



**Transforming public procurement:  
Response to the December 2020  
Government Green paper**

March 2021

# Submission in response to the consultation on Transforming public procurement Dec 2020 by Project Compass CIC and the London Practice Forum.

## About Project Compass CIC

Better Procurement = Better Design. [ProjectCompass CIC](https://projectcompass.co.uk) is a not-for-profit procurement intelligence service supported by 52 firms and individuals providing architecture, engineering, and planning consultancy services and sustained by voluntary contributions. Its aims are to open, promote and make access to a high-quality built environment easier, more effective, and economical and – most importantly – transparent, for the benefit of the public, clients, and construction professionals. The service delivers research, publications and best practice guidance, a free to use sector specific procurement portal, transparent real time data for clients and project teams, procurement consultancy and capacity building.

<https://projectcompass.co.uk>

## About London Practice Forum

The London Practice Forum is a collective of 21 leading architectural practices based in London. The LPF campaigns for measures which improve the quality and sustainability of the built environment, for better representation and diversity within the professions responsible for designing the city, and for the delivery of enhanced social value through public-sector commissioning.

<https://practiceforum.london>

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March 2021 (R3)

## Consultation Questions

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

Yes we agree with the proposed principles of public procurement aligned with the GPA and the intention to ensure contracting authorities have regard to the Government's strategic priorities to be laid out in a new National Procurement Policy Statement.

A National Procurement Policy Statement giving sufficient consideration of different procurements, works, services and supplies, along with granularity by scale, value, risk and industry/commercial sector along with a fair balance of authority and responsibility between central and local contracting authorities their requirements, capacity and capability is thought to be required.

**Proportionality.** We believe there is significant merit however in additionally embedding the principle of proportionality [[PCR2015 – 18\(1\)](#)].

Proportionality is a principle that explicitly expresses scale and measure, distinctly from fair treatment of suppliers and non-discrimination. Proportionality supports both contracting authorities and bidders in ensuring delivery of the most appropriate public procurement procedures, and processes in actual practices. It is a key principle for enabling micro and SME businesses access to public procurement. This principle has been shown to have had benefits for lower value procurements particularly where more 'gold plated' tenders had been apparent historically.

We believe that proportionality should also be given consideration as a foundational principle in public procurement so that scale / quantum, for authorities, bidders, procedures, and processes is more fully embraced.

**Should Cost Model.** (Clause 39 para 5). In construction the 'Should Cost Model' proposed requires careful consideration ([The Construction Playbook 2020](#)). Suitable for generic projects and those having well established and defined parameters it is less suitable for many complex projects that are unique, where precedents maybe unreliable and certainty less predictable. If insufficiently considered this proposed model may result in prolongation of time and cost with multiple procurement stages becoming the only affective way for contracting authorities to model their risks.

Staged commissions can add time and cost, although in construction development an effective model in some circumstances for better addressing these issues, where they arise at early design stages, is described in this response under Qu. 11.

As it adds time and cost this should also be considered proportionately, as for lower value awards these factors would likely outweigh the benefits overall. For the implementation of 'should cost modelling' a multiple of the works threshold value (eg x4) might be considered appropriate and allow for its efficiency and effectiveness to be evaluated.

### 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 believe a new unit to oversee public procurement with new powers of review and intervention is necessary and for those raising complainant's anonymity should be sustained. While Mystery Shopper and the Public Procurement Review service (PPRS) have already achieved significant effect, more could and should be done to support professionalising procurement, so that policy may be

delivered effectively and in a timely fashion. However, the PPRS lacks the powers to instruct authorities to alter or restart procurement procedures where these are determined to be defective.

**Existing Supplier confidence** in the architectural sector with the PPRS has been very low, reputedly, because those who have raised concerns have seen / obtained little apparent individual remedy. Because its remit is only advisory the service reputedly has appeared toothless. Issues arise for consultancy MSMEs who may bid less frequently and for lower value contracts, where inappropriate procurements may have significant proportionate impacts. PPRS, or its replacement, needs the ability to instruct changes to active procurements which are not in line with best practice, and not only those which are not compliant with the law.

**Reviewing specific procurements.** We believe that the proposals should not preclude addressing specific procurements, as exemplars, and do so more proactively by intervention if change to more professional procurement is to be achieved.

### 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?

**Panel Formation.** We consider that autonomous panels within this unit should have different remits (by sector), broad representation (including micro & SME representation), with panellists appointed for fixed terms in rotation, and to ensure balance they should have expertise from across the remits being scrutinised, in the manner of peer review panels. Should the panel consider it necessary they should be able to call upon external experts and technical advisors. Panellist should be representative of contracting authorities, and contractors of both services and works. To offer public confidence panels should also have members who are transparently independent public appointees.

**Sector based panels.** Forming sector-specialist panels would allow greater scrutiny by those having suitable expertise where cases are complex. We consider it important that there should be a construction sector panel, and that this should include a suitably experienced architect panellist(s).

**Value based panels.** Forming specialist panels by value offers greatest opportunity to better target scrutiny on areas of less complexity.

