – this can be particularly important in the context of constrained access to finance.
 - (b) **Build capacity and resilience:** Lack of capacity or resilience among suppliers to government can create risks for taxpayers and public service users due to the potential for disruption to the delivery of essential services, delays to projects, and/or additional costs from securing supply at times of scarcity and supply disruption. Such risks can also affect resilience of supply

to the wider economy.¹⁴ To minimise these, government can influence market features associated with fragility, including by ensuring suppliers have sufficient financial resilience, lowering barriers to entry and expansion, and encouraging greater diversity of potential suppliers (for example SMEs).¹⁵

- (c) **Deliver long-term value for money:** Individual procurements typically use competition to deliver value for money with respect to the goods or services being purchased at the time. Procurement decisions can, however, also affect longer-term value for money outside of the specific exercise. For example, if a series of procurements leads over time to a consolidation in a market so that the number of credible suppliers to public authorities shrinks, this might lead to higher prices and lower quality in the long-term due to weaker competition. Proactive market shaping can support long-term competition and contestability to help deliver long-term value for money.
- (d) **Improve quality and innovation:** Although price is likely to be a central factor in all procurement decisions, government can influence the focus suppliers place on other features such as quality and innovation, and the extent to which they compete on these dimensions. This influence can be brought to bear, for example, through the signals government sends when setting out procurement pipelines, and through ensuring the weight given to quality and innovation in market engagement and procurement decisions reflects their relative importance to government.

14. Government will, in practice, influence markets in which it is an important buyer, even where it may not intend to do so. This 'passive' shaping can lead to worse long-term market outcomes, such as 'races to the bottom' on quality; underbidding and weak financial resilience among suppliers; and overreliance on a single or small number of providers.

Box 2: Examples of 'passive' market shaping and unintended consequences

Failure of Carillion

In the run up to its collapse in 2018, Carillion had run a high-risk business model that involved offering very low-price bids for major government contracts.¹⁶ These practices, which had become prevalent among major strategic suppliers to government at that time,¹⁷

¹⁴ The CMA's 2023 [Market resilience discussion paper](#) considers in more detail the drivers of market resilience and the roles of competition authorities and wider government with respect to these.

¹⁵ For example, 'should-cost' models can be used to baseline expected costs and disincentivise unrealistically low bids that could financial stability of suppliers later in a contract.

¹⁶ See pages 4-6 of [Institute for Government report 'Carillion: Two years on'](#) (2020)

¹⁷ [Institute for Government report 'Carillion: Two years on'](#) (2020) states: 'When Carillion collapsed, several other companies also had weak balance sheets and declining margins (see Figure 3). In 2016/17, none of government's three

were driven in part by award criteria for government contracts that placed a high emphasis on price – leading suppliers to make bids that were uneconomic, and to make up the difference during the contract. In effect, government at the time ‘passively’ shaped the market through its procurement, incentivising business models that were inconsistent with the resilience and stability required to deliver important public services and projects.

Forensic science services

Since 2012, following the closure of the publicly owned Forensic Science Service, forensic services have been supplied by private sector providers (under contract from police forces), and ‘in-house’ by police laboratories.

The sector is widely recognised as fragile.¹⁸ It has shrunk in size as in-house provision has grown and police authorities – themselves under financial pressure – have driven harder bargains with private sector contractors. These financial risks, and the high level of market concentration have on a number of occasions put service continuity at risk.

The police are by far the most important buyer of forensic services, and traditionally groups of forces have procured jointly. Their decisions on whether, how and on what terms to purchase have therefore had an important impact on competitive structure and profitability in the forensics market, and hence its resilience. Concerns have in the past been raised around the impact of procurement practices on the forensics market, including:

- the timing of tenders, combined with their size and the high weighting of price in bid evaluation, caused suppliers to compete intensely on price, weakening their financial resilience.

- in certain respects, private suppliers were in a disadvantageous competitive position vis a vis ‘in-house’ police provision. In particular, in-house providers could operate without accreditation and could put certain costs (for example estates) onto other budgets.

