

# PARTNERING FOR PROSPERITY

CBI/BROWNE JACOBSON 2018 PUBLIC PROCUREMENT SURVEY

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*The world economy is growing – and UK firms are ready to grow too, improving lives in every part of the country. Yet, against a backdrop of strong global growth, our own performance has been relatively sluggish. If the UK is to remain globally competitive, it is therefore vital that government takes steps to boost prosperity across all the regions and nations of the UK.*

Partnerships between the public and private sectors have a critical role to play in achieving this. Got right, these crucial collaborations not only deliver jobs and support innovation, but can give us great competitive advantage as a country.

But beyond this, public services and infrastructure are at the heart of the wellbeing of the UK's citizens. Whether it is educating our young people, treating the sick or responding to crime, effective and efficient public services and infrastructure are simply critical to the functioning of our day to day lives.

As this report highlights, business cares deeply about the vital role it can play in delivering public services and infrastructure – and it already makes a significant contribution. Whether by supporting frontline services, future-proofing our transport system, or meeting our energy needs, collaboration between sectors helps deliver the outcomes that really matter to people.

What our survey also shows, however, is that these partnerships need to evolve if they are to be fit for the challenges of the future. In particular, government must work with its suppliers to focus more on long-term value rather than just short-term costs.

At a time when collaboration between sectors is under increasing scrutiny, it is more important than ever that government and business work together to develop better partnerships and boost public confidence in their value. We hope this report can provide some important reflections on how this can be achieved.



A handwritten signature in black ink that reads "Matthew Fell". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Matthew Fell  
**Chief UK Policy Director, CBI**

*Over the last 25 or so years, the manner in which public services are delivered has dramatically changed. The shift away from direct delivery by public bodies has grown to a place where the sector now spend more on outsourced arrangements than it does on direct delivery.*

Therefore the importance of this symbiotic relationship between the public, private and third sectors cannot be understated. To this end, the way those partners are selected by the public sector is coming under increasing scrutiny. From the public sector side this scrutiny is concerned about value for money and the ability of the contractors they depend on to deliver on the promises they make. From the contractor side they want to win good contracts but remain concerned about the way in which those competitions are run and the balance of the relationships even when they do win.

This report gives a fascinating insight into what government contractors at all levels think about the procurement process and indeed government bodies' attitude to working with them. The massive cuts in public sector funding, particularly in the local government field, have inevitably affected procurement activity with an ever increasing eye on cost.

One of the key messages coming out of the report and indeed recent events in the outsourcing sector is that cost and value for money need to be more carefully looked at if we are going to achieve a sustainable and viable market place in the medium to longer term.

It is extremely positive to see the emphasis that government, at all levels, are putting on SME involvement in public service delivery. Whilst barriers and challenges remain, the innovation and indeed value that these businesses can bring can't be underestimated.

Renewed efforts should be made to make the processes and procedures as user friendly as possible and our exit from the European Union might, in the longer term, be an opportunity to do this.



Peter Ware

**Partner, Browne Jacobson**

# CHAPTER 1

## INTRODUCTION: STRENGTHENING COLLABORATION IN PUBLIC CONTRACTS

*New CBI evidence, gathered in partnership with Browne Jacobson, demonstrates that if government's ambitious vision for public services and infrastructure is to be delivered, the public sector and its private sector suppliers must work together to build better partnerships.*

*With suppliers facing intensifying scrutiny, it is more important than it ever has been for business and government to work together to deliver long-term value rather than just savings in the short-term.*

*Unlocking this contribution in turn requires reductions in the complexity and inconsistency of procurement, to ensure that businesses of all sizes can make their full contribution to improving the outcomes that matter to citizens.*

### **Partnerships with business are essential to both the sustainability of public services and infrastructure, and economic growth across the UK's regions and nations**

Business involvement in the public services and infrastructure is widespread with the private sector delivering everything from back-office IT support and complex infrastructure projects like HS2 to frontline services, such as health treatment centres and prisons.

In fact, as the National Audit Office (NAO) has noted, in recent years the public sector has been spending more money on contracts than it spends on providing services itself.<sup>1</sup> How well government designs and manages public contracts is therefore critical for the delivery of core public services that touch the lives of citizens every day.

