

A seven point plan to improve procurement in the UK

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The Government spends £220bn a year – the equivalent of £3,500 per adult and child in the UK – on goods and services. In a time of fiscal contraction ensuring that every pound is spent well is vital. If the Government is to protect frontline services, a new approach to procurement will be required which harnesses the potential power of innovative new products and services and utilise the skills and experiences of its suppliers.

Recommendations

1. Expanding outcome based commissioning and payment by results to promote innovative approaches and incentivise high performance.
2. Improving value for money assessment of bids to drive long-term economic benefit.
3. Improving UK implementation of the EU Procurement Directives to improve consistency, speed up procurement processes and reduce bid costs.
4. Simplifying EU Procurement Directives to promote growth, open markets and ensure fair competition;
5. Improving transparency to ensure ongoing value for money in procurement.
6. Simplifying procurement documents and bid administration to reduce costs, open markets to new entrants and reduce barriers to entry for SMEs.
7. Improving public sector procurement skills to help address the cultural gap between the public and private sector.

A recent report highlighted that procurements in the UK are amongst the slowest and most expensive anywhere in the EU; the mean procurement process in the UK takes almost 50% longer and costs more than twice as much as the EU average.¹ Meanwhile a slew of National Audit Office reports have criticised central and local government for failures that have in part been caused by poor procurement.

Unless the public sector is in a position to procure the right product at the right price and on the right terms, the Government's ambitious reform agenda will be impossible to realise.

Getting procurement right will require change across the whole process to enhance the ability of the public sector to get the best results and enable providers to deliver the most appropriate solutions. This will require a step change in attitudes, practices and approaches to procurement. The CBI believes that just as the

¹Public Procurement in Europe: Cost and Effectiveness, Study prepared for the European Commission by PWC, London Economics and Ecorys, March 2011, (average procurement time: Figure 2.46, Pg 105, average cost of procurement Figure 2.12, Pg 88)

penalties for failing to reform procurement are cause for concern, the benefits that can be realised offer the potential to completely transform the user experience.

The work of the Efficiency and Reform Group has been well received by CBI members, government and the NAO. Their commitment to simplifying the burden of the procurement process is welcome and progress is being made at a central and local level.

1. Expanding outcome based commissioning and payment by results to promote innovative approaches and incentivise high performance

Effective procurement allows innovation to flourish and enables providers to use their expertise and experience to deliver better results more efficiently. The work of the Department for Work and Pensions and the Ministry of Justice has been warmly welcomed by members.

Too often, providers find their actions constrained by ill thought out and ineffective process monitoring. Contracts are often over-specified and input-based in a way which requires extensive oversight of processes and restricts the ability of suppliers to deliver innovative new approaches. Outcomes based procurement allows public bodies to focus on the things that matter most to their users. One CBI member currently runs a student accommodation unit where payment is determined based on managing maintenance spend and student satisfaction with the accommodation. Risk is transferred to the private partner, university staff can be redeployed to work on other areas and students benefit from an incentivised service.

By focussing on the outcomes that a service delivers, contracting authorities can give providers the ability to deliver services in the most appropriate way. This can often mean taking a new approach to service delivery. One example of this

is the results achieved by a private fleet management provider whose focus on maximising fleet availability has helped reduce repair turnaround times by 50% in some blue light services, freeing up more vehicles for frontline use and potentially allowing for a reduction in fleet size.

Improving the dialogue between contracting authorities and potential suppliers is vital to help give both sides a clear understanding of the desired outcome and the potential solutions on offer. Outcomes based contracts are already underway in many departments and public organisations. As well as incentivising good performance, payment by results manages risk to the public finances by rewarding performance that creates long-term value and limiting payment where performance has been unsatisfactory.

CBI Recommendations

- Commissioners should stop thinking of themselves as providers and focus more on how their procurement process will help achieve the desired outcomes rather than focussing on inputs.
- Benefits and value are lost if commissioners are overly prescriptive about the means rather than the ends. DWP and MOJ have embraced outcomes-based commissioning and payment by results but this approach needs to be implemented more widely.
- Delivering outcome focussed commissioning will require more effective market engagement before, during and after the procurement process. Significant scope already exists for negotiation and the work the MOJ is doing to engage with potential suppliers and providers has been warmly welcomed by CBI members. Training on the legal scope for engagement needs to be available to procurement staff and businesses.
- The CBI believes that the scope for further use of payment by results is significant; we would urge the Government to engage with its suppliers to identify future areas for development.

