

Transforming public procurement – Consultation – IWFM response

The Institute of Workplace and Facilities Management (IWFM) welcomes the opportunity to comment on the Cabinet Office's Green Paper *Transforming public procurement*, published in December 2020.

IWFM is the professional body for workplace and facilities professionals. We exist to promote excellence among a worldwide community of around 14,000 and to demonstrate the value and contribution of workplace and facilities management (FM) more widely. We empower professionals to upskill and reach their potential for a rewarding, impactful career. We do this by advancing professional standards, offering guidance and training, developing new insights and sharing best practice. As the pioneering workplace and facilities management body, our vision is to drive change for the future, to be the trusted voice of a distinct profession – recognised beyond the built environment for its ability to enable people to transform organisations and their performance.

The IWFM was established in 2018. It builds on the proud heritage of 25 years of the British Institute of Facilities Management.

Workplace recognises the joint responsibility of facilities management, IT and human resources to achieve optimal performance between people, technology and workspace, anywhere that work happens, including hospitals, airports, schools, shopping centres and businesses of all kind. By integrating people, place and process across the built environment, our professionals' purpose is improving the performance and quality of life of people and the productivity of the core business¹. By making these workplaces as efficient as possible, our members have a major role to play in making the UK a more productive and sustainable place².

Roles cover management of a wide range of areas, including health and safety, risk, business continuity, procurement, sustainability, space planning, energy, property and asset management. They typically oversee activities such as catering, cleaning, building maintenance, environmental services, security and reception.

General Comments

IWFM welcomes the Government's consultation *Transforming public procurement* and the opportunity for us to engage with it. We support the intention **to make procurement policy more innovation-friendly and that it should deliver for our communities and businesses**. Likewise, we support the intended simplification of the legislative framework and the intention to embed the core procurement principles therein, within the framework that the plurilateral Agreement on Government Procurement (GPA) allows. The principles of these changes should indeed allow for greater innovation and greater participation of smaller businesses, but much will also depend on how these principles are followed through in the implementation of the policy.

While we very much welcome the principle of the **National Procurement Policy Statement**, we consider that many of the key principles it touches on should be embedded in the forthcoming regulatory framework, rather than being depended on the policy of the Government of the day. For example, we were disappointed to see **that The Public**

¹ ISO 41011:2017(E)

² An effective workplace can improve productivity by 1-3.5%, potentially delivering a £20 billion uplift to the UK economy, The Stoddart Review – The Workplace Advantage, (December 2016), Raconteur, 42p.

Services (Social Value) Act 2012, and indeed the **Late Payment of Commercial Debts Regulations 2013**, will not be included in the new framework regulations. The justification for this being that they are freestanding laws that may be updated from time to time in their own right. We consider that this omission is out of step with the intention to include the principles of public good and value for money. Embedding the core principles of those aforementioned pieces of legislation into the regulatory procurement framework would send a clear signal about the Government's intended outcomes to really do better for our communities and businesses. It would also be an opportunity to embed the strengthened social value policy contained in a procurement policy note and guidance into legislation³.

Following through on this logic, while we welcome the inclusion of the **principles of public procurement**, we would like to see them strengthened beyond 'having regard to' and 'should'.

One area where the procurement policy implementation plans are provided in greater detail are the ambitious proposals around the **transparency principle**, including the central online platform for tender information, the centrally operated debarment register and expedited remedies process. We consider their realisation key to enabling the vision of the Green Paper to materialise. We realise this will require more resources, upskilling and time from the contracting authorities, but without them it is doubtful that culture change and better outcomes – from both a commercial perspective, but also from a community and business perspective – will be achieved.

We **welcome the reduction in the number of procurement procedures and the new competitive flexible procedure**. In particular, the elements of negotiation and outcome-based specifications are much more suitable for the FM sector and the complex services that often need to be delivered. This new procedure should allow for much more engagement between buyer and supplier so that innovative solutions can indeed be provided and not excluded through the rigour of the system, and more detailed and more appropriate tenders can be submitted. We would, however, recommend increasing the timescales for submission of tenders as 25 days is insufficient to provide better quality submissions, in anything but the most simplistic tender requirements.