Government's Industrial Strategy rightly highlights public procurement as one of the most important levers government has for driving social and economic prosperity across the UK's regions and nations.<sup>2</sup> In total, around £242 billion per year – around 14% of total GDP – is spent through public procurement across 200,000 organisations, including a growing number of small and medium-sized enterprises (SMEs). Reflecting this, respondents to the recent CBI/Browne Jacobson survey on public procurement alone employ more than half a million workers in the UK.<sup>3</sup>

**If the UK public sector is to meet the significant challenges it faces, these partnerships with industry will become even more critical**

The public sector continues to be placed under increasing pressure, with demands on many frontline services growing in the context of ongoing resource restraint.

In order to support efforts to reduce the budget deficit, for example, between 2009–10 and 2012–13 there were real-term cuts to central government spending on the delivery and administration of public services of £41 billion, with a further £4 billion being cut between 2012–13 and 2016–17.<sup>4</sup>

While the scale of public spending cuts has slowed in recent years, these demand pressures are set to intensify.<sup>5</sup> For example, the number of people aged 65 and over who require unpaid care is projected to grow by more than one million between 2007 and 2032.<sup>6</sup> Pupil numbers are also projected to rise in the coming years, placing further pressure on government to create more school places and train more teachers.<sup>7</sup>

Even if greater sums of money were to be found, it is unlikely that these challenges could be addressed by increased public spending alone. Business investment and innovation will therefore play a vital role in ensuring the public sector is sustainable in the years to come.

Government has acknowledged, for example, that private sector innovation in areas such as artificial intelligence (AI) will be critical to streamlining how health and social care agencies handle data. New technologies also have the potential to improve patient outcomes therefore reducing pressure on services in the long term.<sup>8</sup> In the US, AI is already enabling mammograms to be interpreted 30 times faster and with greater accuracy than humans which in turn support earlier diagnosis and more effective treatment.<sup>9</sup>

A significant proportion of the public now also want fast, efficient and increasingly digital public services.<sup>10</sup> With many areas of the public sector, from local councils to courts, continuing to depend on legacy systems and paper-based processes, drawing upon industry expertise and investment in digital transformation to make this a reality will be essential for success.

**But maximising the contribution of suppliers relies on effective partnerships**

If business is to support government in meeting the significant challenges highlighted above then creating the right operating environment will be essential. Where public sector markets are effective, they provide greater competition and choice, which in turn can drive innovation and improve service delivery.

At the heart of this is developing effective public procurement processes and commercial behaviours that enable business and government to work in partnership.

As the CBI has previously argued, there are a number of core behaviours that can help ensure public-private partnerships deliver maximum impact:

- Delivering against new commercial priorities – with a particular focus on innovation
- Being open to new ideas and feedback
- Focusing on the outcomes
- Creating and maintaining deep partnerships
- Anticipating changing needs and remodelling the contract over time
- Working collaboratively to manage risk<sup>11</sup>

To build on this work, the CBI set out to better understand to what extent these behaviours are being adopted in practice. In early 2018, we conducted a survey of organisations involved in the delivery of public services and infrastructure. More than 250 businesses responded – a third of which were SMEs.

Our results suggest that while government has shown welcome intent to improve the way it works with its suppliers, there are some clear opportunities to improve public contracts and deliver better value for money for taxpayers.

Most notably, our research identifies a culture of short-termism in the public marketplace which results in disproportionate focus being placed on contracts being used as a vehicle for cost-reduction and risk transfer. This threatens to prevent contracts from delivering the outcomes that can improve the lives of citizens and that business sees as central to the market's success.

It also has the potential to reduce the effectiveness of these partnerships, which combined with high-levels of process bureaucracy, can prevent SMEs from making their full contribution.

If businesses of all sizes are to continue to play a vital role in public services and infrastructure, government and industry must therefore work together to both make public procurement more efficient and place public contracts on a more sustainable footing.





## CREATING PARTNERSHIPS FOR THE LONG TERM

*Government and business must work together to create a more competitive marketplace for public contracts which deliver long-term value.*

### **Competition is at the heart of government securing value for money for taxpayers in public contracts**

Not only does diversifying the number of service providers help provide greater choice for government buyers, but historically evidence suggests that introducing competition saves between 10-30% for the public purse.<sup>12</sup>

While opportunities in some sectors, such as IT and construction, still receive high numbers of bids, there is evidence that parts of the market are becoming more concentrated, with fewer companies choosing to compete for some government opportunities – and not just those which require high degrees of specialisation.