We therefore believe that there are benefits in having sector-specific specialist panels for procurements above GPA thresholds, along with separate sub threshold panel(s).

**Intervention in sector based panels.** In a construction sector specific panel, we believe that any panel(s) should have the powers to intervene were concerns to arise about safety, quality, sustainability, and value, and where necessary have the powers to stop a procurement process. As SV assessment methodologies embed, we also believe that there should be powers to intervene where the inappropriate application of SV evaluation methods preclude MSME access and participation.

**Intervention in value based panels.** Sub threshold panel(s) should have a greater remit to intervene with sanctions, when it's deemed necessary in the reasonable opinion of the panel, during a procurement process and wherever processes brought to their attention fall short of the proscribed regulations or their principles.

**Powers of Arbitration.** Giving panels a remit under certain cases to arbitrate could obviate some risks highlighted in Clause 69 point 4, and do so more flexibly, economically, and efficiently. (ref also response to Qu.32)

**Framework Capture.** We are concerned that architects, and other service providers, are reluctant to raise concerns regarding call-off contracts because they fear that this may result in exclusion from

future opportunities on that framework. There is a strong element of commercial capture particularly where call offs from frameworks & DPS frameworks are involved. This remains unaddressed.

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

*Yes.*

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

None reported.

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

Yes, although we would seek clarification of the potential to scope a Design Contest procedure under the proposed new regulations, and consider more generally that greater direction, definition and guidance is necessary. The main issue with the current procedures is the capacity and skills necessary for delivery. We question the economic advantage and benefits of the change, when upskilling from the established capacity base may offer better outcomes, without any loss (eg of Design Contest) or digression, because the new procedures appear to offer little that is additional to what is currently available.

**Design Contests Clause 74.** The Design Contest procedure [[PCR2015 Chapter 3 Section 8](#)], used commonly elsewhere, offers significant advantages and opportunities for delivering more progressive, flexible and innovative procurement practices in specific contexts that align to the Green Papers proposed outcomes (eg clause 88).

The Design Contest procedure is recognised within the WTO GPA, ratified by UNESCO on adherence to the UNESCO Regulations and recognised internationally. Uniquely Design Contests provide for the anonymous MAT evaluation of a drawn / design artefact, under a process embedding peer review. The provision for price negotiation without prior publication following award uniquely prioritises MAT within selection [[WTO GPA \(Art. X111 \[h\]\)](#), & [PCR2015 32 \(7\)& \(8\)](#)], which is one of the most appropriate method of selecting spatial design and drawn artefacts. Many possible innovations in procurement aren't currently used with great frequency in the UK and design contests are no exception. However, we consider this procurement offers significant value if cultural change is to be sought forward. A means to include provision for this procurement route, modelled on the GPA, and addressed across the flexible procedures and limited procedure, should be provided.

**Clause 69.** Changing the procedures may ultimately precipitate significant cultural change but given contracting authorities capabilities it is thought more likely in most instances they will default to current practices / tried approaches for considerable time, in the absence of clear guidance. We would agree that to support the changes in procurement procedures guidance as described under clause 90 with clear interpretations, best sector and procedural specific practice (that identifies new potential and innovation), along with support mechanisms are essential. Any loss of standard SSQ would increase time, and tender costs, while diminishing access and thus competition. This would be most detrimental for SME's particularly.

We consider a baseline standardisation should be sustained.

**Clause 63.** In making the proposed flexible procedure 'similar to the Light Touch Regime (LTR)' [[PCR2015 76 \(4\)](#)] risks increasing exposure to potentially corrupt practices. Historically in construction such practices have been a blight and the proposed provisions identified are felt to be inadequate to address this context. It is considered that the proposed competitive flexible procedures require greater definition and protection from this risk.

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

Yes, but this should be subject accountably to democratic controls and oversight.

**The Definition as Scoped.** We express reservations with the definitions scoped under clause 79 - 'the endangering of life or health of people' and the protection of 'human, animal or plant life or health' - having sufficiently complete regard for possible future environmental crisis, particularly those which may relate to marine environments.

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

**Price scoring of bids.** We consider price scoring of bids should be reviewed to improve construction delivery, whole life, sustainable, social, and qualitative values. Assessment evaluations and selection where lowest bid prices are rewarded the highest score are ill conceived. They do not reflect the best value market price for delivering the performance, values and quality being sought, nor the best resourcing necessary to deliver a contract. Assessment by the lowest price bidding is an incentive which also increases risks of bankruptcy, particularly in economic downturns. It is evident across many construction procurements, not only Grenfell, that there has been a race to the bottom crisis.

In any reasonably sized cohort of diligent bidders, the best value price achieving the desired outcomes is likely the price nearest the mean price bid. We consider Government should recommend bids for construction service contracts are assessed on a mean narrow average basis, whereby the highest score is awarded to the bidder closest to the (narrowed) mean, and so on. (*The formulation for this assessment method is set out in the response [Appendix A](#)*)

In this way tenderers are encouraged to base their financial offers on what they believe a service will cost to properly deliver, rather than reducing the scope of their service to achieve a competitively low fee. For architectural services there is no realistic way to reduce fees without limiting the number of hours spent on the contract. The profession has been plagued by abnormally low fee bids for public work, which has a disproportionately negative effect on long-term outcomes.