Steps have been taken in recent years in efforts to improve market resilience, including short-term price uplifts to contracts; a new, centrally administered Dynamic Purchasing System for procurement; and a long-term Forensic Marketplace Strategic Plan. Looking ahead, future resilience will depend on commercial strategies and procurement practices that enable efficient providers to be financially sustainable, and, over the long term, create conditions for new entry and expansion where it is required, such as in digital forensics.

largest suppliers – Capita, Carillion and Amey – made a profit, despite all winning more government work. Another told us it had not made a profit on UK central government work for five years.’

¹⁸ See, for example House of Lords Science and Technology Select Committee (2019) [Forensic science and the criminal justice system: A Blueprint for Change](#); and The Westminster Commission on Forensic Science (2025) [Forensic science in England and Wales: pulling out of the graveyard spiral](#)

15. The CMA is aware of a number of practical challenges to proactive market shaping in public procurement, including:
- (a) **Lack of capacity in procurement teams:** gaps in skills, awareness or knowledge in procurement teams can lead to limited consideration of the long-run health of a market, or to over-weighting prices in bids. In some cases this lack of capacity reflects the split of responsibility for successful immediate procurement outcomes (which generally sits with procurement teams), and market health and long-term objectives (typically sitting, if anywhere, with policy officials). Lack of adequate resource and staff can also result in prolonged procurement processes, distorting competition by increasing costs that smaller firms are less able to bear.
 - (b) **Misaligned incentives:** procurement teams often face incentives or pressures – such as time and budget constraints – which do not align with long-run objectives or market health. These incentive structures can lead to procurers being strongly risk averse, including by favouring established suppliers at the expense of longer-term competition in markets.
 - (c) **Ineffective coordination:** procurement exercises from different parts of government often draw from the same supply chains or markets. However, procurement teams are often not set up to consider the cumulative impacts of public procurement decisions beyond individual tenders. Where this lack of coordination occurs, this can result in the dilution of buying power, with lost benefits for government and taxpayers. Where supply is constrained, it can also lead to public procurers ‘competing’ against each other for the same goods and services, when coordination mechanisms could be more effective in allocating scarce supply, and delivering better value for money.
 - (d) **Multiple objectives:** while public procurement can be used to deliver wider public policy objectives, added requirements and complexity for potential suppliers can act as a barrier to some firms competing effectively (for example SMEs or new entrants). It can be challenging, both in setting the overall framework and in undertaking procurement, to balance the pressure to deliver on a wide set of policy objectives against creating the conditions where a diverse mix of firms can effectively compete for tenders.

How can public procurement be used to proactively shape markets?

16. Effective proactive market shaping begins with a thorough understanding of the relevant markets,¹⁹ and clear policy objectives. Ahead of procurement exercises,

¹⁹ See guidance on market assessments and market health in Cabinet Office's [market management guidance note](#). In addition the CMA's [Bus Franchising Advice](#) also highlights considerations for the design of franchising local transport to support competition including for future retenders.

policy teams benefit from a clear vision of what a well-functioning, successful market looks like for government. This might include:

- (a) **Market dynamism:** the number or nature of firms competing for business; the extent of firm entry and exit; the levels of innovation.
- (b) **Supply resilience:** the diversity of providers and/or sources of supply in the market; spare capacity; pipelines of future supply; acceptable supplier exit risks, especially for providers of essential services.
- (c) **Product/service characteristics:** both the cost and quality of products with respect to government's needs now and in the future; levels of investment and innovation.
- (d) **Wider economic government objectives:** any specific policy objectives for sectors from which government is purchasing, for example linked to the Industrial Strategy.

17. Once a clear understanding of these objectives is established, common approaches to support their achievement include:

- (a) Effective preparation and market signalling.
- (b) Addressing barriers to entry or expansion.
- (c) Addressing switching barriers.
- (d) Harnessing the scale of (fragmented) public procurement.
- (e) Creating incentives that go beyond price competition.