The Spend Network's recent analysis, for example, saw a 476% rise in the number of contracts which only received a single bid between 2012-17.<sup>13</sup> This included the MOD's Military Flying Training contract which was awarded to a single bidder after two others withdrew due to concerns with the commercial and technical requirements.<sup>14</sup> Earlier this year, a contract for prisoner escorting services in Scotland also went to a single bidder following other key players in this market withdrawing due to concerns about profitability.<sup>15</sup>

While a valid competition can still be held with a few suppliers, if this trend continues in the longer-term – with an increasing number of businesses voting with their feet – a rising number of single-bid tenders could hamper the government's ability to secure the outcomes it seeks through contracting.

### **Ongoing dialogue about commercial opportunities can help maximise business investment**

Certainty about the volume and timing of future commercial opportunities is critical to providing suppliers with the information they need to make informed investment decisions and adequately prepare to meet future need. It can also help boost supplier confidence in the long-term health of the market, which in turn supports deeper partnerships between government and industry.

Since the early 1980s, with the introduction of compulsory competitive tendering, successive governments have made moves to improve the delivery of public services and infrastructure through increased competition and choice. As a result, the private sector has seen – and been confident of – consistent growth in the breadth and depth of services being contracted out by government.

Now, however, there is a sense that there are fewer opportunities. Almost 40% of businesses surveyed by the CBI stated that they had seen the number of public sector contracts decrease since 2015.

Within local government, there is also evidence of reduced private sector involvement. A Guardian investigation of 36 strategic public-private partnerships signed by local authorities between 2000 and 2007, for example, found that 13 of the contracts have since gone back in-house.<sup>16</sup>

And nationally, delays in commercial opportunities coming to market, such as in the Private Finance 2 (PF2) pipeline, have created further uncertainty about the future of public-private partnerships.

Structured and more regular dialogue about commercial opportunities is therefore essential to drive confidence in the marketplace and is also critical to ensure that suppliers invest in the right capabilities to support the delivery of public contracts in the long term.

### **To deliver sustainable contracts, business and government must collaboratively manage risk**

Industry recognises that one of the attractions of partnerships with business is the ability for government to transfer risk. In practice this means that by contracting out the business function or service, the supplier agrees to a certain level of uncertainty around whether demand for the service will increase or running costs will rise.

To maximise business investment, however, the public sector should ensure that risk is transferred appropriately and sits with those best placed to manage it.

This requires procurement teams to understand how different financial, political, and demand-side risks can affect their suppliers, and take this into account when designing contracts so that risk is distributed fairly.

While this has been acknowledged by government, which has shown welcome intent to address its handling of risk, high levels of risk transfer continue to be a key concern raised by suppliers.<sup>17</sup>

Over a third (37%) of businesses we surveyed felt that government's handling of risk had deteriorated since 2015, with almost half stating there had been no improvement during this period.

In particular, concerns remain that contracts still contain terms that allow service levels and financial incentives to be reset at any point with little or no consultation with suppliers. Despite government guidance advising against transferring onerous amounts of risk, some public sector buyers continue to use unlimited liability clauses – or impose very high levels of liability without a clear commercial justification.<sup>18</sup>

This exposes businesses to the prospect that their entire operation may be compromised in the event of contract failure – despite the often low levels of reward on offer.

Without taking steps to rebalance the levels of risk being transferred, government could see competition for contracts reduce even further. For larger organisations, increasingly strict corporate governance procedures can mean they are simply unable to take on public contracts with a high-risk profile and for SMEs, a lack of capacity to take on high levels of risk can prohibit them from tendering.

A number of suppliers stated that high levels of risk was the factor most likely to deter them from bidding for public contracts and also deterred them from innovating. Working collaboratively to ensure risk is managed appropriately is therefore critical to ensuring the government marketplace operates effectively.

