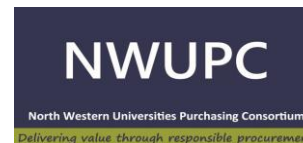


NWUPC Member Response to Transforming Public Procurement Green Paper



Members represented in this response:

	Question	Agree	Disagree	Don't Know	Responses from Survey and Heads of Procurement Discussion Group
C1	1 Do you agree with the proposed legal principles of public procurement?	100%	0%	0%	
	2 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?	73%	27%	0%	Members felt that the proposal as it stands sounds impracticable and unworkable. There was concern about the lack of detail in this proposal and the powers that such a body would be granted and if the panel would be able to 'undo' procurements. There was also concern about what the penalties would be and what is meant by 'intervene'. It was felt that early cases would be made an example of and disproportionate action may be taken. It was also felt that recent publicised Government procurements linked to the pandemic would have a disproportionate impact this proposal. It wasn't clear how this would link to the Mystery Shopper Scheme - would it be another 'name and shame' initiative. There must be more clarity on what is meant by 'improving clarity and practices of contract authorities.' More information about 'improvement notices' and about the penalty for non compliance is required. There is concern about the National Policy Statement - this should be left to local control and must not distort or interrupt delivery of HE strategy. It needs to be clear if this proposal is aimed at central government departments (where there is already that level of scrutiny) or if it is proposed to apply to HE too. It is felt that the language is very hard and not in the spirit of supporting the flexible approach that is mentioned in the paper. It is unclear if the proposed unit is intended to act as an ombudsman and if it would it be available to support contracting authorities as well as suppliers.
	3 Where should the members of the proposed panel be drawn from and what sanctions do you think they should have access to in order to ensure the panel is effective?				Members felt that this proposal would need significant resource to deliver the service effectively. It would be appropriate for the panel composition to be experienced procurement professionals / practitioners with a broad range of wider public sector experience - including HE, Blue Light, NHS and Central Government Agencies and PBOs. It would also be important to have input from specialist legal advisors and perhaps specialist experts (possibly from industry) depending on the subject matter.
C2	4 Do you agree with consolidating the current regulations into a single, uniform framework?	91%	9%	0%	
	5 Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained? Public Contracts Regulations 2015 (PCR); Utilities Contracts Regulations 2016 (UCR); Concession Contracts Regulations 2016 (CCR); and Defence and Security Public Contracts Regulations 2011 (DSPCR)				Members felt that it would make sense to simplify and standardise and to have an overarching set of rules in place. It does however seem to be a reworking of the existing regulations rather than a new set of regulations. There was concern about the ambition to expand the reach of CCS and what the impact would be on the current collaborative landscape and the impact on the service levels in that space. There was concern about the removal of LTR and unless the thresholds for areas are increased it would have a major impact on workloads for contracting authorities. There were also questions about whether the expanded reach of CCS aims to control expenditure. It was felt that the ability to tailor the regulations to each sector would be beneficial - for example the NHS requirement is very different to the HE requirement.
C3	6 Do you agree with the proposed changes to the procurement procedures?	91%	9%	0%	
	7 Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used? a new flexible procedure that gives buyers freedom to negotiate and innovate to get the best from the private, charity and social enterprise sectors. an open procedure that buyers can use for simpler, 'off the shelf' competitions. a limited tendering procedure that buyers can use in certain circumstances, such as in crisis or extreme urgency.	82%	18%	0%	Members felt that there is already provision to respond to emergency situations so wanted more clarity on what this means and on who would determine what constitutes a 'crisis'. There must still be robust challenges in place to access this route to market. Members would welcome the opportunity to use negotiation in a more recognised way.
	8 Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?	50%	10%	40%	Members felt that allowing use of restricted tenders again and the ability to shortlist suppliers would be beneficial. It was also felt the ability to allow for 'proof of concept' stages in the process would be beneficial - perhaps in the new competitive flexible procedure. Greater flexibility to work with SMEs would be a positive move. Encouraging the use of output specifications would be a positive move and may encourage innovation.

