



UK Universities Purchasing Consortia

## **UK Universities Purchasing Consortia Joint Response to the Cabinet Office Green Paper: Transforming Public Procurement**

### **Introduction & Response Scope**

This is a response to the open consultation on the Green Paper: “Transforming Public Procurement”, on behalf of UK Universities Purchasing Consortia (UKUPC) members. UKUPC is a partnership between eight UK procurement consortia who created a formal entity to support collaborative procurement within Higher and Further Education. All eight consortia work together to share knowledge and best practice, to support each other and our wider procurement community.

This response is on behalf of all UKUPC partners:

- [Advance Procurement for Universities and Colleges \(APUC\)](#)
- [Higher Education Procurement Consortium, Wales \(HEPCW\)](#)
- [London Universities Purchasing Consortium \(LUPC\)](#)
- [North Eastern Universities Purchasing Consortium \(NEUPC\)](#)
- [North Western Universities Purchasing Consortium \(NWUPC\)](#)
- [Southern Universities Purchasing Consortium \(SUPC\)](#)
- [The Energy Consortium \(TEC\)](#)
- [The University Caterers Organisation \(TUCO\)](#)

Together, our membership covers virtually all higher education institutions in the UK as well as a variety of other associated member organisations and members of the wider public sector. Our members account for approximately £18 bn in non-pay spend each year<sup>1</sup>, representing significant spend through public procurement. In 2019/20 our members spent £1.4bn through collaborative framework agreements and achieved £74.8m in cashable savings and £118.6m in non-cashable savings.

The proposed reforms in the Green Paper have a direct impact on all UKUPC members. Very high levels of long-established and world leading collaboration is a feature of procurement across UK higher and further education. All UK universities are still likely to be involved in cross-border (EU and international) multi-institution funded projects that require compliance with EU and other international procurement rules. Interoperability of legislative structures is a key enabler of universities’ work.

The UKUPC partners undertook a combination of both quantitative and qualitative research methods to assess our members’ views on the impact of the reforms on their procurement activity. This allowed responses from 137 organisations to be gathered to form this combined response document. Responses to individual questions start on [page 7](#).

---

<sup>1</sup> Based on 2018/19 HESA Data



UK Universities Purchasing Consortia

**Key Highlights of Member Views** (*aspects identified are also generally noted in the specific responses to questions starting on page 7*)

### **Positive Aspects of the Proposed Reforms**

1. The extra flexibility proposed is a good thing for bodies in scope. The proposals will create greater opportunity for increased value for money and potentially greater exploitation of unforeseen benefits that can be included during the negotiation phases of procurement exercises (versus the current open and restricted procedures).
2. The inclusion of social value as an important aspect of procurement is welcomed as a positive change and long overdue. However, universities have a strong civic and social value ethos and already incorporate social value into tenders. We feel the proposed reforms do not go far enough, particularly with regards to requirements for Modern Slavery Statements.
3. An oversight body could be a useful facilitator of good practice, but this must be non-partisan, structured, non-bureaucratic, transparent and open. Contracting authorities should have the right to enact improvement before intervention. Such a body must be free from government influence.
4. There was universal endorsement for consolidating current regulations into a single, uniform framework, although acknowledgement that some bodies may need to retain certain elements of some regulations. Consolidation should be viewed as an aspiration rather than an absolute.
5. A reduction in the prescriptiveness of the processes under the GPA-based regime would allow for faster, more efficient procurement exercises. Divergence from the EU legislation and a greater focus on commercial outcomes rather than ridged compliance could be considered a positive step towards financial recovery. Key sustainability aspects could be put at risk unless managed carefully with the correct parameters in the legislation.
6. There is endorsement for including “crisis” as a new ground for which tendering can be accelerated. However, “crisis” needs to be well defined to avoid abuse. Limited tendering must mean that competition is still sought, pursued and secured – direct awards should be restricted to very exceptional grounds.
7. The proposed central knowledge database is considered to be a very constructive proposal. A central register with pre-approved suppliers, up to certain thresholds, and linked to credit check facility/accreditation organisations, would be well received. However, there are reservations about the timescale and complexity for development and deployment of a portal.