18. **Effective preparation and market signalling:** this involves government engaging with, and building understanding of, the relevant markets it purchases from, together with clear signalling of its objectives for the market, so current and potential suppliers can prepare to meet these.²⁰ Specific actions can include:

- (a) *Preparing pipelines of procurement activity:* this helps suppliers understand the public sector's long-term demand for services and prepare themselves to respond. This is particularly important for widening the range of suppliers and ensuring sufficient market capacity.²¹
- (b) *Engaging Small and Medium-sized Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs):* particularly when carried out

²⁰ Existing formal assessment tools include: Market Assessments, Delivery model assessments and Should Cost Model Estimates

²¹ In providing such pipelines it is important that procuring authorities are alert to factors which could facilitate bid-rigging or collusive activity. For example, risks may include predictable and regular bidding rounds that would present opportunities to strategically divide similar tendering exercises between firms.

during preliminary market engagement, this can provide additional time for SMEs/VCSEs to prepare for the bidding process.²²

- (c) *Transparency*: efforts to communicate information about public sector purchasing to a wide set of businesses (rather than just existing suppliers for example), can help to widen the supplier base and to hold suppliers to account.
- (d) *Pilots*: these can be particularly useful where public authorities are outsourcing a service for the first time. They provide an opportunity for contracting authorities to gather additional evidence to test understanding, market appetite and potential supply, and wider impacts of outsourcing, with a view to adapting course as needed in response.

Box 3: Example of issues related to government's signalling to the market: care homes

The CMA completed a market study in 2017 into residential and nursing care homes for older people. Among other findings, the study concluded that – although local authorities in England and Wales have a ‘market shaping’ duty – they did not sufficiently identify and plan for future demand for care, or take steps to commission care services on the basis of those plans. This in turn meant that they were largely unable to provide credible incentives to operators to invest in necessary future capacity. CMA recommendations in response included a single independent body with the technical and policy expertise to support local authorities to plan future capacity needs, and to monitor and hold local authorities accountable for their commissioning and procurement.

- 19. **Addressing barriers to entry or expansion**: based on understanding gained from preparation and market engagement activity, barriers to entry and expansion for prospective suppliers can be identified and reduced. This includes consideration of the barriers to SMEs successfully entering markets and bidding in public procurement exercises. Steps to achieve this include:
 - (a) *Reducing bid costs*: requiring large amounts of information or form-filling from participants can make it difficult and costly for smaller and less experienced firms to participate in public procurement. This is particularly relevant for SMEs or inexperienced firms bidding for public contracts. In many cases, costs might be unavoidable, and a reflection of the complexity of the public

²² For example, paragraphs 3.32 and 3.33 of the [CMA's 2024 advice paper on bus franchising for local transport authorities](#) sets out learnings from public intervention in bus markets around facilitating successful bids from otherwise competitive smaller operators who might not have the resource to hire specialists to advise on tendering processes.

sector's requirements. However, an awareness of procurement design factors that can raise participation costs can help minimise avoidable costs.

- (b) *Less prescriptive tenders*: restrictive criteria can lock out firms based on past experience or firm size, or location which can reduce competitive pressures within markets.²³ In some circumstances there may be legitimate reasons for setting narrow pre-qualification criteria or directly limiting the number of eligible bidders though tendering criteria should seek opportunities to be as open as possible.²⁴ Use of frameworks can be relevant here – used well, they can reduce frictions for both suppliers and procurers and can be a tool to reduce levels of prescription. However, they may create additional hurdles without offering sufficient compensating benefits if they are poorly designed, used unnecessarily, or made more prescriptive than necessary.
- (c) *Feedback support for repeat tenders*: this is particularly relevant if there is a likelihood for retendering in future. Bidders that are successful and unsuccessful in the first rounds of bids can benefit from feedback on how to improve their chances for subsequent bidding rounds or procurement exercises. If feedback provided is of a high standard, this can lead to higher quality and more competitive credible bids in future.
- (d) *Considered approach to risk ownership and intellectual property (IP)*: how risk is transferred or shared between public authorities and suppliers through procurement contracts can also act as a barrier to participation. For example, where public authorities are procuring new or innovative products, setting contract terms which load the risks of successful deployment towards suppliers could act as a barrier to firms of insufficient scale to manage such risks.²⁵ This also applies to the use of other contract terms such as liability clauses. Risk can also come from uncertainty, such as changing delivery criteria or short contract lengths. Similarly, where public procurement will lead to the creation of new IP, the approach to ownership of that resulting IP can influence the attractiveness of those contracts.²⁶
- (e) *Role for public sector 'entry' or expansion*: where a market has very little competition and there is little prospect to change this (or there is a need to quickly scale up new capacity, for example due to resilience concerns), new

