

SUPC Member Response Summary to the Open Consultation on Transforming Public Procurement

Background and Summary

Following the publication of the [Cabinet Office Green Paper on Transforming Public Procurement](#) in December 2020, SUPC hosted a number of discussions regarding the paper with our members, including at monthly virtual meetings with Heads of Procurement.

SUPC is a not-for-profit and a charity that helps universities and colleges buy smarter. Members use our frameworks and support services to make sure their procurement activities deliver value for money to students, staff and wider communities. SUPC's 138 members represent 42% of the HE sector and, collectively, spent £386m through UK purchasing consortia frameworks in 2019/20. Through these frameworks, members achieved £54m in savings (both cashable and non-cashable).

In January, SUPC circulated our [own observations](#) on the key changes proposed within the paper and how these might impact members. We also distributed a survey to gather the views of members to inform an SUPC collective response to the proposals on behalf of our membership. We have, of course, encouraged members to respond to the proposals in their own right and we will also be providing input to the collective UKUPC response, which aims to reflect the views of the wider UKUPC membership.

The responses received from SUPC members provided detailed comments and opinions which evidence their passion and commitment to ensuring that the proposals within the Green Paper are subject to comprehensive review and challenge.

Here, we outline the key themes to emerge from member consultation: from both the qualitative (one-to-one discussions and larger meetings) and quantitative (survey response) methods. You can find an overview of the responses submitted to our survey question-by-question, attached in [Appendix 1](#).

At a high level, the proposals to review the procedures have been welcomed by SUPC members. Members are supportive of the simplification and additional flexibility proposed, although there was a consistent theme that there needs to be consequences for those who do not adhere to the revised procedures. The proposal to migrate to “Most Advantageous Tender” to inform evaluation prompted reflections that this offered little change from the current “Most Economically Advantageous” basis.

Members were clear that procurement teams need to receive adequate and appropriate training to enable them to fully embrace the opportunities suggested by the Green Paper.

Members called for greater clarity on many of the proposals, so that contracting authorities have a clear and unambiguous understanding of the extent and nature of the procedures to be deployed within the UK.

Positive Elements of Proposed Reforms

Members highlighted the following positive elements of the proposed reforms:

1. The proposals promoting increased flexibility in procurement approaches are widely welcomed
2. The objective to consolidate upon a single regulation was acknowledged, although it should be viewed as an aspiration rather than an absolute
3. The consideration of procurements necessitated by “crisis” prompted significant comment. Responses proposed that “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.
4. Clear 'rules of engagement' for early market engagement would benefit all parties and help manage expectations.
5. The proposed central knowledge database was 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 were reservations about the timescale and complexity for development and deployment of such a portal.
6. Members endorse the proposal to make past performance easier to consider given their experience of not being able to exclude poor performing suppliers.
7. The use of legal, but unethical, tax avoidance should be considered as a potential ground for removal, as should failure to publish a Modern Slavery Statement.
8. Longer term contracts should be allowable to facilitate development of good working relationships under frameworks.
9. The proposal to introduce a review and arbitration facility was viewed positively. Responses referenced the importance of broad representation on such a panel, including procurement professionals being drawn from all sectors covered by the procurement rules (i.e., central and local government, HE, Blue Light, charities, etc.).
10. Compensation awards should be proportionate to the contract size and offer no more than the potential profits accruing from the full contract period.
11. Short or small value contract amendments should be accepted without an obligation to publicise, although further or above threshold changes should require a notice.
12. Members welcomed the greater focus on social value proposed, although observed that the HE sector already evaluates aspects of sustainability and social value.