For construction works contracts a double envelope methodology might be considered. In this method bids must reach thresholds of assessment in all other bid criteria before the price bid can be considered. For example, in such a procurement only those achieving eg. a score greater than 50% / or the 75% top scores on all other assessment criteria can have their price bids considered. This stages the assessment and ensures contractors are required to meet qualitative thresholds before consideration of their (quantitative) price. This better ensures an authority's requirements are met and the risk of defaults from untenable pricing are avoided.

**VAT on Works & Services.** EU regulations on VAT have financially constrained UK contracting authorities from selection of the most appropriate contracts. For a contracting authority when architects are employed directly by the contracting authority, under a 'service' contract, VAT is charged at the full rate but if they are employed under a PCR2015 'works' contract as sub-contractors, VAT maybe recoverable. This does not offer contracting authorities' equivalent choice or consultants a level playing field and works to the detriment of quality and professionalism. VAT at 20% is therefore a significant financial incentive that has been driving the expanding market for employing architects and other professionals as sub-contractors, as for these contracts the prime contractor is appointed under a works contract. With the growth of UK VAT rates the liability upon contracting authorities cost has become an increasing compounding issue.

This incentivises contracting whereby professionally impartial design supervision, stake holding and allocations of responsibility necessary to sustain a ‘Golden Thread’ over the duration of a contract is impacted (ref [Dame Judith Hackitt report](#)). This has accelerated work fragmentation, where different architects are increasingly employed under different contractual terms at different project stages.<sup>1</sup>

VAT should be equal and consistent for all construction design professionals whether employed under a works or services contract irrespective of the contracting authorities’ choices of procurement. This would be best achieved by making VAT fully applicable for the employment of consultants equally at the full rate under all contracts and would raise revenue for the Treasury. To allow construction development models opportunity for adjustment, any such proposal would need to be introduced over a well-considered transitional programme.

**Fixed-Price Bids.** We consider that fixed price bids should be provided for. When a contracting authority has a fixed budget with a performance specification this can enable the best value bid to be better and more simply assessed.

**Clause 83 – 92.** We consider that within construction a link should be made between innovation and quality so that the direction of innovation is defined as one which achieves betterment. It is quite possible to innovate inappropriately, as testaments of evidence at the Grenfell inquiry have highlighted, so directing outputs to achieving higher quality through innovation is now considered necessary. This could be achieved by requesting that contracting authorities and contractors consider articulating how and what betterment is derived above the established base.

**Design Contests.** Ref. response to Q.6 above.

### **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?**

Professional construction design consultancies are predominantly micro & SME businesses who provide specialised ‘intellectual’ services. They offer opportunities for ideas, innovation, quality and delivery of economic, social, and environmental values but can easily be precluded from bidding.

In their interactions with contracting authorities they most frequent report issues relating to the capability and capacity of contracting authorities to appreciate, understand and accommodate micro and SME’s businesses, their model, scale, capacity and resources. Proportionality, effectiveness, and inappropriate procedural routings, cost burdens and excessive constraints are among matters cited that lead many to avoid working in the public sector entirely.

It is considered that there could be more emphasis in the proposed reforms on balancing interests of micro businesses and SME’s by better considering proportionality, increasing the drive to make more diverse and numerous lots, continuing to make consortia access more attractive, sustaining simple more effective, and efficient processes, procedures and practice, and making procurement as relevant and appropriate for the purposes of delivering the outcomes sought.

**Application of Social Value Outcomes.** Social value outcomes when applied to bidders on the basis, for example of the advice from the [Social Value Portal](#), [Guidance](#) and [National TOMS framework](#), can easily be unduly disproportionate and inappropriate. An example can be found in **Appendix C**. A further example comes from another recent tender which called for services, where otherwise

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<sup>1</sup> Building Culture. Project Compass 2021 (forthcoming May 2021) Project Compass. research publication. Abstract of findings - Ref **Appendix B**)



eligible MSME bidders were required to agree to employ additional personal in training or at the location of a project, to add social value under a specified category which received the highest monetarised 'social value score', when the resources available to them precluded them from doing so.

The SV methodology adopted in both these tenders derived from the National TOMS, as have been all other complaints reported to Project Compass to date. We could find no reference to proportionality in the digital National TOMS framework online guidance when this should be a priority. The monetarisation of SV assessments is contradictory in many cases and for MSME's unduly onerous. It is too easy for procurement authorities not to understand the principles inherent for the process or its implementation. The [PPN 06/20, guidance](#) and [social value model](#) methodology directs more proportionate, intelligent, and nuanced procurement. We would very much hope that something could be urgently done to ensure the current edition of the LGA TOMS is withdrawn, so that they can be simplified, made more readily proportionate and appropriate so that societal benefit can best be delivered by SV without discrimination.