²³ This may, for example, reduce the 'threat' of competition from new competitors – even if new competitors do not bid for contracts, a credible 'threat' that they might can place competitive pressure on incumbent firms.

²⁴ For example, in procuring essential public services, costs of delivery failure may be higher than in other contracts, and procurement officials may in such cases place a higher value on the experience and reputation of bidders within public markets.

²⁵ For example, as part of the Covid-19 vaccine development programme, government pre-commitment on purchase along with non-refundable grant payments even if the vaccine technology failed or failed to gain regulatory approval. By placing the risk of unsuccessful R&D with government, this helped encourage firms to undertake costly but uncertain R&D efforts.

²⁶ For example, it may be less attractive to a smaller growing firm that is scaling up to take on significant contracts that result in no or very little IP ownership, even where they are well placed to innovate and deliver on such contracts and/or benefit from the immediate revenue.

or greater direct provision by the public sector may be an option. This is more likely to be beneficial from a market shaping perspective where market dynamics mean public provision can credibly compete (for example if a local authority were to insource a software product which could then compete for the business of other local authorities when they tender),²⁷ and where the principles of competitive neutrality can be maintained (i.e. public provision competes on the merits with private sector provision and is not advantaged purely by its public ownership).

We recognise the risk that efforts to effectively shape markets through public procurement may themselves lead to greater complexity of procurement processes and create barriers to participation. In considering the appropriate balance of objectives, procurers can also consider how to mitigate – for example prioritising means to shape markets through public procurement that do not necessitate additional tendering requirements on firms.

20. **Addressing switching barriers:** A failure to recognise and address barriers which might prevent or make switching difficult between providers in future can leave public authorities in a weak position when it carries out a re-procurement. In some cases, this can mean that a single procurement exercise has the potential to lock out competition and market dynamism in the long-term. Wherever possible, such barriers should be reduced through contract design including:²⁸
- (a) Early identification of potential switching barriers.
 - (b) Establishing transition arrangements – for example, clarity on what information is required at the end of the contract; whether and how data or other assets are transferred; any requirements around outgoing providers handing over to incoming providers.
 - (c) Developing contract exit plans which provide, as appropriate, a clear outline of activities, milestones, and contingencies (for example in case of delayed contract end).

Box 4: Example of switching barriers leading to negative outcomes: the Emergency Services Network

In 2021 the CMA launched a market investigation into the supply of the land mobile radio network services for public safety (and ancillary services) in Great Britain. Motorola was the owner of the company providing the current mobile radio network (Airwave Solutions),

²⁷ For example, [Norse Group](#) is a local authority trading company (a wholly owned subsidiary of Norfolk County Council) that provides various services to other councils (for example facilities management, catering, refuse) in competition with private sector providers, typically through a joint venture partnership model.