We appreciate that the consultation is based on a Green Paper, so many of the details of how to implement the proposals included still need further input. This means there is not sufficient information in the Green Paper to comment on the future success of the **frameworks**, in particular in the workplace and FM sector. Until we have more information about the future functioning of the frameworks, we remain concerned about their use for the buying of workplace and FM services as these services are often demonstrating a complexity that framework processes do not allow for, and consequently outcomes are often not met.

As above, the **competitive flexible procedure** is very much to be welcomed. Greater clarity on if this could be **used within frameworks** would be appreciated as its principles would negate the constrictions and negative outcomes of current frameworks and their methodology.

In addition to the above, we would have liked to see **different contract models** outlined for the call-off stage in frameworks, reflecting on the management phase. A recent development in the FM industry has been the introduction of a form of NEC4 contract that has been designed for FM service delivery – the NEC4 Facilities Management contract; this could be used as the basis for developing some of the key principles that the Green Paper is setting out to achieve. Also, a partnership contract is an effective contract model that would

³ Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts

derive real long-term value from FM supplier contracts. Such a model would see agreement on a long-term contract at an agreed price - supplier and buyer could then work together in partnership to look for efficiency gains year on year. This model would allow bidders to show how they would look to achieve these improvements and it recognises that opportunities for improvement often only become apparent once the service is being supplied, and that in most cases both parties need to work together for such improvements to be achieved. Because of the size of the frameworks, however, this flexibility is often not possible. Other procurement and contract models are available that would go some way in resolving these issues.

In summary, **past concerns on frameworks** have often focused on:

- Frameworks are generally too wide, ignoring the need for bespoke contracts and specific skills;
- Frameworks can, and emphatically do, set general provisions on price, but are not good tools for setting requirements in relation to quality, which need to be tailored to the work being tendered;
- Frameworks drive an acquisition strategy by the megaliths in the FM sector, because frameworks have tended to favour the large businesses that have the scale to match the contracts they are bidding for. As a result, some businesses have been seen to go on an acquisition drive, buying other businesses to get the scale needed to obtain the contracts. This can result in government putting its work to businesses which are overburdened with debt and have to cut margins below what is viable to generate the turnover to support their debt;
- Frameworks and Invitations to Tender often set too short a period for bidding, which means that bidders have insufficient time to produce accurate cost estimates and are forced to estimate, sometimes optimistically, subcontractor and other costs while under pressures to bid low;
- Another reason why bid prices often prove inaccurate is that there may be insufficient information on the facilities which will require managing. This makes it impossible to provide accurate cost estimates in a complex service with the results being reduced to commodity pricing. While additional time and site visits can help to increase the accuracy of the bid, much of the true cost does not become clear until a supplier starts managing the facility; and
- Frameworks do not get managed well.

The upskilling touched on in the Green Paper, the potential use of the competitive flexible procedure, and the implementation of the transparency principle will help to mitigate some of the issues outlined above.

We do see a potential issue with the proposals around **limitation of supplier numbers** on frameworks. The Green Paper suggests the option of allowing new suppliers to join a framework at defined points in time (in the “open” framework approach). If contracting authorities do limit the number of suppliers, they will need to re-evaluate the bids of suppliers already on the framework, with those from the new joiners, to determine who stays on it. This could require a significant amount of administration, procurement support, and engender a level of uncertainty amongst existing framework suppliers – if they are appointed as one of those in the initial exercise to set the framework up, will they enjoy the benefit of remaining on it for its full duration, even if they deliver good work / service? We believe this needs more consideration as to how it can benefit all parties involved, and that more work needs to be undertaken in to how frameworks will be managed by contracting authorities in the future.

We recognise that the Green Paper is focused on transforming public procurement processes and procedures. An essential part of the success of FM contracts is how they are managed, and the skills and expertise needed relating to this. We would welcome steps in these latest proposals to support the **improvements in contract management** needed,

beyond prompt payment and contract amendments, to ensure that the principles outlined in the Green Paper are able to become a reality.