We consider that social values are best assessed for MSME on the deliverables of a construction project, by a performance target method - meaning what can be added by a MSME. For lower value works this should invite bidders to propose what they offer towards meeting an authority's SV objectives, rather than rely on a process which, for bidder eligibility, sets specified objectives requiring untenable expenditure to engage in the process, or diversion of resources away from existing SV commitments.

Application of separate SV criteria further slices and dices bidding processes, which adds burdens. From two bid categories, e.g. Price / Quality, SV is now being adopted as a third. In this single SV category, there are then e.g. 5 sub-category themes. With this progressive compartmentalisation inter-relationships become lost. For example, in construction the (MAT) value and societal benefits of an output directly relates to the balance achieved across factors, such as price, quality, and sustainability, but balance is not measurable by current methods. Greater thought might be given to how, in delivering SV, balance is achievable with less compartmentalisation, along with simpler, more considerate, and proportionate processes.

As an example, SV outcomes can be delivered by reserving contracts for MSMEs on the basis of the numbers of pay-rolled employees, and/or turnover, or by MSME consortia being able to aggregate numbers within individual firms to encourage them forward (ref. more detailed response below to this Qu. - Consortia working).

For SME consultancies if a monetarised contribution is to be proposed, then this might be competitively evaluated within the price bid (using the narrow mean method proposed under Qu.8). EDI requirements such as reporting on gender pay gaps, might be better considered in standard SSQ questionnaires or as a pass/fail part of their price submission, reflecting the economic relationship.

If the simplification, consolidation and changes to the procurement procedures that are being proposed, (under Qu. 1, 4 & 6 and with which we generally concur), are an intention then it appears very contradictory to then embed additional complexity, compartmentalisation and burden in the processes of preparing and complying with SV evaluation, while also transferring risks, cost and time to bidders.

**Assessing experience in designing physical artefacts.** Issues arise in construction because the output of design consultancy services and construction works are a physical artefact derived from a drawn proposition. Few if any contracting authorities make assessment evaluations and awards where criteria evaluate previous experience based on visiting outputs / projects or sites, or meeting users /



occupiers and stakeholders. Reliance is placed instead on document reviews. When evaluating experience within the construction sector there should be far more encouragement for contracting authorities to visit projects / built outputs or artefacts.

**Assessing content more than procedures.** For many architectural consultancies the procedures are basically managed, like an obstacle course, through tick box administrative compliance, which counts more than contents. This arises in large part because design ability (as a drawn descriptive artefact) specific to a brief is now rarely engaged within assessment. Greater focus on content in the professional metier being assessed is beyond the capability and capacity of most contracting authorities. Assessments having sector specialists, or assessments referred to or including local authority design review panel members might be ways to address this shortfall.

Where drawn artefacts however are a tender requirement for assessing quality, these are frequently excessive on smaller projects and might include, for example, 6 A3 'sketches' and 6 A4 pages of text, in addition to standard question sets. This is a lot of work for each MSME bidding and accumulates economic costs. With intelligent bid preparation and assessment far more economic submissions should be possible, these should be in substitution for other question sets/forms of enquiry and more and further encouragement to constraint could be considered.

**Professional Indemnity Insurance.** The type and level of Professional Indemnity insurance cover is specified in construction tenders. This largely precludes consideration of other types of insurance including single project insurance (SPI), along with integrated project insurance (IPI) forms, and impacts upon market innovation. Both the SPI and IPI insurance models can have significant benefits while also helping sustain better collaborative working practices and BIM integration. The insurance market has recently been posing a risk when greater market diversity could offer some mitigation. Alternative insurance models should be encouraged by relaxing proscriptive specifications that stipulate the type of insurance model at award stage. This might allow the best insurance format to be determined through negotiation and agreement jointly amongst clients and project teams prior to a contract's assignment, or at different work stages. The level of cover can still be specified at tender as being £xxx PI 'or an equivalent level of risk covered by other insurance forms'

**Consortia working.** Amongst construction consultants growth has been reported in consortia bids. This has contributed to sustainably expanding capacity, skills and output quality, while offering team empathies at the outset. However, these occurrences are predominantly found in medium to large scale projects and remain rare. We believe more could and should be done to make consortia access to tender bids simpler and easier. This might be by reviewing the measurements of a consortia's collective strength (eg Ref. Qu.9 response above: Application of Social Value Outcomes), and by allowing combines upon tendering and before joint legal assignment of a contract in certain situations, so that a combined entity is not precluded. Consortia submission currently require a lead, but a lead comprising more than a single entity should be allowed. Subject to the scale and type of works for example the latter might be applied when considering consortia that combine an architectural and an engineer firm etc. who might otherwise be considered legally separate.

**Balancing Risks.** Procurement practices in construction design are currently principled upon and practiced by factoring financial risk. Innovation is the opposite however, and principled on perceived opportunity. As 'de facto' innovation has no previous precedent, it cannot be financialised and evaluated this way. If there is to be more innovation in construction outputs a change in the balance between opportunity and risk is necessary, as principles currently adopted largely preclude innovation.

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

The publication of open data in a consistent format – including PINs, tender notices, awards, variations to procurements, and call-off contract awards – is vital, not only for reasons of transparency, but also to enable those bidding to identify which contracting authorities, what projects and which contracts etc. are the most appropriate to them and worth targeting for future potential work.