UK Universities Purchasing Consortia

8. Members endorse the proposal to make past performance easier to consider given experience of not being able to exclude poor performing suppliers.
9. There is widespread endorsement for extending potential grounds for bidder exclusion to include unethical, albeit legal, tax avoidance.
10. Longer term contracts should be allowable to facilitate development of strategic and good working relationships under frameworks.
11. The proposal to introduce a review and arbitration facility is viewed positively. However, it is important to ensure broad representation on such a panel, including procurement professionals with recent and practical experience drawn from all sectors covered by the procurement rules (i.e., central and local government, HE, Blue Light, charities, etc.).
12. Members recommended that challenges should be proportionate to the contract size and offer no more than the potential profits accruing from the full contract period.
13. In general, members felt that short or small value contract amendments should be accepted without an obligation to publicise, although further or above threshold changes should require a notice.



UK Universities Purchasing Consortia

### **Negative Aspects of the Proposed Reforms**

1. The Green Paper has a central government department focus and does not address the nuanced environments, constrained resources and local policy/strategy imperatives of the wide range of contracting authorities to be impacted by these proposals. At times universities, unlike other contracting authorities, are in direct competition with one another. Central government departments and other contracting authorities do not have this dynamic.
2. It is felt that there is not enough detail in the paper to understand how the procedures would work and therefore the detail to follow would be required for a fuller opinion. Due to this, members feel there is an increased risk of challenge due to increased flexibility/ambiguity.
3. Concerns are expressed about the effectiveness of the proposed oversight group. The current Public Procurement Review Service (PPRS) has investigated 1,800 cases and unlocked over £8m in late payments, since 2011, which seems fairly limited. To create a new unit that would have a significant/meaningful impact would take much resource/investment. Throwing the onus back on contracting authorities, by requiring them to complete the numerous central registers proposed, creates bureaucracy, whereas the purported aim of the new rules is to reduce the administrative burden. There are examples of good practice referenced in our answer to question 2.
4. There is concern that that excessive bureaucracy will inhibit the efficiency and innovation the Green Paper aims to encourage.
5. There is a risk that the proposals will make it easier to obscure bad and uncommercial decisions, such as where contracts are awarded to unsuitable suppliers without consequence.
6. The proposal seems to reduce the penalty and deterrent to contracting bodies who seek to act in an unfair and unethical manner, by reducing the potential liabilities to 150% of supplier's bidding costs and restricting to companies that were unsuccessful.
7. Several members did not see the benefits of the open framework if they are to regularly reopen and require assessment of additional and updated responses. A better option could be to extend the closed framework period for up to a six-year period, to allow true strategic partnership arrangements to be established.
8. There are significant reservations about the proposed new DPS+ and its value to smaller contracting authorities, given its apparent complexity in terms of maintenance and operation.



UK Universities Purchasing Consortia

9. The cost of implementing, maintaining, operating and supporting the open contracting data standards (OCDs) for contracting authorities needs assessing against the benefits delivered/received.
10. Members generally feel that ongoing support for post tender debrief is useful to show transparency and educate bidders.
11. Suppliers working across the UK may find it complex to navigate the different sets of rules. This may put suppliers off bidding outside of the jurisdiction that they normally operate, thus reducing competition and value for money. There is a risk that UK Government grant providers could include conditions of grant that require compliance with English procurement rules, when Scottish and Welsh institutions cannot operate to them as they must comply with devolved nation legislation.
12. The current regime, while it has its issues around bureaucracy and time impacts, does enforce a minimum level of good practice and transparency. Under the proposals there is a significantly increased risk of poor practice occurring in procurement activity. The approach may lead to less scrutiny of the process within organisations where (due to the reduced formality of process) more procurement may be allowed to be carried out by end users, which is at least overseen by procurement professionals under the existing arrangements.
13. It is likely that the changes will lead to a material divergence in the public procurement rules across the UK. It is essential therefore that within the rules, it is permissible for any UK public contracting authority (who is named as being within the scope of the contract, etc.) to be able to use a collaborative public contract/framework put in place by any other UK public contracting authority - despite a potential divergence in the rules across the UK nations - without any further local compliance activity being required.



UK Universities Purchasing Consortia

### **Key Requirements for Transforming Public Procurement**

1. Changes must not result in more bureaucracy in the tendering process or requirements that lead to the exclusion of SMEs.
2. An oversight group should include procurement professionals with relevant and recent experience. It must represent wide range of contracting authorities, not just central government. Reassurance is needed that it would not interfere with process nor promote opportunities for challenge and that good would need to come out of it with regards to the regular publication of learning, case studies and examples of good (and bad) practice.
3. The Green Paper does not address technology or digital contracts.
4. There must be an alignment of approach between each of the UK's four nations to address complex funding and partnership arrangements.
5. There need to be clear 'rules of engagement' for early market engagement to benefit all parties and help manage expectations.
6. Appropriate training must be provided to commercial team members, including procurement, to address the move to increased flexibility and more commercial dialogue/negotiation. We may require a fundamental review of the necessary skill set.
7. Generally, members require more clarity on the specifics of proposed procedures.