	a	If you have answered yes, please expand:				Clearer guidance on compliant negotiation would be welcomed.
	9	Are there specific issues you have faced when interacting with contracting authorities that have not been raised here and which inhibit the potential for innovative solutions or ideas?				There are issues with complex IT procurements and proof of concept. Often it can take 3 months or so to get through proof of concept, this is not practical and can have a major impact on service delivery. There has to be a balance between innovation and fairness and transparency. Innovation is often perceived as just a cost saving mechanism. It needs to expand beyond this thinking. Different end user needs and requirements can be a barrier.
	10	How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?				Members felt that it would require a reliable, safe and robust system. It may be an option to utilise the Crown Commercial Service site but it would need to be more user friendly. Standard pre qualification data base is mentioned and previously discussed. The revisions to publishing more data may help this although the resource required to enable this is concerning.
	11	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?				It is not clear what the proposals here are. Members are keen on pre-market engagement but this takes time and resource which is not always beneficial to the final tender process. It may be appropriate to introduce Expression of Interest stage with market engagement. The development of an innovation portal where suppliers have something completely unique and relevant around key criteria that could be set and they could share may be beneficial. Also, online discussion forums to enable new ideas or approaches to be discussed between contracting authorities and the supply chain would be helpful. Some members feel that there is currently a good balance of being able to test the market with the current procedures available to us.
	12	In light of the new competitive flexible procedure, do you agree that the Light Touch Regime for social, health, education and other services should be removed?	64%	36%	0%	
C4	13	Do you agree that the award of a contract should be based on the "most advantageous tender" rather than "most economically advantageous tender"?	73%	18%	9%	Members felt that this was already happening in some areas (Works contracts is a good example). On the whole though, MEAT is more commonplace.
	14	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?	73%	9%	18%	
	15	Do you agree with the proposal for removing the requirement for evaluation to be made solely from the point of view of the contracting authority, but only within a clear framework?	0%	55%	45%	This is unclear - we are unable to respond from HE. Perhaps this is not relevant to HE?
	16	Do you agree that, subject to self-cleaning fraud against the UK's financial interests and non-disclosure of beneficial ownership should fall within the mandatory exclusion grounds?	100%	0%	0%	
	17	Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?				Consideration should be given to exclusion for conviction of certain supply chain violations e.g. Modern slavery, environmental pollution etc. It was agreed that convictions for tax evasion should be added.
	18	Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?	82%	0%	18%	
	19	Do you agree that non-payment of taxes in regulation 57(3) should be combined into the mandatory exclusions at regulation 57(1) and the discretionary exclusions at regulation 57(8)?	100%	0%	0%	
	20	Do you agree that further consideration should be given to including Deferred Prosecution Agreements as a ground for discretionary exclusion?	73%	0%	27%	
	21	Do you agree with the proposal for a centrally managed debarment list?	82%	18%	0%	
	22	Do you agree with the proposal to make past performance easier to consider?	100%	0%	0%	
	23	Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?	91%	9%	0%	
	24	Do you agree that the limits on information that can be requested to verify supplier self assessments in regulation 60, should be removed?	55%	9%	36%	
C5	25	Do you agree with the proposed new DPS+?	50%	30%	20%	
	26	Do you agree with the proposals for the Open and Closed Frameworks?	73%	18%	9%	

C6	27	Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?	73%	9%	18%	
	28	Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?	20%	10%	70%	
	29	Do you agree that a central digital platform should be established for commercial data, including supplier registration information?	55%	27%	18%	
C7	30	Do you believe that the proposed Court reforms will deliver the required objective of a faster, cheaper and therefore more accessible review system? If you can identify any further changes to Court rules/processes which you believe would have a positive impact in this area, please set them out here.	20%	10%	70%	It was felt that in theory, this proposal could speed up the process.
	a	If you have answered yes, please expand:				
	31	Do you believe that a process of independent contracting authority review would be a useful addition to the review system?	46%	27%	27%	
	32	Do you believe that we should investigate the possibility of using an existing tribunal to deal with low value claims and issues relating to ongoing competitions?	70%	20%	10%	
	33	Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages?	44%	11%	44%	
	34	Do you agree that the test to list automatic suspensions should be reviewed? Please provide further views on how this could be amended to achieve the desired objectives.	44%	0%	56%	
	35	Do you agree with the proposal to cap the level of damages available to aggrieved bidders?	100%	0%	0%	
	36	How should bid costs be fairly assessed for the purposes of calculating damages?				Damages should be calculated based on realistic lost profits - this could consider the average of the bids received or the complexity / time and resource expended.
	37	Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?	70%	10%	20%	
C8	38	Do you agree that debrief letters need no longer be mandated in the context of the proposed transparency requirements in the new regime?	63%	25%	13%	Members felt that perhaps a revision of the award process would be useful but blanket publication of all supplier evaluations would not be helpful, it undermines supplier confidentiality and is likely to lead to additional questions. It is not clear how the transparency requirements will work in practice, so debrief letters could still be useful for some time to come. Members felt that debrief letters are a very important tool not least in ensuring that internal stakeholders are fairly assessing tender responses, this also ensures they have consistent feedback and we aren't constantly asked or as a result potentially challenged or receiving influxes of FOI requests.
	39	Do you agree that:				
	a	businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?	36%	27%	36%	In theory this is reasonable but it very much depends on the contracting authorities ability to respond to this. We must also understand how corrective action would be enforced.
	b	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?	91%	0%	9%	Yes, members agreed with this proposal.
	c	private and public sector payment reporting requirements should be aligned and published in one place?	90%	10%	0%	This would depend on how it is managed and who is responsible for publishing this information. Access and controls are must also be a key consideration.
	40	Do you agree with the proposed changes to amending contracts?	56%	0%	44%	
	41	Do you agree that contract amendment notices (other than certain exemptions) must be published?	30%	50%	20%	
42	Do you agree that contract extensions which are entered into because an incumbent supplier has challenged a new contract award, should be subject to a cap on profits?	82%	9%	9%		
	Other Comments:				Whilst some of the changes to simplify the regulations are welcome, the practicalities and resource requirements for some of the proposed changes to processes and transparency via shared systems for all contracting authorities are concerning, if noble in their aim.	