Retention of standards e.g. of data and meta data, nomenclatures, and alignments to NUTS and CPV codes, would sustain and facilitate comparative historic and international performance analysis along with common data filters. Thought should be given to publishing the highest bid, the lowest bid and the winning bid when price data is published, to better inform and feedback to the market.

## 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?

**Clause 91.** Processes which incentivise procurement as a tool for innovation and better outcomes.

A consequence of procurement procedures can be that they established linear processes, when broader analysis particularly at early stages, can achieve better outcomes. In construction wider appraisals at early stages can lead to greater innovation and better outcomes from more thorough initial research and testing. Development of options from a single contracted source, whether created by an individual firm or single point team of suppliers frequently offers little choice, as the incentive to extend evaluations can be limited for example by experience, culture and construct.

‘Parallel Commissioning’ is a methodology that has been developed to address this and offer contracting authorities the public and stakeholders better research and wider choice in the development of spatial designs.

Parallel commissioning is where 2-3 architectural design teams are invited to submit appraisals and feasibilities evaluating propositions, often with pre-defined themes for a fixed fee. There is no further commission for the selected teams beyond the parallel commission. Parallel commissioning can therefore be particularly useful to public authorities to inform the preparation of a brief and before starting a subsequent procurement processes.

When a range of ideas haven’t been previously tested by spatial design proposals for example against the possible variety of site configurations, height, massing, form, mix, servicing requirements, budgets and functional performance or through engagement with the public and stakeholders; the full range of suitable alternative opportunities may not be fully understood. If project briefs and development proposals are then instigated without a thorough exploration of alternative spatial design possibilities the results may be inappropriate, inefficient, and a misguided lost opportunity.

This ‘Parallel commissioning’ type of competition can explore a range of alternative solutions that are developed to a higher level of quantitative, qualitative and spatial interrogation that can be particularly valuable for analysis of the development options for some project briefs at the pre-procurement stage. With parallel commissioning it is possible to appoint different design teams to work on a range of alternative propositions in competition to explore strategic briefing options, calibrate a projects scope, evaluate quality, and more fully engage stakeholders.

A public authority might, for example, have a range of sites available, but at the outset does not know what could achieve the best outcomes, so it commissions three practices to undertake early competitive studies. One practice might be asked to appraise the feasibility of a low-rise, high-density, mixed-use scheme, one a medium rise, and one a high rise or any such combination etc. They do this

through a collaborative investigation having competitive outcomes allowing the contracting authority stakeholders and the public a fuller feasibility appraisal and budgetary analysis of options against the programmatic performance requirements.

It is short and simple, allows public scrutiny, bases the outputs on environmental, spatial and design quality, and can be developed to inform the eventual procurement, meanwhile the procedure can be undertaken together with the preparation for the full procurement selection stage and its documentation, ensuring the best outputs can be briefed forward.

**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?**

*Yes*

**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.

This may support clarifying the cultural change but doesn't yet appear to offer anything other than a change of vocabulary. If linked to new methods of qualitative assessment and those identified in the response to Qu.8, the proposed change might then hold more substantive meaning.

Monetarising SV as implemented in the [Social Value Portal, Guidance](#) and [National TOMS framework](#), processes drives in entirely the opposite direction to the change to MAT that is indicated, and appears deeply contradictory (ref. Qu. 9 response above).

**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?**

Generally yes,

**Clause 106 - 107** we also agree that the risks identified are real as the introduction of award criteria not linked to the subject matter of the contract could easily be disproportionate, precluding SME & micro businesses participating in contracts, unless scale and measure are considerations and probity issues are well considered. To address this, embedding the proportionality principle as described in this paper's response to Qu. 1. should be considered along with seeking to materially defined scale, quantum and probity within the specific circumstances which Government will aim to provide guidance on.

**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?**

Yes.

In Italy there is a legal obligation to have young practices as equal partners in an architectural design competition bid (when submissions are sought from larger established practices), as collaborative team members. This delivers social values by nurturing and sustaining talent and is seen as a method to deliver long term economic benefit across generations. We consider this could provide a model for measures available to public authorities to enable them to nurture values, including diversity and equality, that are proportionate and effective to address within architectural service appointments. Such measures embody social value further through professional mentoring and training and have particular value in economic downturns as a method of sustaining capacity.

**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?**

*Yes*

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

The mandatory exclusions within [PCR2015 57](#) are considered acceptable benchmarks for the standards of probity, to which it is considered that convictions arising from breaches of health and safety regulations, employment and equalities law, should be included. To drive change consideration should be given to allowing authorities to include provisions covering gaps and disparities in gender pay and employment, and BAME engagement.

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

*Yes*

**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)?**

*Yes*

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

*Yes*

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

Yes, but it is thought a need for the appeal process and oversight of a debarment list is necessary so its operation is considered to be robust, fair and reasonable.

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

Clause 122, 126 & 127. In benchmarking quality and performance ref also the response given in Qu. 9

**Assessing experience in designing physical artefacts.** Without such verification KPIs can rarely provide the necessary information to calibrate the quality of physical outcomes as effectively.