We are submitting this response on behalf of our members. Consortia and our members have been encouraged to make individual submissions as well.

We would welcome the opportunity to discuss HE sector views with you and can be reached at:

Julie-Ann Garton  
UKUPC Board Chair  
Managing Director  
North Western Universities Purchasing Consortium (NWUPC)  
[Julie-Ann.Garton@nwupc.ac.uk](mailto:Julie-Ann.Garton@nwupc.ac.uk).



UK Universities Purchasing Consortia

## **Responses to Consultation Questions**

These responses are collated from consortia discussion groups, workshops and survey responses.

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

Generally, yes, however, clarification is required around the strictly defined circumstances of when single source procurement can take place and who can make that decision. Under non-discrimination, more information is needed on how awards can be made to SMEs and local businesses.

There are concerns that the increased flexibility and current ambiguity will lead to increased risk of challenges within a sector that is primarily driven by risk mitigation and legal compliance. There is also the potential that it will be easier to obscure bad and uncommercial decisions.

### ***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?***

There are mixed views on this. This body would need to be independent of Government, transparent and focused on two-way communication. Serious consideration should be given to the make-up of this body and its ability to make meaningful impact. Members had concerns about how this would link to the 'Mystery Shopper' scheme and if the body would support contracting authorities as well as suppliers.

An oversight body could be a useful facilitator of good practice, but it will be difficult to enforce interventions that over-ride the responsibility of independent public bodies' Senior Responsible Officers (although it may be appropriate for directly managed government bodies/departments).

Some good practice to look to could include The Public Procurement Reform Programme in Scotland, which operates a partnership of the Scottish Government and the formal sectoral Centres of Procurement Expertise (who fully understood the unique nature of their own sector's procurement needs/environment). This has now been thoroughly tried and tested and has struck a good and effective balance that ultimately would be more effective than what is proposed in the Green Paper, if implemented also in England.

### ***Q3. 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?***

Any oversight body should have senior representatives from each main public sector and also have a small number of experienced senior private sector procurement leaders. It should also have representatives that are experts on key supply chain impact factors such as modern slavery/human rights, pollution and climate change. Those on the panel should have practical experience of procurement. It would also be important to have input from specialist legal advisors and perhaps specialist experts (possibly from industry) depending on the subject matter.



UK Universities Purchasing Consortia

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

Yes, members acknowledge the benefits this will bring. However, there is a risk of a one-size-fits-all approach that will not address known issues or structural weaknesses.

***Q5. Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained?***

There is some support to retain a less regulated version of the DSPCR in the interest of national security.

The importance of a clear definition of a *Contracting Authority* was highlighted as vital; this currently differs across sectors. It should also be noted that not all universities are required to follow the regulations.

The UCR is often applied to private/commercial businesses – there may be challenges in blending this into general public procurement approaches.

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 also concern about the removal of LTR - unless the thresholds for areas are increased it would have a major impact on workloads for contracting authorities.

Some members 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.

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

Generally, yes; however, the sector needs clarification on the following:

- Threshold levels.
- Use of the limited tendering procedure.
- The ambiguity of some of the proposed procedures, leaving contracting authorities open to increased risk of challenge.
- How prototype or other practical demonstration can be compliantly undertaken.
- It is essential that within the rules, it would be permissible for any UK public contracting authority to use a collaborative public contract/framework put in place by any other UK public contracting authority (with the rules local to the lead public contracting authority being applied) despite a potential divergence in the rules across the UK nations. In effect it would ideally be the case that as long as a contract was put in place using the rules of any one of the UK nations, then it should be valid for use in any of the four nations.
- It is also essential that if an institution is purchasing for delivery against a grant/funding contract that specifies that EU procurement must rules be followed, then that should be



UK Universities Purchasing Consortia

permitted as an alternative compliant route to market in these specific situations. To not enable this could exclude UK institutions from taking part in many world class international collaborative research activities.

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

Generally, yes; however, members need clarity on what would constitute a crisis. Many members only agree with this question if there are robust penalties for those at any level who abuse the crisis grounds to enable award of business to their friends/associates/donors etc.

The effective use of “crisis” requires clear unequivocal guidance on when this can be utilised, and sanctions applied effectively where it is abused to deter persons using it inappropriately. If a swift Cabinet Office approval process could be introduced that would provide consistent governance.