**A focus on long-term value for money is essential if public contracts are to deliver the best possible outcomes for taxpayers**

Government policy demonstrates a clear commitment to ensuring that public procurement is based on value for money which it defines as 'the best mix of quality and effectiveness for the outlay'.<sup>19</sup>

The launch of the Balanced Scorecard approach in 2016, for example, aimed to ensure that procurement teams look at aspects beyond just cost. This includes taking into consideration factors such as quality, the impact on supply chains and employment and skills – particularly when procuring large or complex projects.<sup>20</sup> At a local level, the Public Services (Social Value) Act 2012 also means that local authorities are required to have regard to economic, social and environmental well-being when awarding public service contracts.

Despite this, just 1 in 5 businesses surveyed by the CBI believed that a bidder's ability to deliver value for money is the main reason why contracts are awarded in practice. Only 3% of businesses stated that social outcomes are currently the determining factor and just 2% believed it to be service quality.

Instead, there is strong evidence to suggest that a near-singular focus on cost determines which bids are successful in a significant number of contracts. Over 60% of businesses surveyed by the CBI believed that lowest initial bid cost was the factor that most influenced the decisions being taken by procurement teams in the public sector.

This suggests that while government has put in place policies to encourage procurement teams to shift their approach beyond a focus on cost, these are failing to have the desired impact.

We heard that a key reason for this is that current attempts to measure quality are too frequently overly simplistic or poorly applied. In particular, there are concerns that assessments of quality are often framed in a way which makes it too easy for a significant proportion of suppliers to score highly. As a result, cost remains the only way that buyers are able to differentiate between bids.

This has the potential to impact the overall cost and quality of services that the public receive, and the delivery of infrastructure. Too often, a focus on reducing costs in the short-term also leads to the overall project lifetime costs being much higher.

Suppliers highlighted contracts where government buyers had continued to use hourly rates or initial capital investment as the main point of comparison between bidders – rather than their ability to deliver value for money over the lifetime of the contract. Cheaper medical products which can require more intrusive surgery were also cited as an example of where procurers have focused too heavily on short-term cost reduction, missing opportunities to both deliver better health outcomes for patients and reduce overall spending in the long-term.

Government must therefore go further to measure benefits beyond cost reduction. This could, for example, mean including social impact clauses within contracts or deciding that for key contracts costs will be fixed and bidders will compete on quality criteria alone. Combined with increased training for procurement staff this can help ensure that a focus on outcomes becomes embedded within government's approach to contracts.

## *“Price, price, price but not value for money”*

– CBI/BROWNE JACOBSON SURVEY RESPONDENT

### **Used strategically, public procurement can support investment in innovation**

Alongside supporting economic growth, government has rightly acknowledged that public procurement is an important lever for driving innovation. In the Industrial Strategy government committed to using its spending to better support innovative businesses and launched a GovTech fund of £20 million to provide financial support to firms who can provide government with innovative solutions to the challenges facing public services.<sup>21</sup>

This complements an overarching government ambition for 2.4% of GDP to be spent on research and development (R&D) by 2020.<sup>22</sup>

Internationally we have seen how, used strategically, procurement can help support the creation of new technology businesses. US agencies and initiatives like the Defence Advanced Research Projects Agency (DARPA) have demonstrated the impact that public procurement can have on driving innovation through the wider economy.<sup>23</sup>

In the UK, the Small Business Research Initiative (SBRI) was launched to replicate this success – although it continues to face a number of challenges.<sup>24</sup>

Of the businesses surveyed by the CBI, however, only 5% agreed that current public procurement processes in the UK incentivise innovation.

*“We need to see greater opportunity to offer alternative approaches, greater opportunity to innovate and less emphasis on lowest price.”*

– CBI/BROWNE JACOBSON SURVEY RESPONDENT

This means that government is missing valuable opportunities to develop innovative solutions to key public sector challenges. With government being such a powerful buyer in the UK economy, its actions can also have a significant impact on the size of the market for new technologies and therefore the willingness of business to invest.

As the CBI has argued previously, for growth and opportunity to reach all of the UK’s regions it is critical to see investment in R&D rise to 3% of GDP.<sup>25</sup> By failing to support innovation through public procurement, government hinders rather than supports progress towards this goal.

To combat this, public sector commissioners must therefore look to place innovation at the heart of their commercial strategies, wherever possible, and champion an approach to contracts which can support more innovative solutions.