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

Yes and this is welcomed as was the ESPD described in Directive [2014/24/EU Art. 59](#) which provided similar facilitation with supplier registration in an advanced digital format for simplifying selection stages, although the means to incentivise uptake better might be considered. Supplier registration criteria should be appropriate for the works, services or supplies, sector, and be proportionate.

**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. The information should be appropriate, and this should not be seen however as permitting more burdensome information.

A large number of issues are raised by architectural practices with regards to [PCR2015 – 60](#), for example -

Micro & SME firms who are specialist or bespoke architectural practices and who may turn over a comparatively small number of projects within the time limitations in time 60 (9)(a) and can then be

denied access to public contracts. Where commissions are less frequent or specialist, for example, in works of conservation, to listed buildings, or projects for specific typologies such as cultural buildings, this issue appears most frequently.

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

Yes and we particularly welcome the proposals for mandatory publication of DPS+ award notices and the restriction on fees and charges that can be levied, so they are only eligible upon the award of a commission for work and are capped.

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

Yes.

Within the proposed open framework we welcome endeavours to account for the 'lock out' that can arise with prolonged frameworks lasting considerable time (as this can exclude rising firms and MSMEs), as well as the proposed provisions for mandatory publication of awards when a framework call off is concluded.

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

Yes. The proposals are welcomed particularly the intentions to consolidate the existing fragmentary system, offer interoperability, extend transparency and functionality.

**Clause 159.** We welcome free access to 'Find a Tender' and consider access to tender documents by suppliers should also remain free. This ensures suppliers can scan notices and their supporting documentation free of cost and pay walls. Prior to [PCR 2015 – 53](#) this had been a particular constraint identified by micro & SME firms seeking to compete.

**Clauses 167 – 169.** In design what might constitute a trade secret or matter covered by copyright maybe difficult to appraise under these proposals, current regulations and a contracting authorities' interpretations. An example might be a design strategy or solution which may be submitted as part of a bid. In such situations a bidder's declaration of what they regard as copyrighted intellectual property should be considered.

In construction projects we would welcome transparent data that allowed for the recording of employment by project works stages, particularly for consultants because of the apparent increase in fragmentation of employment over work stages impacting a 'Golden Thread' (ref. Qu. 8 VAT ... and Appendix B).

**Ensuring Transparency.** There is evidentially an increasing lack of transparency within the construction sector particularly at Award stage, as the research snapshots in **Appendix D** illustrate. This is despite mandated requirements. Consideration should be given to how therefore it is intended additionally to ensure transparency is enforced and policed if the aspirations are to be upheld.

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

Yes this is generally very welcome.

**Clause 173, 178 & 179.** We consider however that the systems value should be driven by the outcomes being sought within the proposals, and not simply used to monitor the procedures identified. In the construction sector we consider the OCDS should extend to engage post occupancy evaluation and whole life values which would deliver more significant relevant value. A timescale and programme to full adoption of the OCDS standard needs embedding.

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

Yes. Ref. also response to Qu.28 above - Clause 173, 178 & 179.

We very much welcome mandating procurement and data publishing by all contracting authorities through the central platform.

**Clause 178.** Aligning existing data currently recorded on Contracts Finder into the new central system would provide better research, intelligence, and benchmarking.

**Clause 178-181.** We welcome a central supplier register with endeavours to align this format as closely as possible to the European ESPD and allow digital export functions, to simply improve and facilitate access to that market.

**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.**

Yes

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

Yes this is very welcome, so long as an authorities internal reviews are conducted independently by staff that are not directly involved in the procurement that is the subject of the complaint.

**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, and for claims on contracts below thresholds consideration might be given to conferring certain powers of review and remedy to determination by arbitration by the review panels (Item 42-46), for lowest value claims with written pleadings where all parties agree to this routing. This might further streamline the processes and reduce burden on the courts / tribunal.

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

A clearer definition of the structure offers benefits if other reforms are also to be delivered but a measured response on this is necessary as cases most likely are context specific, involve different levels of consequential risk, remedy, and public interest.

**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.**

Response all as for Qu. 33

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

No, when it is proposed to do so as stated in Clause 210 (see response Qu.36 below)

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

If they are to be considered, then they should take better account of 'off book' resource drains upon supplier organisations who pursue remedies, including the impacts on a business and its personnel in respect of economic, social and environmental health, and wellbeing, the internal resourcing deployments (other than by commissioning a legal team) necessary to pursue a case and loss of



perceived earnings. For MSMEs, proportionately this can be hugely significant. To compensate loss of income and future income the factor proposed is too low and should at least be raised (to eg. x3?)

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

The potential for corruption and collusion does not appear to be addressed adequately. Although the justification given in Clause 214 may have value the means of addressing this in 215 appear to fall short of allowing challenge where this might be justifiable in the public interest.

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

Yes

We would agree that individual debriefings should no longer be sought where a meaningful standard debriefing of appropriate and sufficient quality is issued to all bidders collectively and conjunctively with the award notice (Clause 218 the publication of this information as a matter of course). We consider however that the regulations should provide and encourage mechanisms for non-attributable / informal feedback to bidders, as debriefing conversations can form essential capacity building experience for bidders.