The retention of the current section 84 report would be helpful for transparency where persons have used crisis as a ground for limited tendering.

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

While further clarity on procedures is required to understand how innovation is fully supported, suggestions from our members include:

- More flexibility in procurement for research and development innovation. The changes in procedure need to be backed up by sound legalities and a strong and prominent oversight body to ensure buyers are given the authority and flexibility to explore innovation properly.
- Re-set the advertising threshold for services based on annual spend rather than contract spend to avoid having to game-playing re: contract length.
- Allow post-tender negotiation with the winning bidder (i.e., where there is a clear case for VFM overriding transparency in those circumstances).
- The provision of a suitable pre-market engagement procedural checklist, process or programme to assist contracting authorities in improving and updating their market knowledge would be useful, as would additional templates to ensure consistency through public procurement processes.
- Longer term contracts to form truly strategic relationships.
- Allowing use of restricted tenders again and the ability to shortlist suppliers would be beneficial.
- 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.



UK Universities Purchasing Consortia

- Clearer guidance on compliant negotiation would be welcomed.

Consideration will need to be given to ensure monopolies are not created and that innovation can take place in practice (not just in theory). There are concerns that previous attempts to encourage innovation (the innovation partnership) did not meet procurement team's needs and required undue management.

***Q9. 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?***

Some authorities push bidders into a tight turnaround (which possibly may dissuade some who may be innovative or have limited resources), but then take a long time in their decision and award.

Often it is the human nature issues which are the biggest challenges: complacency, a reliance on bureaucracy to dictate the procurement process, excessive risk aversion and a lack of incentives to achieve change and value for money to name a few. Clearly demonstrating good examples of excellent innovative thought processes and practice will encourage change in this area.

As in question 5, the importance of clarification around who a contracting authority is and who can operate outside of the regulations is vital here to ensure the balance between regulation and action.

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.

***Q10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?***

Suggestions include:

- Implement a central reporting hub or implement procurement data hubs within sectoral Centres of Procurement Expertise. Create cross-sector forums at regional and national level to maximise benefits/opportunities identified from increased data visibility.
- Broadening this to include sharing of case studies.
- Broadening this to include central market intelligence data, framework availability, user/supplier performance data.
- Broadening this to include central database of suppliers based on UNSPSC/CPV code data.
- It may be an option to utilise the Crown Commercial Service site, but it would need to be more user friendly.



UK Universities Purchasing Consortia

Consideration must be given to balancing commercially confidential information with useful details. Some members felt working through consortia provided an opportunity for formal and informal sharing of information while avoiding unnecessary bureaucracy.

***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?***

Members are generally supportive of pre-market engagement, but this takes time and resource which is not always beneficial to the final tender process.

Proposals noted should be effective if carefully implemented in dialogue with key innovation sectors (universities etc). However, increasing the pre-market engagement would support greater innovation. Continuing to encourage the use of a PIN would help ready the market so that the overall process could be sped up. It may be appropriate to introduce Expression of Interest stage with market engagement. Again, clarity is required in terms of what is and is not allowed within pre-procurement supplier 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.

***Q12. 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?***

Members expressed mixed views on this. It was felt that there was insufficient detail around what may replace the light touch regime.

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

There does not appear to be a material difference in meaning as MEAT effectively means MAT, both allow for consideration of other factors to price. The simple change, however, does encourage people to think more widely about value and that is welcomed.

***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?***



UK Universities Purchasing Consortia

While some members agreed with this, there was also some confusion around when it would be acceptable to exclude a supplier from a process for specific subject matter outside mandatory exclusions. For example, with respect to suppliers' record of prompt payment or its plans for achieving environmental targets within its operations.

There should be an ability to include non-partisan organisational policy and ethos/principles in the award criteria. Any governmental decreed exemptions should be based on independent expert, scientifically based or human rights-based factors.

There is a risk that evidencing TOMS will become an administratively heavy process.

***Q15. 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?***

There were mixed responses to this question, around half thought this was a good idea; those who said "no" or "don't know" felt strongly that there would need to be a very clear framework to prevent abuse.

***Q16. 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?***

There was widespread agreement for this, but extreme care will be required to ensure effective wording. Good guidance will be needed.

***Q17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?***

Members had several suggestions:

- Companies who do not take reasonable and proportionate measures to remove modern slavery & labour abuses, etc. in their supply chains.
- Companies who do not take reasonable and proportionate steps to reduce their impact on climate change.
- Tax evasion should lead to disbarment.
- Any breach of UK laws.
- Poor prior performance, including consistently unsuccessful (and without merit) award challenges.
- Companies with pension liabilities.