2. Improving value for money assessment of bids to drive long-term economic benefit

There is a lack of consistency on the definition of best value within the public sector. This can lead to decisions based (either deliberately or unwittingly) primarily on lowest price. Lowest price will be a very significant factor in determining best value particularly for the procurement of goods but other factors are particularly important where service contracts are being assessed. Contracting authorities often take too cautious an approach, making decisions on clearly 'objective' criteria such as price. This limits innovation and the scope for bidders to demonstrate the level of process re-engineering that can satisfactorily prove the added value of an offer.

e-Procurement and e-Sourcing procedures can have real benefits in procurement. As tools for transparency and efficiency they offer real advantages. Considerable cost savings are available through the use of reverse eAuctions. At the same time, more care needs to be given to how these procedures are used to ensure that the correct weighting is given to the bid criteria to ensure that issues other than lowest price are accurately factored in to decisions about complex products and services.

Whole-life costing can make a significant impact on the overall cost even where relatively simple services are being procured. One member highlighted a case where a local authority had chosen a supplier offering an older, less fuel efficient product because of a marginally lower initial price. The losing bidder won the follow-up contract after proving at their own expense that the additional cost of fuel used by the older device was nearly twenty times the value of the difference in initial cost.

CBI Recommendations

- It is important that procurement officials do not automatically revert to lowest price.

- Whole life costing should be adopted more widely as the basis of procurement decisions.
- Decisions around relative weighting of cost and other value factors (quality, innovation, service, external policy factors) needs to be carefully considered in each procurement.
- e-Procurement and e-Sourcing offer a number of advantages across procurement and their use where appropriate should be encouraged. More consideration needs to be given for their use for complex services.
- The public sector can play a significant role in the development and use of innovative new products and services which can drive long-term economic and service benefits. The importance of innovation needs wider consideration

3. Improving UK implementation of the EU Procurement Directives to improve consistency, speed up procurement processes and reduce bid costs

CBI members have argued that the UK's implementation of the EU procurement directives is one of the biggest challenges facing procurement reform. While the EU directives are a source of frustration, the overwhelming opinion is that implementation in the UK is a much more pressing issue.

The UK's culture of over-compliance with EU law causes a great deal of frustration. The fear of criticism and challenge too often leads to a very cautious approach and gold-plating of procedures and specifications. It also creates a very process driven approach to procurement, which enables officials to 'justify' decisions on process points and protect themselves from criticism but often leads to unsatisfactory outcomes.

Under existing rules, contracting authorities can choose between four procedures according to the

type of procurement that they are undertaking – open, restricted, negotiated and competitive dialogue. There is concern that risk aversion is leading to procurement officials over-using competitive dialogue rather than more appropriate procurement routes. The overly cautious approach means that the benefits of each route are not being realised. In particular, the benefits of competitive dialogue as a tool to help contractors demonstrate their expertise and added value are being lost because of poor specification and rigid processes. This results in competitive dialogue being curtailed, the procurement process being halted or unnecessary retendering, as well as overly ritualised dialogue sessions which do little to advance understanding of the commissioners needs and how best to satisfy them.

Procurement (and particularly competitive dialogue) should not be seen by public bodies as a tool for shaping requirements. When public bodies initiate a formal procurement process without having properly assessed and decided on aims and specification, dangers of poor outcomes are magnified. One CBI member reported that they were currently involved in a competitive dialogue which had involved over 150 meetings with each potential supplier.

Concerns have also been expressed that the implementation of the directive has led to reluctance to make entirely benign and useful changes to contracts during their life, due to concerns that use of the Change Process would alter the nature of the contract and provoke a procurement challenge.

All tenders must be published in the Official Journal of the European Union (OJEU) and follow one of the four authorized procurement routes. Members have expressed concern over the problems caused by poor scoping prior to OJEU announcements and the problems this can then subsequently cause during the procurement process.

The slow speed of procurement processes in the UK has been repeatedly highlighted as a problem. Speeding up the process across the board needs

to be given greater priority and will be required across government. The rollout of lean procurement techniques can be instrumental, and initial results from the pilots have been very warmly welcomed by members.