**Q39. Do you agree that:**

- businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?
- 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?

**Qu. 39 Response.** We consider the provisions in Directive [2014/24/EU Art.71 3](#) that allow for Project Bank accounts, and other cascading digital mechanisms for payment through the supply chain, should be reviewed and considered as a further option in any reform proposals. With the increasing speed and sophistication of digital financial transactions not to have such an option becomes increasingly arcane. This model provides a tried, tested, and robust approach, obviating the need for many of the provisions discussed. On smaller projects however where the establishment of such a system may not be warranted, then direct recourse to the contracting authority should be enabled.

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

Generally, yes, but the % increase or decrease should be the same, whether for goods, services, or supplies. Otherwise this is a can of worms. Take the example of a construction project where 'a single project output' having lots or combinations of separate suppliers or consultants providing services inputting proportionately to works which have been let separately. A proportionate increase/decrease in value which fell between 10-15% would then, by way of legal challenge as discussed in clauses 233, & 238 impact one party differently have many unforeseen consequences potentially impacting project finance, delivery, productivity, effectiveness, and efficiencies. For this reason the % should be levelled or the risk exposure is not fully addressed.



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

Yes to ensure probity, maintain transparency and public trust.

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

## Appendix A

### Narrow Mean Average Methodology

The tender submitted which is closest to the average of the tenders submitted, having discounted the highest and the lowest, will be awarded the contract (in a lowest price competition) or the highest price score (in a price/quality competition). This revised price scoring methodology should be for service contracts in price/quality assessed competitions above thresholds and used also below thresholds where these may be price only bids.

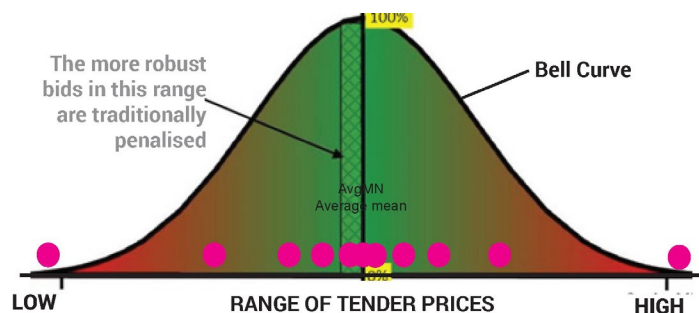


Diagram showing a typical range of bid price submissions in a cohort submission at tender (pink)

Discounting the lowest and highest tenders, the Mean Narrow Average (AvgMN) is calculated by aggregating the remaining tender sums and dividing by the number of these tenders. One point is deducted for each percentage point above or below this average.

1. The Absolute value is the non-negative value of a number. Consequently, no matter whether the Tender Price is greater or less than AvgMN, the Absolute value shall never be a negative number and will be subtracted from 1.
2. Where the Tender Price is greater than or equal to twice AvgMN, then the Price Mark shall be set to zero.
3. In the case of price only assessed procurements, the tender price that is closest to the AvgMN will be the winning tender, unless a lower tender is within the Proximity Margin of AvgMN in which case it will win. The Proximity Margin shall be set at 7.5% of AvgMN.
4. In the case of competitions to be assessed on the basis of price and quality, the tender price that is closest to AvgMN will achieve the highest price score. As this score will be added to the quality score to determine the MEAT, the inclusion of a Proximity Margin is not considered necessary.

$$\text{Price Score} = 100 \times \left( 1 - \text{Absolute} \left( \frac{\text{Tender Price} - \text{AvgMN}}{\text{AvgMN}} \right) \right)$$

## Appendix B

Work fragmentation, where different architects are increasingly employed under different contractual terms at different project stages

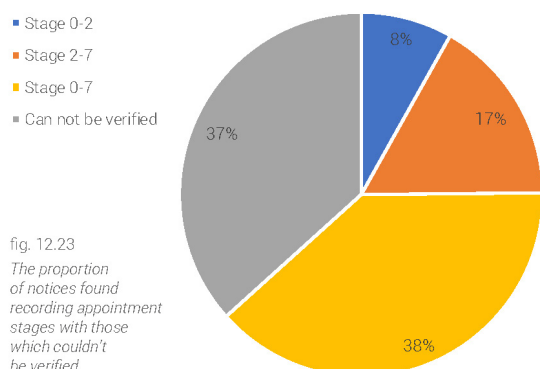


fig. 12.23  
The proportion of notices found recording appointment stages with those which couldn't be verified

The records indicate that only 38.7% of projects can be verified from the contract notices as offering service appointments at commencement, extending through Stages 0-7 (fig. 12.23). 8% covered RIBA stage 0-2 only and 17% covered RIBA Stages 2-7 only. Abstract from a data set comprising 582 records of 491 arts and cultural projects from across the UK from January 2013- November 2018.