²⁸ Existing government tools to support these are Market Assessments and Delivery model assessments.

and a key supplier in the roll-out of the planned new Emergency Services Network (ESN). Delays to the new ESN left Motorola with a virtually unconstrained monopoly in the market. The CMA's market investigation resulted in a price cap that put an end to the estimated £200m per year of over-charging by Motorola. The market investigation found that there were not effective exit and asset transfer provisions at the end of the contract:

“there are uncertainties arising from the provisions relating to transferable and non-transferable network assets and their valuation. In any event, the provisions have not been effective in securing the transfer of the network assets to the Home Office and the assets are still owned by Airwave Solutions. These points played (and continue to play) an important part in reducing the Home Office's options and distorting competition. They mean the Home Office could not, for example, retender the provision of the network and services using the existing infrastructure, nor credibly threaten to do so.”²⁹

21. **Harnessing the scale of (fragmented) public procurement:** Although in aggregate government is often a sufficiently important buyer to influence market structure and outcomes, this influence is often not brought to bear in practice due to purchasing responsibilities being divided between multiple procuring bodies (for example multiple local authorities or government departments). This can lead to missed opportunities to proactively shape markets in support of government's policy objectives. Approaches to addressing this include:
- (a) *Increased coordination:* opportunities may exist to share information,³⁰ and to co-ordinate actual purchasing activity (see box 5 on Children's Social Care), for example by:
- Recording and utilising cross-government procurement data.³¹
 - Leveraging cross-government understanding of the totality of procurement activities.
 - Setting obligations for responsible bodies to coordinate purchasing across organisational boundaries, or otherwise creating or utilising structures to ensure procurement takes place at a sufficient scale and with sufficient market understanding.

²⁹ CMA [Mobile radio network services final report](#) (2023), paragraphs 4.60.

³⁰ While government as a whole may have significant information and expertise relating to the markets, this will often not be available equally to relevant officials or collated centrally.

³¹ Better recording of data, including losing bid data, can also bring wider benefits - for example improved detection of bid-rigging as set out in Annex 1.

- Emphasising potential roles for central government departments to take greater responsibility for overall market health and market shaping by providing support to more fragmented procurers (for example local authorities). This might include, for example, establishing standardised or model contracts or terms (for example the around end of contracts) to improve consistency across bodies procuring the same products. This can help reduce fragmentation and reduce barriers to entry or switching.
- (b) *Incentives for procurement officials*: Empowering and incentivising procurers to take on board market shaping considerations and/or placing more responsibility on policy officials for market shaping implications of procurement.³²
- (c) *Sufficient capacity*: When allocating and conferring responsibilities ensuring responsible bodies or teams have sufficient scale and scope to exploit the benefits of government's buyer power to deliver value for money. This includes sufficient skills and expertise to understand market, forecast and market shaping impacts.

Box 5: Example of lack of coordination leading to ineffective market shaping: Children's Social Care

In 2022 the CMA's [market study into children's social care](#) found significant problems in how the placements market was functioning. These included a lack of capacity; materially higher profits and prices among the largest private providers than would be expected in a well-functioning market; and high levels of debt carried by the largest private providers, creating a risk of disorderly failure.

One of the reasons for these outcomes was the approach to procurement in the sector: services were commissioned by local authorities, who were not able to act strategically due to a limited ability to plan future services and volatile service demand. In response, the CMA recommended larger scale market engagement, such as by setting minimum procurement sizes, establishing sub-national commissioning bodies in England, and information and oversight structures to allow central coordination. The CMA also recommended increasing national support for purchaser engagement, such as national forecasting functions, national procurement for some contracts, and national government trialling regional procurement and market management strategies. By improving market

³² For example the CMA's [Electric Vehicle Market Study](#) in 2021 found in rolling out on-street charging, local authorities did not have a clearly defined role, in many cases did not have the capabilities and resource to plan and oversee roll-out, and could face difficulties accessing funding. In response the CMA recommended that the UK and devolved governments provided greater support and oversight, such as provide funding for dedicated expertise and clearly defining the role of local authorities for example by introducing a statutory duty.

management and procurement, we expect the benefits of competition to be better realised in the sector.