The proposed **change from Most Economically Advantageous Tender to Most Advantageous Tender** is a welcome one, reducing the historic keen focus on price and allowing procuring organisations to include much wider areas of importance. However, this is not necessarily a complete step change in principle – many procuring organisations have traditionally interpreted MEAT as requiring a focus on the cost of the service to be delivered, and subsequently the lowest price. This was unfortunate, as interpreting “economically advantageous” did not have to mean lowest price, but it invariably resulted in this. This is important, because it acknowledges other drivers of decision making related to selecting a future supplier – predominantly the organisation’s available budget. This is unlikely to change in the near future and so any future assessment of what wider benefits may come from a bid will need to be clearly expressed and shown as delivering tangible benefits – assessment of value will be central to this, and there is currently no universally accepted methodology for assessing or quantifying value.

We welcome the drive to **promote innovation in procurement** and agree this is essential to improve public procurement in the future. Innovation has been something that FM contracts have attempted to introduce and develop for many years, but with mixed success, mainly because it is hard to define in the context of FM service delivery, and so challenging to assess over time. There are many excellent examples of innovation in FM, but these have usually been delivered in addition to contractual requirements, not as a result of them.

Late payment of suppliers is a damaging and disruptive issue in the FM market that needs addressing and we welcome the proposals in the Green Paper on this. Allowing subcontractors to address payment delays with the contracting authority is likely to help – but only if the subcontractor feels this will not damage his standing with the organisation directly employing him (and which he may be reliant on for other work). The transparency of reporting payment statistics on gov.uk is a positive step to ensure open scrutiny, and if poor payment performance is one of the issues that could result in a main contractor being placed on a debarment list this is likely to help to influence the appropriate behaviours related to payment (the Green Paper notes that possible discretionary grounds may come into play in the future).

Risk allocation, and interpretation / perception of risk is a key influence on how successful FM contracts are in delivering on their objectives. The Green Paper is proposing changes which should help to mitigate risk and enable a more open and collaborative approach to delivering on shared objectives and contract goals – as long as these are clearly understood, achievable, and agreed by both parties. The focus on greater transparency, integrity, efficiency (e.g. the introduction of DPS+) and fairer treatment of suppliers should result in lower levels of uncertainty and so healthier approaches to risk. However, the Green Paper also introduces the prospect of more intangible deliverables such as “public good” which are more open to interpretation and will need a lot of supporting work to ensure they result in the most beneficial outcomes for both parties in FM contracts.

Reflection on **implementation** – for this transformation to be embedded, it requires a central approach, leading on uniform application across the board, reinforcing the move towards centralisation, away from fragmentation.

Specific questions and answers can be found in Appendix 1.

Conclusion

IWFM looks forward to the next steps in the development of UK procurement policy and legislation.

While we wholeheartedly welcome the principles of public procurement, we would be keen to see the embedding of social value and prompt payment within the core of the new regulatory framework. Detailed areas of priorities can reside within the National Procurement Policy Statement as they may change with the Government priorities of the day, but the core principles of evaluating social value (including as a mandatory award criteria) and ensuring prompt payment should not change with Government priorities.

The principle of transparency has great capacity to bring about a real culture change. For this culture change to take place, the realisation of the central online platform for tender information, the centrally operated debarment register and expedited remedies process are key. They will require significant resource to deliver, as without them it is doubtful the culture change and better outcomes – from both a commercial perspective but also community and business perspective – will be achieved.

We welcome greater details around the proposals for frameworks and are excited about the potential for change in this area. However, greater clarity is needed on timelines, what procedures will be available for use, and what contract models will be advocated for future use in the contract management stage, as the wide-ranging impact of these frameworks upon the supply chain - and indeed beyond - cannot be underestimated.

We look forward to supporting the further development and subsequent implementation of the future procurement policy and would be keen to help shape the future rules around best practice for frameworks.