Abstract from –

Building Culture: procurement of UK arts construction. Sawyers B. & Menteth W. Project Compass 2021 (forthcoming May 2021)

## Appendix C

Example of an SV bid using the TOMS methodology precluding MSME construction consultancy.

*This is an anonymised example of a recently reported tender reported to Project Compass that is from an increasing number of such reports that are being received.*

A Public Authority's recent bid requirements expressly stated that SV contributions should be monetarised and equate to 10% of the contract value. Based on the maximum contract value of £1m advised in the tender, this equated to a £100k contribution to SV, of which at least 50% would be borne by the Lead Consultant. The SV guidance note stated that this sum should not be included in tenderer's costs but should be an extra over contribution, which comes out of the tenderer's existing Corporate Social Responsibility budget. A minority led MSME, with a track record of successfully delivering planning permissions for projects of the equivalent scale and complexity was therefore precluded from bidding, which reduced competition. The annualised SV contribution asked for over the projected timescale would have equated to a significant portion of that practices annual turnover and was simply not deliverable for that size of practice.

The consultancy has a strong reputation for maintaining a range of commitments to delivering SV, which are accounted for in their CSR budget. This budget can only be funded by the fees charge to clients. The consultancy's team members are often involved in SV initiatives in their own time, but this is at their discretion and is inevitably limited by the other commitments they have, such as child care, which, as a consultancy which values wellbeing and EDI, is supported. The consultancy has a range of existing long-term commitments, and the organisations they work with rely on their support. If the consultancy were to have bid for the project, and could afford to do so, they would also have needed to reallocate resources away from existing CSR responsibilities, and in doing so would be letting down organisations in other locations who have come to rely on their input.

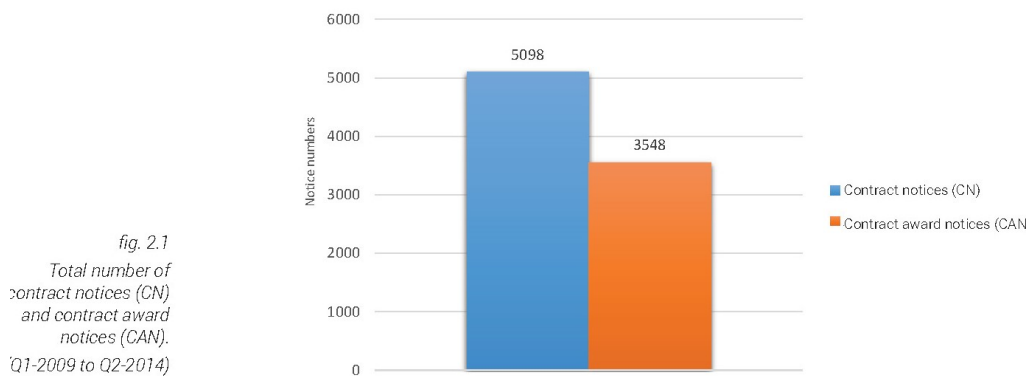
In summary the criteria discriminate against MSME participation and hence competition. This also illustrates how, in a societally self-defeating unforeseen consequence, SV capture by one public authority may deplete established SV engagements and investments elsewhere.

The SV methodology adopted in this tender was derived from the LGA National TOMS, as have been all other complaints reported to Project Compass. PPN 06/20 methodology directs more intelligent proportionate and nuanced procurement, and we would very much hope that something could be done to withdraw the LGA TOMS and send them back to the drawing board.

## Appendix D

### Construction Award Notices issued

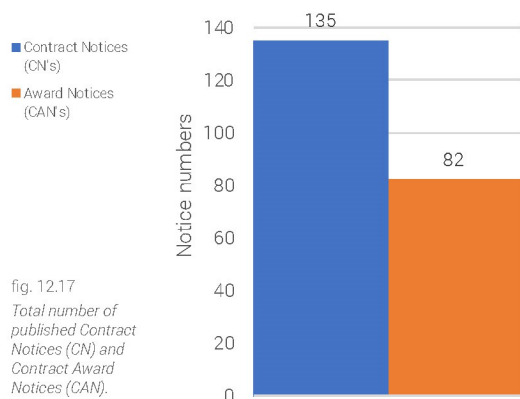
Research sampling as evident below indicates transparency is decreasing



**2009 – 2014** Numbers of contract notices issued relative to number of award notices issued. From a sample of 5,098 contract notices were issued with 3,548 award notices (just under 70%), in the construction sector were notices called for architecture. Discontinuation notices, which are comparatively rare, were not thought to be comparatively significant.

Source:

Menteth W., O'Carroll O., Curtis R. & Sawyers B. [Public Construction Procurement Trends 2009-2014](#) Dec. 2014. Project Compass. Fig. 2.1. p.10



**2013 – 2018** Numbers of contract notices issued relative to number of award notices issued. From a sample of 421 UK arts and heritage capital projects. 135 contract notices were issued with 82 award notices (60%). Discontinuation notices, which are comparatively rare, were not thought to be comparatively significant.

Source:

Sawyers B & Menteth W., *Building Culture: procurement of UK arts construction*. May 2021. Project Compass. Fig. 12.7 (forthcoming)