Shorter processes will also require greater responsiveness from other public sector bodies indirectly involved in procurement. One member highlighted their experience of trying to bid in foreign countries using accelerated procedures but finding themselves unable to bid because reforms at HMRC meant that the time required for certification of tax compliance had increased from one week to seven weeks.

The varied picture of reform and the lack of coordinated approaches to procurement across central and local government is a growing source of concern to CBI members. While encouraging progress is being made, the implementation gap is huge and continues to grow. Even where positive developments have been made, (the PAS 91:2010 standard for construction procurement was highlighted) CBI members have highlighted a lack of awareness from contracting authorities both on the use of the structure and in many cases the existence of such a structure.

CBI Recommendations

- Address the risk averse culture in government procurement across the UK.
- The use of the right procurement process for the job needs to be the subject of greater focus. Using the correct route can improve efficiency, reduce procurement costs and deliver better value for money during the life of a contract.
- When competitive dialogue is used, serious consideration must be given to whether competitive dialogue is the appropriate route. The dialogue must be solution focussed and properly managed to avoid negotiations aimed at determining specification.
- Cabinet Office work on lean procurement techniques needs support from across Government when it is fully rolled out.

- Government should provide clarity on altering the terms of tendered contracts. Legal advice on issues such as expanding existing shared services contracts without retendering is urgently needed to help support innovative cross-sector and agency work across the public sector.
- A comply-or-explain policy should be established to ensure that more use is made of standardised procurement procedures where appropriate.
- Greater attention is needed for contracting authorities on the scoping process prior to OJEU publication and how this will impact on subsequent stages of the process. Members have highlighted the benefits of ‘readiness tests’ for authorities prior to the launch of a procurement.
- Further use of the Mystery Shopper service should be encouraged as a tool for highlighting potential procurement problems.

4. Simplifying EU Procurement Directives to promote growth, open markets and ensure fair competition

The CBI believes that substantial reforms of the EU directives would be helpful and we are committed to supporting the Government’s work in Europe to significantly simplify the current procurement directives. However, there are concerns that negotiations could have unintended consequences. There has been a push for more stringent social and environmental criteria to be taken into account in public purchasing decisions, with some groups (and parts of the Commission and European Parliament) arguing for mandatory requirements. While there is scope for social and environmental criteria to be taken into account it must be both appropriate and related to the main subject matter of the contract.

Procurements for services and supplies valued at over £156,442 and works valued at over £3,927,260 are subject to the EU procurement

rules. The issue of whether this threshold should be raised is the subject of significant debate. The European Commission has signalled that they believe that the procurement threshold is covered by external agreements so there is little chance of increasing the threshold. Given this context, the need to simplify the directive to reduce cost and complexity becomes even more important.

CBI Recommendations

- Under the current directive, procurement cannot be used as a vehicle for other policy unless there is a clear link between the subject matter of the project and the policy objective. We believe that maintaining the current system is vital for the efficient functioning of public procurement markets and ensuring equal access to the market for all types of provider.
- Additional consideration should be given to the potential use of pre-qualification systems in public procurement based on the systems created under the utilities directive.
- The likelihood that the threshold will remain unchanged underscores the need for simplification and clarification of rules relating to documentation, financial history, negotiation and contractual terms. This also needs to extend to below-threshold procurements.

5. Improved transparency to ensure ongoing value for money in procurement

It is vital that transparency is at the heart of the procurement and provision of public services regardless of who is providing them.

The Government's focus on efficiency and price reduction in public procurement has led to savings and productivity gains. The scope for wider savings is substantial; however, there is a need for better articulation of how the Government sees procurement as a tool for driving savings and service improvements. Private and voluntary organisations are unlikely to invest resources in developing new products and services to meet a demand which may not be recognised by public bodies.

An issue which CBI members have highlighted is the problem faced in challenging incumbent suppliers who are both better placed to respond because of better data on the operation of a contract and also because they have advance information on the timing of a procurement. This is particularly an issue for SMEs.

CBI Recommendations

- All public sector contracts should be open to scrutiny- not just those delivered by the private or social sector.
- Contracts need to be designed in a way which provides ongoing information on performance and cost to allow comparison and ensure that future contracts reflect best-practice and past performance.
- When contracts are published, a consistent approach is needed to protect commercially sensitive information and intellectual property which does not relate to the performance of the contract.
- Development of an improved system for providing advance notice of a procurement to allow for pre-tender dialogue between contracting authority and suppliers.