UK Universities Purchasing Consortia

***Q18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?***

There was universal agreement with this.

***Q19. 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)?***

There was universal agreement with this, with many feeling that 'legal' tax avoidance should be included as well.

***Q20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?***

There were mixed responses to this. Consideration should be given to suppliers being afforded the opportunity to identify how they are remedying a situation. There needs to be a timeframe and action plan identified.

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

Responses to this question were mixed but tended toward agreement. There is concern that a creation of an exclusion/barring list(s) could present commercial and litigation risks that are not acknowledged or addressed in the paper. All respondents agreed that while in theory this may be a good idea, the management of this list would need to be efficient with clear guidelines around what happens if suppliers are added or removed from the list during a tender process or throughout the life of an agreement. Further clarification is required in this area from the Cabinet office.

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

The majority of respondents felt this would be appropriate, however concerns were raised over fairness and also how challenges to this could be managed if the framework for application was not robust.

It was noted that poor performance is subjective to each project and the data quality which will support the publishing of performance will likely be inconsistent, which may damage SME and micro business participation, and shift too much power on the contracting authority. Additionally, it was felt that it may also increase risk of challenge and subsequent costs to both parties and may dissuade new bidders from participating.

Clear guidelines should be provided as to how this should be managed.



UK Universities Purchasing Consortia

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

There was widespread endorsement for this, however there was concern that contracting authorities would not be able to apply different evaluation methods to the supplier information on the central supplier registration system to reflect the nature of the contract/size of the supply market.

Members suggested a central register with pre-approved suppliers up to certain thresholds. Consideration must be given to allow discretion to the individual contracting authority to disbar suppliers dependent on circumstances such as the nature of the requirement or other information.

***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, where the verification information to be used for a particular procurement exercise is clearly specific. Clarity on how it would be widened would be helpful.

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

There were mixed responses to this question. It's not clear from the (lack of) detail what its purpose/advantage would be. There are significant reservations about its value to smaller contracting authorities.

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

Responses to this question were mixed. From a purchasing consortium perspective, little value is perceived in the ability to undertake an Open Framework as the administrative burden would be similar (for buyers and suppliers) to re-advertising, in its entirety, the framework every 4 years. This opinion however differs for individual institutions with local frameworks where fewer suppliers are involved, and this flexibility may be welcomed.

More clarity is needed on the levy, in particular what would be considered 'in the public interest'. It was requested that a levy should only be allowable if the contracting authority is a not-for-profit organisation and they do not pay any money to others in provision of the service.

A clear understanding of who is classified as a contracting authority (as above) is required and more strict regulation on how they are allowed to operate in the provision of frameworks for access by others. For instance, a school should not be capable of being a front for a private company delivering IT hardware to the wider public sector as sometimes happens now. We propose that it should be mandatory for anyone setting up a framework or DPS to have prior approval from anyone they name as a participant.



UK Universities Purchasing Consortia

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

This was an area of divergence across the sector. While many agreed with the idea in principle, it should not impose a larger administrative burden on stakeholders. There also concerns about what can be revealed while still maintaining commercial confidence for both the bidders and the contracting authority.

Those who disagreed cited the need to retain uniqueness of bids and to minimise administrative burden.

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

Members had mixed views on this. Some suppliers may be put off bidding if their lack of success was to be published. Additionally, some sensitive commodities (animal testing etc) could put buyers and people in the supply chain at personal risk to their safety. While this is sound in theory, the administrative burden could significant.

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

Linked to the responses to question 28, this was mostly felt appropriate in principle, however it would be important to ensure all stakeholders are involved in the design, so it is not too onerous. Members suggested that ideally it could be fed by e-tendering platforms, either Find A Tender could be developed for this, or taking feeds from commercial tools. There need to be safeguards in place.

***Q30. 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.***

The proposal seems to reduce the penalty and deterrent to contracting bodies who seek to act in an unfair and unethical manner, by reducing the potential liabilities to 150% of supplier's bidding costs and restricting to companies that were unsuccessful.

Some members suggested that an intermediary would be required which would quickly assess claims for a legitimate legal basis before they were heard.

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

In principle some members agreed with this, generally because there is a requirement for a route, especially for small companies, to use to challenge which holds authorities to account but without



UK Universities Purchasing Consortia

making public procurement impossibly slow to award. However, it was agreed that there is a significant risk that a professional body created to oversee procurement disputes may be bureaucratic, toothless, and hard to adequately resource for the whole public sector.