We remain at your disposal, should you have any follow up questions.

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Appendix 1 – consultation questions and answers

Q1. Do you agree with the proposed legal principles of public procurement?

Yes, we agree with them, but would recommend they go further, and that the forthcoming legislation would also embed and strengthen the principles around social value and prompt payment into its framework (see 'General Comments' above). The requirement to evaluate, not just consider, social value outcomes can be embedded in the new framework legislation, while the more pragmatic measurement-based priorities can reside in the National Procurement Policy Statement.

In addition to strengthened principles around Public Good and Value for Money, the transparency principle proposals (central online platform for tender information, the centrally operated debarment register and expedited remedies process) are very much to be welcomed and are key to achieving a culture change in the way procurement will deliver against community and business focused outcomes.

Q2. Do you agree there should be a new unit to oversee public procurement with new powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities?

Yes, we welcome the steps to pull together existing skills and expertise in to a more coherent and accountable body, that can be seen as a centre of excellence for public procurement and will subsequently influence procurement activities in the private sector.

Q4. Do you agree with consolidating the current regulations into a single, uniform framework?

Yes, we welcome a streamlined and single framework proposal. We disagree, however, that the Public Services (Social Value) Act 2012 and the Late Payments of Commercial Debts Regulations 2013 should not be included in the new regulations. The justification that this is in line with current practice, is insufficient given that the objective of the procurement overhaul is to deliver on community and business outcomes, in addition to commercial outcomes.

In addition, the embedding of those principles into the new framework regulations would send a clear signal to all stakeholders how integral those concepts are to future UK procurement policy.

Q6. Do you agree with the proposed changes to the procurement procedures?

Yes, we welcome the rationalisation of the different procedures increasing the clarity for suppliers on what to expect, which in turn will benefit increased participation from SMEs. We would like to highlight that timelines for submissions of tenders are still too short from a supplier perspective and that increasing the duration for submissions would see an increase in quality, especially in combination with the increased engagement that is expected in the new competitive flexible procedure.

While very much welcoming the proposals, and especially the flexible procedure, this will require the Government to build on the upskilling programme that is already in place to ensure that buyers are informed clients and can use the variety of tools available to them in the best possible manner. Focusing on outcome-based specifications is valuable indeed and allows bidders to respond in a more innovative and open manner, cognisant of some of the key principles that the changes proposed are looking to deliver. However, much work remains in defining how outcome-based specifications can be measured and assessed.

Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?

We agree with this in principle and acknowledge that there can on occasion be a need for this. However, we believe there is more work to be done in ensuring transparency in how the principle is applied and the governance needed for assurance.

Q8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?

There are several areas of innovative approaches to business support services that procurement can learn from, including those that have started to proliferate in the financial and banking industries, and other sectors. We believe that public procurement needs to be able to respond in an agile manner to the benefits that are starting to be realised – an example of this is the development of blockchain technology to support transactions. Any digital procurement system will need to be able to accommodate advances in this area in the near future. There are major suppliers in the FM industry that are already considering adopting such technological advances to support business processes.

Q11. What further measures relating to pre-procurement processes should the Government consider to enable public procurement to be used as a tool to drive innovation in the UK?

Other measures previously used are information sessions and innovation labs, these should be retained. In addition, the process of market engagement could be formalised better, as this would help to articulate and demonstrate best practice. The importance of this phase being that suppliers can showcase their work and potential.

Q13. Do you agree that the award of a contract should be based on the “most advantageous tender” rather than “most economically advantageous tender”?

Yes, the MAT is very welcome as a new concept, especially in combination with the inclusion of the procurement principles. As the consultation itself highlights, this change is about reinforcing and adding clarity around wider evaluation changes, which will require resources from an upskilling perspective. This will need to happen in any case to support all the proposed changes in procurement policy, whether these are included in legislation or not.

Q14. Do you agree with retaining the basic requirement that award criteria must be linked to the subject matter of the contract but amending it to allow specific exceptions set by the Government?