- The Open Public Services White Paper sets out a path to reform. However if Government is serious about engagement with the private sector, much greater dialogue is required around what transformed services can deliver and how private and voluntary organisations can help achieve wider goals.

6. Simplifying procurement documents and bid administration to reduce costs, open markets to new entrants and reduce barriers to entry for SMEs

Current process can often be overly prescriptive, complex and costly. This extends the tendering process, makes it more difficult for SMEs to bid successfully for contracts and discourages innovative new solutions being adopted. The requirement for SMEs and mutuals to provide detailed financial histories can make it impossible for new companies to enter the market.

More work is needed as part of the drive towards lean procurement to improve the use and design of Pre Qualification Questionnaires. In their current form they are often seen as an impediment to the ability of potential suppliers to fully explain their skills and capabilities to commissioners.

The costs to suppliers of procurement process relative to contract value need to be examined with thought given to the barriers to market entry they create. One case study presented by a CBI member involved an initial two-year contract worth approximately £100,000 which had required 52 staff hours to complete the tender documents at an internal cost of over £5,000.

Issues around variations to contracts, consequences of ineffectiveness and the lack of a failure mechanism for public and private service providers all create inconsistency and uncertainty.

There is a clear need for further engagement with business to clarify the implications.

Much greater thought needs to go into the preparation of procurement documentation by contracting authorities. CBI members have voiced their concerns about the number of repeated requests for information – one member highlighted a case where they were required to provide detailed financial histories and references to a local authority with whom they had already completed numerous projects and to whom they submit upwards of 30 bids per year.

Similar care needs to be taken when authorities are deciding which information to request from potential suppliers. One CBI member highlighted their experience in the Yorbuild construction framework which requested ten references for each lot of a 38 lot contract. This does little other than tick boxes and cause significant burden on all parties.

The CBI is very supportive of the drive towards lean procurement led by the Efficiency and Reform Group in the Cabinet Office: more work needs to be done to build on the good work that has been done to tackle the problems with implementation that are regularly identified by CBI members.

CBI Recommendations

- The implementation of lean procurement across the UK should be accelerated.
- Procurement documents should be shorter and less complex, so they are not difficult and daunting for new market entrants and SMEs. Greater consideration of the costs of a procurement process for both sides needs to be given.
- Procurement needs to be carried out in a way which avoids restricting innovations by adding unnecessary complexity to the procurement process.
- Common sense should be applied when dealing with new entrants to the market especially where the company involved is newly established and therefore unable to

satisfy requirements relating to financial history.

- Ensure that the information requested from suppliers is appropriate to the performance of a contract.
- There should be greater use of standardized documents and procedures where appropriate.
- There needs to be a focus on how best to use the PQQ (which should be focused on "can you?" questions) and the relationship of the PQQ to the Invitation To Tender/ Invitation To Participate in Dialogue ("how will you?").

7. Improving public sector procurement skills to address the cultural gap between the public and private sector.

NAO reports often criticise the procurement capability of central departments in areas such as needs analysis, risk management, market engagement and performance evaluation. This skills deficiency puts value for money at risk. CBI members are working with the Cabinet Office to set up a secondment programme between private and public sectors to improve capability on both sides.

This lack of commercial skills led to one CBI member describing procurement as a process of exclusion not a contest to find the best supplier for a particular contract. In many cases, a lack of engagement with external providers has led to restrictive contractual conditions and a failure to understand the potential offering of external providers.

Procurers need to ask themselves ‘what does good look like?’ at every stage of the procurement process.

As part of the drive towards the lean procurement process, the ERG have systematically reduced the 6,500 pages of existing procurement guidance to a few hundred pages and initiated a training programme for procurement staff. This approach is welcome and CBI members are committed to working with the government to push this agenda forward.

Training and information sharing which highlights areas where similar products and services have been procured is a vital part of the process of transforming procurement into a process which focuses relentlessly on outcomes rather than processes

CBI Recommendations

- The skills transfer program that is underway in the Cabinet Office could be expanded to other public sector purchasers. Raising procurement skills and competencies are more widespread will help deliver more suitable procurement methods, lower costs for all parties and give better value for money and services that better meet the needs of users.
- Increased dialogue with external providers is needed to assess market demand and potentials for joint working.
- More effective sharing of best practice across government and with the private sector to help procurement staff understand ‘what good looks like’ and how this was achieved.