***Q32. 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?***

Yes. This has clear advantages over the 'start from a zero base' option and should be deliverable more quickly and efficiently. It is recommended that this tribunal should act as a first-stop dispute resolution chamber. It was noted, however, that asking a tribunal to address a series of challenges could be lengthy and counter-act the expediency proposed in the reforms.

***Q33. Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages?***

Yes, most members agree with this proposal.

***Q34. 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.***

This was unclear for most respondents, with the majority answering don't know. Further clarification is required. For those that agreed, it would depend on what changes are proposed to the remedies directive and at what point. Greater clarity is needed.

***Q35. Do you agree with the proposal to cap the level of damages available to aggrieved bidders?***

Most members agreed with this proposal. Successful challenges should be proportionate to the contract size.

***Q36. How should bid costs be fairly assessed for the purposes of calculating damages?***

Members suggested a variety of options, including:

- Suppliers being required to submit their bid costs with their tender submission, the average cost of all bids then being considered. All those who responded to this section agreed that evidence should be provided.
- The average bid writer day rates as a benchmark plus a calculation of the supplier's technical expert's salary prorated to reflect the time invested in the bid could also be a useful way of calculating costs. It may also help level the bidding market, those currently with large bid

teams may be less likely to deploy as much resource in the future if they knew that the costs could not be fully recovered following a challenge.

- The cost of those involved in preparing the bid, where there is a guide as to the typical number of hours required of staff of the various levels of seniority, by category/industry.
- Suppliers should provide evidence on an open book basis on time spent on bid and cost within tender response; this should then be benchmarked against other bidders' costs and the average used as a means of calculating damages.
- The supplier should suggest what the costs were, but this should be subject to scrutiny by both the Contracting authority and an independent body (e.g., an auditor).
- It would also be beneficial for data on bid costs to be collated from suppliers where possible by a Central Body as this would help inform decisions on these costs. This data could also potentially be analysed with a view to advising suppliers on how to make their bid process more efficient.
- Suppliers should provide evidence of the costs they have incurred in submitting a bid, this should be benchmarked, and a limit put on the amount for damages that can be awarded. Open book accounting of cost is the only way to do this fairly.
- If a number of bidders are affected, then benchmarking should be done to agree a fair price. Fixed percentage of the median/mean tendered sum of the tenders received for the contract under consideration. Keep the standstill, the only loss is the cost of tendering.
- Some don't believe that bid costs should be claimable in damages claims.

***Q37. Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?***

Generally, yes. Although, clear guidance on what constitutes a crisis is needed. There must be robust penalties for those at any level who abuse the crisis grounds to enable award of business to their friends/associates/donors, etc.

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

Most of our members disagreed with this. Many feel this is important for transparency and to help educate the supply chain, which supports more competitive bids in the future and continuous improvement within the sector. However, others feel debrief letters are time-consuming and open to misinterpretation from bidders and that increased transparency elsewhere in the proposals will mitigate the removal of debrief letters.



UK Universities Purchasing Consortia

**Q39. Do you agree that:**

- ***Businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays.***

This is an area of divergence across the sector. While many member representatives responded that they would be happy with this. There is also the view that those that have a specific contractual relationship should be the parties involved in such disputes and that the law already provides for enforcement as-is.

- ***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, if it's an option and the contracting authority can choose to use it or not. There also need to be sensible limits on contracting authorities' rights and responsibilities in this regard.

- ***Private and public sector payment reporting requirements should be aligned and published in one place***

There is no clear consensus on this. The extension of the reporting requirements to the private sector is welcomed by some, however it is unclear how this might work in practice or how it could be mandated. It is suggested that poor payment performance could then be grounds for exclusion under social value requirements.

**Q40. Do you agree with the proposed changes to amending contracts?**

Generally, yes, however, consideration must be given to cost, unnecessary administration and bureaucracy. Contracting authorities also need clarity on what constitutes a change, along with clear guidance.

**Q41. Do you agree that contract amendment notices (other than certain exemptions) must be published?**

Yes, this is important for transparency. However, consideration should be given to a different approach for short or small value amendments versus above-threshold changes. The key here is to support transparency without creating unnecessary administration.

**Q42. 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?**

Yes, where the supplier is being divisive or where there is a valid complaint. Some members would go further and require that the contract should be performed at cost and the supplier should only receive a reasonable allowance for profit if the challenge is successful.