Yes, award criteria in future procurements should be able to focus on wider considerations that would benefit the procuring organisations, as well as consider benefits to society as a whole – moving further away from the problematic issue of focusing primarily on cost. A clear definition on “value” is key to this.

Q21. Do you agree with the proposal for a centrally managed debarment list?

Yes. This will need to be clearly managed in an open and transparent manner that encourages the appropriate behaviours from suppliers in future contracts. We would envisage debarment periods would adjust for different “offences”.

Q22. Do you agree with the proposal to make past performance easier to consider?

Yes.

Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

Yes, we believe that improvements in this area that reduce the time and effort incurred by bidders – and potential bidders – when informing or updating selection criteria submissions will help to bring a more fluid and responsive market. This has been an area of concern from the bidding community in FM for many years – public contracts take a lot of time, resource and cost to consider and submit bids for. If the supplier registration system reduces this, then we believe it will help introduce efficiencies and also potentially widen bidder interest across available bids (they will be able to consider a wider number of bids and opportunities). Bidders will need to be able to refresh and update their details on the system to ensure the latest information is available to procuring organisations.

Q24. Do you agree that the limits on information that can be requested to verify supplier self-assessments in regulation 60, should be removed?

Yes, we agree with this proposal. We would, however, recommend guidance to assure uniform application of best practice as too much variation in what is being requested from organisations would put too greater burden on business, especially SMEs. This would, in turn, go against the rationale for many of the changes as it holds back the number of suppliers.

Q25. Do you agree with the proposed new DPS+?

Yes, and we welcome the use of the competitive flexible procedure in this option.

Q26. Do you agree with the proposals for the Open and Closed Frameworks?

We welcome the increased maximum duration of the term and for the new suppliers to join at defined points. FM frameworks would benefit from these proposals as longer-term relationships allow for the greater creation of value (including for money), especially where the contractual relationship is such that supplier and buyer really work together in the contract management phase to deliver efficiency gains year on year.

Unlike the DPS+ proposals, the framework proposals do not talk about which procurement process to follow. This makes it difficult to consider to what extent changes will be realised from previous frameworks.

The questions in this section do not ask for feedback on the **potential fee or levy**. We would not agree with the approach of charging for participation in a commercial vehicle. What is the justification for such a proposal? How would such a fee be managed and what would it be charged for? The proposal to include a fee jars with the ambition to include more SME's because in our view it would add burdens to the procurement process, and as such it would work against innovation without generation of any additional value.

Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?

Yes, transparency to the right degree (without touching on commercially sensitive issues) is important to drive culture change, enable better outcomes and call out the wrong application or behaviour where it is happening.

Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?

Yes, a uniform standard should be required across contracting authorities, as without a uniform standard the value of collecting and comparing data is diminished.

Q29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?

Yes, this proposal is welcome.

Q31. Do you believe that a process of independent contracting authority review would be a useful addition to the review system?

Yes, an internal review within the department would be a useful addition to the system, allowing people to potentially review situations and addressing them before going through the system, saving resources all around. What the necessary considerations are to achieve this are unclear now.

Q38. Do you agree that debrief letters need no longer be mandated in the context of the proposed transparency requirements in the new regime?

We are minded to disagree with this proposal because while we acknowledge the transparency principles, these principles will update and inform bidders through the procurement lifecycle and may not provide information related to the evaluation. Debrief letters remain helpful to all stakeholders to understand why they were unsuccessful in their bid and through their use will further support learning and culture change in approach and behaviours.

Q39. Do you agree that:

- **businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays? Yes.**
- **there should be a specific right for public bodies to look at the payment performance of any supplier in a public sector contract supply chain? Yes.**
- **private and public sector payment reporting requirements should be aligned and published in one place?**

The answer to any of these questions must be yes. Late payment must be dealt with at all levels, whether the breaching organisation is a central government buyer, tier 1 supplier or smaller SME. It affects all equally and no business can be expected to carry other organisations at any time, and even more so in difficult times.