This should include a shift towards implementing more flexible agreements with suppliers which enable them to exploit emerging technologies. Early engagement with the market to understand the potential to innovate will also be key, and must be complemented by open and fair discussions about risk to acknowledge the inherent levels of uncertainty associated with transformational contracts.

### **Businesses should bid responsibly and be prepared to challenge or walk away from bad deals**

Creating a thriving marketplace is not only government’s responsibility. Business must play its part by submitting bids for public contracts that are sustainable for the long-term, rather than bidding at a low price simply to win a contract.

Suppliers must be prepared to challenge bad practice. This can mean pushing back on their public sector customers when tenders appear to be driven by a race to the bottom on cost or the transfer of high levels of risk – even if this results in not being awarded a contract. The Cabinet Office’s Mystery Shopper programme, for example, is one avenue through which suppliers can anonymously raise concerns about poor procurement practices and

strategic suppliers should also utilise their relationships with the crown representatives to shine a spotlight on financially ineffective contracts.

In recent months, an increasing number of suppliers have taken this stance and been unwilling to enter into unsustainable or high-risk contracts. As we look ahead, more suppliers should focus on the long-term health of the market.

### **And government, for its part, should set out a vision for delivering value in public procurement**

At a political level, government can support a shift in approach and do more to articulate the value of public-private partnerships, above and beyond cost-savings.

We heard from businesses that government's rhetoric around austerity and fiscal restraint has encouraged the laser-like focus on cost-savings within procurement teams.

A change in rhetoric – particularly at a ministerial level – could therefore help support a shift in culture within procurement teams, which in turn can encourage a more sustainable approach to contracting.

Industrial Strategy presents an important opportunity here. With public procurement a key part of this vision, a campaign by ministers in relevant spending departments to articulate the value of business involvement – particularly around innovation and service improvement – would be an important first step.

This should be complemented by a clear message that public sector buyers can adopt procurement processes that do not always result in the cheapest provider of goods or services being selected.

While business strongly supports the need for sustainable public finances, it is also vital that public sector buyers are able to identify and exploit areas where greater up-front investment will deliver better value for money in the long-term. A shift in rhetoric is key to seeing greater adoption of this approach.

#### ***Recommendation 1:***

*Government and industry must work together to address a culture of short-termism in the public marketplace, through boosting industry engagement and shifting their approach to cost and risk.*





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## DRIVING UP STANDARDS ACROSS THE MARKETPLACE

*The Cabinet Office has launched a number of helpful initiatives, but wider adoption is needed to maximise their impact*

### **Business acknowledges the good work of the Cabinet Office and Crown Commercial Service which has gone some way to make government a more effective customer**

Since its introduction in 2014, the Crown Commercial Service (CCS) has done much to improve the commercial heart of government; not only through acting as a central procurement function, but as a provider of strategic commercial support to the wider public sector.

We consistently heard from businesses that CCS has made significant strides towards making government both a more efficient and effective customer. In particular, a number of suppliers welcomed efforts to streamline processes and increase engagement with industry, as well as increased investment in commercial capability.

#### **Streamlining processes**

The use of short form terms and conditions for some low value contracts has helped promote the use of proportionately 'light touch' contract terms for less complex procurements. This helps government run more efficient tenders and, got right, can support greater SME involvement in the delivery of public services.<sup>26</sup>

In addition, the use of framework agreements – which create a type of 'umbrella' arrangement that enable higher numbers of organisations to buy through a single agreement – have also reduced duplication and generated significant savings. In 2015/16<sup>27</sup> alone, £521 million was saved by public bodies working with or using CCS frameworks.

Suppliers of technology and digital services have also benefitted from the creation of the digital marketplace which enables public sector organisations to use an online portal to find people and technology for digital projects – including cloud services through the G-Cloud framework.

These developments have been met with much positivity from industry, with the vast majority of suppliers suggesting that digitising and streamlining procurement has the potential to make supplying to government easier for businesses of all sizes.

#### **Boosting transparency and industry engagement**

An effective market also requires transparency about upcoming opportunities and for government to have open dialogue with its suppliers about what it is hoping to achieve through partnering with the private sector. This is essential if companies are to invest in the appropriate capabilities and resources needed to deliver often complex or large-scale public contracts.