Negative Elements of Proposed Reforms

Members highlighted the following negative elements of the proposed reforms:

1. The green paper does not distinguish between central and sub-central Contracting Authorities; however, the language is slanted towards central. There should be more clarity for sub-central throughout the paper. The reforms also need to take into account that universities operate in a slightly different way to other contracting authorities in that they operate in a competitive market.
2. A reduction in procedures is desirable, however it was considered important to consider all options. The current restricted procedure is useful for markets with large numbers of suppliers. Concerns were raised about the proposed flexible procedure due to the obligations of the World Trade Organisation's Agreement on Government Procurement (GPA).
3. 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.
4. 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.
5. Respondents considered that there was little difference in real terms between proposed "most advantageous tender" rather than current "most economically advantageous tender".
6. 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 six-year period to allow true strategic partnership arrangements to be established.
7. Significant reservations were voiced about proposed new DPS+ and its value to smaller Contracting Authorities, given its apparent complexity in terms of maintenance and operation.
8. There was widespread demand for appropriate training to commercial team members, including procurement, where necessary, as a result of increased flexibility and capacity for increased commercial dialogue/negotiation.
9. The cost of implementing, maintaining, operating and supporting the Open Contracting Data Standard (OCDS) for contracting authorities needs assessing against the benefits delivered/received.
10. The responses suggest ongoing support for post tender debrief considered useful to show transparency and educate bidders.

Next Steps

SUPC will share this paper with members and then submit this consultation response to the Cabinet Office on behalf of SUPC members.

A joint consultation response, based on this member feedback, as part of the UK Universities Purchasing Consortia (UKUPC) will also be submitted.

We encourage all members to feedback directly to the Cabinet Office as well, if they would like to, before the 10th of March deadline. Members can find more information on how to this [here](#).

We will take every additional opportunity available to represent member requirements on the proposed reforms and will report back, as appropriate.