22. **Creating incentives that go beyond price competition:** For example, by placing appropriate weights in bid criteria and contracts on factors related to innovation, quality, shared gains from successful or risky procurement, or exit requirements. This needs to be balanced against the burdens firms might face in preparing bids against a more complex set of criteria, and the risk of favouring larger or incumbent firms that are better able to navigate these. Taking less prescriptive approaches to such criteria may help with this. Even within price competition, criteria that better reflect total value for money (for example weighting whole life costs, such as maintenance, management, operation and disposal) can help avoid unduly favouring bids that minimise up-front costs.³³

Section 2 – Views on proposals in the consultation

23. The CMA is aware that many of the lessons and approaches covered in Section 1 of this response are already incorporated in central government guidance and best practice.³⁴ However, from the CMA's experience across markets where government is an important buyer, there appears to be further scope for proactive market shaping. Too often, in the CMA's experience, market shaping and long-term health is considered after problems have occurred and markets have been allowed to develop in a suboptimal way. The CMA is supportive of efforts to take a more strategic approach to public procurement and to address barriers that prevent procurers and other officials from doing so.
24. The consultation sets out practical changes and requirements to the process of public procurement and approach to decision making. There are two proposals where we think there is opportunity to better incorporate considerations around market shaping and using public procurement as a proactive tool to meet government objectives.
25. We see huge opportunity from better gathering and utilising of data on procurement (see Annex 1) and would welcome further work from government to bring this to fruition.

³³ 'Should cost' model estimates can provide a baseline of potential costs to sense check bids.

³⁴ In particular the Sourcing Playbook and Market Management Guidance note, which the CMA has previously contributed to.

Response to Question 7 “To what extent do you agree or disagree that contracting authorities should be required to undertake a public interest test and publish it when making sourcing decisions?”; “If you wish to explain why you do or do not agree that the proposed measure reflects or delivers the policy intent described above, please do so here”.

26. The consultation proposes that before services are contracted out, and in advance of existing contracts expiring, public bodies will be required to carry out a public interest test to understand whether services could more effectively delivered in-house. The outcomes of the test will be published and consist of a series of questions likely to include (but not limited to):
- appropriate in-house capability;
 - evidence of cost savings or service quality improvements
 - whether the service is core to the organisation’s objectives
 - need for greater control or accountability over the service
 - whether the service is a government created market; and
 - whether the existing contract/service is performing as expected.
27. The CMA supports the creation of a public interest test and the requirement for this to be published as outlined. The introduction of such a test has the potential to improve the health and competitiveness of markets by encouraging deeper consideration of the possible merits of an in-house supplier. This could include market benefits such as increased supplier diversity and market resilience, where in-house provision could have the ability to compete in an existing market. This might occur, for example, where a local authority develops an in-house software product that other local authorities could switch to if it were the best option in a competitive tender.³⁵
28. Given these potential effects on competition, the CMA recommends that the test also includes a specific question on whether in-house provision could help promote competition in the market.

³⁵ For example, [Norse Group](#) is a local authority trading company (a wholly owned subsidiary of Norfolk County Council) that provides various services to other councils (for example facilities management, catering, refuse) in competition with private sector providers, typically through a joint venture partnership model.

Response to Questions 8-9 “To what extent do you agree or disagree that requiring authorities to set an award criteria which relates to the quality of the supplier’s contribution to jobs, opportunities and skills in the relevant area for all public contracts over £5m and a minimum evaluation weighting of 10%, will help to deliver social value that supports economic growth?”; “If you wish to explain why you do or do not agree that the proposed measure reflects or delivers the policy intent described above, please do so here.”; “ To what extent do you agree or disagree that, where authorities have set social value award criteria relating to jobs or skills, mandating that they also set at least one KPI on social value delivery, and subsequently report performance against a social value KPI (published in the contract performance notice), will support transparency of progress against social value commitments?”; “If you wish to explain why you do or do not agree that the proposed measure reflects or delivers the policy intent described above, please do so here.”

29. The consultation proposes a number of measures to strengthen and streamline rules on social value criteria. Reflecting that certain social value requirements can be difficult to navigate for smaller firms, the CMA supports efforts to streamline social value award criteria to focus on those that are most impactful and relevant to the government’s objectives.
30. As set out throughout our response, we think there is merit in going beyond existing guidance and best practice, and more fully embedding proactive market shaping in public procurement decision making. In doing so, government stands to benefit from more innovative and competitive markets that deliver better long-term value for money, innovation and growth, and would better establish public procurement as a tool to meet wider government policy objectives.
31. With this in mind, we encourage government to find ways to ensure its role in shaping the markets from which it procures is incorporated into its reform proposals, and hence in procurement processes and outcomes. This could include the incorporation of market shaping within social value criteria. In principle, this could be achieved in a way that does not add undue burden or complexity for tendering firms – for example, award criteria that reflect the benefits of supplier diversity would not necessarily be burdensome on firms to demonstrate but could help to support new entry or expansion. The CMA stands ready to work with government on this or other potential approaches to better incorporate market shaping into public procurement.

Annex 1 – CMA work on bid-rigging

32. Bid-rigging occurs when suppliers collude during a procurement process, resulting in the reduction of fair competition, and the artificial inflation of prices. In addition to costing the taxpayer money, bid-rigging undermines trust in markets, stifles innovation and productivity, and limits opportunities for fair-dealing businesses to grow and compete.
33. Bid-rigging is illegal under UK competition law, and a focus of the CMA's enforcement against cartels. For example:
- In 2023, [the CMA fined 10 construction firms](#) a total of nearly £60 million for illegally colluding to rig bids for demolition and asbestos removal contracts, which included contracts for the London Mayor's office, Bow Street Magistrates Court and Met Policy Training College.
 - The CMA has an [ongoing investigation](#) (launched December 2024) into possible bid-rigging to secure contracts to carry out essential building improvements to schools through the government's Condition Improvement Fund.
34. The CMA regards bid-rigging as a key risk in the £385bn annual spend on procurement. Where bid-rigging is present, prices for public sector contracts can be inflated by 20% or more.³⁶ Detecting and preventing bid-rigging can deliver very significant savings to taxpayers and boost productivity by promoting fair competition and helping fair-dealing businesses compete on a level playing field.

Tools to detect bid-rigging in public procurement

35. Our dedicated team of enforcement specialists and data scientists work with public bodies to detect bid-rigging. The CMA has combined its data science and cartel enforcement expertise to develop tools to scan bidding data, spot anomalies and to identify areas of potential anti-competitive conduct. The CMA is now taking steps to develop and extend these data tools. The CMA has already successfully partnered with public sector authorities to screen tender data for suspicious conduct, and is keen to develop further collaborations with procuring authorities to help public bodies use their bid data to detect and tackle anticompetitive conduct.
36. Improving public procurement data collection and sharing across government would significantly enhance the CMA's ability to carry out this work at scale.

³⁶ OECD, [Fighting Bid Rigging in Public Procurement](#)

37. Ideally, public procurement data would be captured centrally in a consistent format, from a wide range of public bodies, in order to be able to identify patterns across contracts affecting different procuring authorities. The government's Central Digital Platform (CDP) takes important steps towards this goal, however, the CDP does not currently require procuring authorities to upload losing bid data, which is critical to the CMA's data screening tools. Mandating the collection of this losing bid data via the CDP, which given the commercial sensitivities could be held privately, would enable the CMA to systematically and routinely screen public procurement data for the 'red flags' which might indicate collusive behaviour. This would enable the CMA to quickly identify and, where warranted, enforce, in problem areas. Case studies from abroad have demonstrated the potential value of collecting and processing this kind of data. For example, Spain has reported its success in increasing detections and enforcing against cartel conduct in public procurement, as well as driving broader efficiencies through a better understanding the landscape based on analysis of the data.
38. The CMA welcomes further opportunities to work with government and public sector procuring authorities to improve public procurement data collection, enhance the detection of unlawful conduct, unlock productivity gains and deliver savings for UK taxpayers.

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