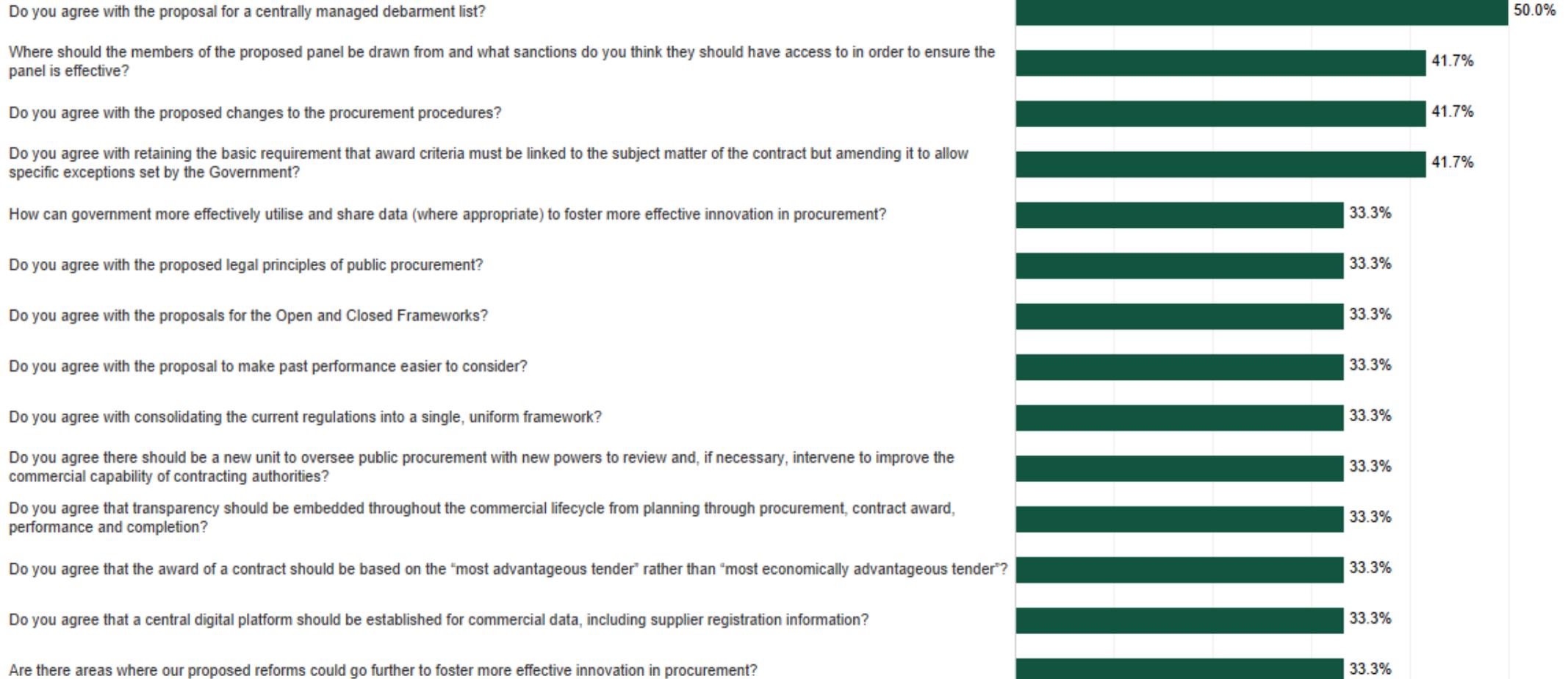
Appendix 1

Member Survey Responses to the Consultation Questions (12 members completed the survey)

		Yes	No	Don't know
Chapter 1 - Procurement that better meets the UK's needs	Q1. Do you agree with the proposed legal principles of public procurement?	91.7%		8.3%
	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?	75.0%	8.3%	16.7%
Chapter 2 - A simpler regulatory framework	Q4. Do you agree with consolidating the current regulations into a single, uniform framework?	83.3%	8.3%	8.3%
Chapter 3 - Using the right procurement procedures	Q6. Do you agree with the proposed changes to the procurement procedures?	83.3%	8.3%	8.3%
	Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?	83.3%		16.7%
	Q8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?	54.5%	9.1%	36.4%
	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?	27.3%	36.4%	36.4%
Chapter 4 - Awarding the contract to the right supplier	Q13. Do you agree that the award of a contract should be based on the "most advantageous tender" rather than "most economically advantageous tender"?	91.7%		8.3%
	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?	83.3%	16.7%	
	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?	41.7%	16.7%	41.7%
	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?	91.7%		8.3%
	Q18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?	91.7%		8.3%
	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)?	83.3%	8.3%	8.3%
	Q20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?	91.7%		8.3%
	Q21. Do you agree with the proposal for a centrally managed debarment list?	100.0%		
	Q22. Do you agree with the proposal to make past performance easier to consider?	100.0%		
	Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?	100.0%		
Q24. Do you agree that the limits on information that can be requested to verify supplier selfassessments in regulation 60, should be removed?	58.3%	25.0%	16.7%	

		Yes	No	Don't know
Chapter 5 - Using the best commercial purchasing tools	Q25. Do you agree with the proposed new DPS+?	75.0%		25.0%
	Q26. Do you agree with the proposals for the Open and Closed Frameworks?	91.7%	8.3%	
Chapter 6 - Ensuring open and transparent contracting	Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?	66.7%	16.7%	16.7%
	Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?	33.3%	16.7%	50.0%
	Q29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?	58.3%	25.0%	16.7%
Chapter 7 - Fair and fast challenges to procurement decisions	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.	50.0%	25.0%	25.0%
	Q31. Do you believe that a process of independent contracting authority review would be a useful addition to the review system?	41.7%	25.0%	33.3%
	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?	41.7%	25.0%	33.3%
	Q33. Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages	58.3%		41.7%
	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.	36.4%		63.6%
	Q35. Do you agree with the proposal to cap the level of damages available to aggrieved bidders?	83.3%	8.3%	8.3%
	Q37. Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?	33.3%	8.3%	58.3%
Chapter 8 - Effective contract management	Q39.a. businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?	81.8%	18.2%	
	Q39.b. there should be a specific right for public bodies to look at the payment performance of any supplier in a public sector contract supply chain?	83.3%	16.7%	
	Q39.c. private and public sector payment reporting requirements should be aligned and published in one place?	83.3%	8.3%	8.3%
	Q40. Do you agree with the proposed changes to amending contracts?	66.7%	25.0%	8.3%
	Q41. Do you agree that contract amendment notices (other than certain exemptions) must be published?	33.3%	66.7%	
	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?	83.3%	8.3%	8.3%

Most Important Questions, According to Members





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