Business therefore welcomed the launch of the Contracts Finder website in 2011 which is an online database that publicises all government contracts worth more than £10,000. This has enabled a significant number of businesses to have greater sight of commercial opportunities. Earlier this year it was estimated that 200 companies per week were signing up to the portal and in total over 22,000 firms now have the ability to both proactively search for opportunities and receive alerts based on key areas of interest.<sup>28</sup>

CCS initiatives such as 'meet the buyer' days, supplier webinars and online guidance have also seen government make progress towards working with industry ahead of the formal tender process.

This has been accompanied by some progress towards government working more closely with business to design and deliver contracts – with suppliers increasingly viewed as valued partners who bring useful expertise to the contractual process. Over a third of companies who responded to the CBI's research, for example, stated that government is more open to new ideas and feedback than it was in 2015.

In addition, the creation of crown representatives in 2011 for strategic suppliers has enabled government to manage relationships more effectively and supported more constructive dialogue between suppliers and their public sector clients when issues arise during the contractual process.<sup>29</sup>

### Developing commercial capability

The effectiveness of tender processes fundamentally depends on the capabilities of staff in the institutions which design and run them.

Government's significant investment in commercial skills in recent years is therefore welcome. This has included the introduction of a commercial fast stream for graduates to develop new talent and the creation of the Government Commercial Function which has responsibility for improving commercial standards across government.

Efforts have also been made to attract and retain commercial talent within departments. This includes new pay classes for commercial roles, with the most senior commercial individuals able to earn up to £20,000 more per annum, as well as increased performance-related pay.

These financial incentives has been accompanied by the introduction of new measures to support commercial staff to perform by developing and enforcing common standards and helping departments to share information on 'what works'.<sup>30</sup>

### **But more significant improvements have been impeded because guidance is too often being ignored across the wider public sector**

The public sector is made up of a hugely diverse group of bodies, which in turn have a wide range of commercial structures and processes. In England alone, there are currently over 20 Ministerial Departments, nearly 400 public agencies and bodies and 353 councils.<sup>31</sup> This makes developing and enforcing a consistent approach to public contracts an immense task.

While business acknowledges this complexity, and has welcomed recent moves to empower local commissioners under the devolution agenda, it remains concerned that sensible guidance from the Cabinet Office is too often ignored by both government departments and wider public sector agencies. This is to the detriment of not only suppliers, but also to the public the government ultimately serves.

Welcome initiatives, such as the Mystery Shopper Programme, for example, have had limited impact. Not only is industry awareness of the programme low (only around a third (31%) of all businesses we surveyed were aware of the programme), but too often guidance is ignored – primarily as there is no power or bandwidth to enforce their decisions.

And critically, an inconsistent approach threatens to prevent the full value of government's investment in improving commercial processes and skills from being realised.

### **Streamlining processes**

Government policy requires departments and wider public sector agencies to commit to a cross-government approach to the procurement of common goods and services. Departments are required to take up centrally-negotiated deals where these exist in order to "use the Government's collective buying power to get better VFM on a whole-life costing basis".<sup>32</sup>

Despite this, there has been some resistance to attempts to streamline buying processes, with local public bodies, in particular, sometimes choosing not to adopt nationally developed terms and commercial policies.

Too often, for example, buyers continue to create completely bespoke contracts, even where a suitable national template exists. This creates unnecessary work for agencies already facing resource pressures. Feedback from industry suggests that newly drafted agreements can often contain additional terms which are some way from what is considered best practice.

More specifically, business is concerned about the use of unfair payment terms and unlimited liability clauses in contracts – both by local buyers and central agencies. This ignores government guidance and exposes businesses to significant commercial risk. Issues also remain with the varying quality of tender documents with administrative errors continuing to require remedy. This slows down tender processes, increasing costs to both parties and delaying goods and services from being delivered.

Of course, nationally set contract terms will not always provide a suitable solution to local procurement needs – and indeed they might not always represent best practice procurement – however in many cases a greater level of consistency could help increase standards and reduce duplication.

An inconsistent approach to pre-qualification also creates inefficiency. Just one example of this is the fact that public bodies continue to use different accreditation processes for the delivery of the same goods and services. In total, there currently are over 40 organisations who offer health and safety accreditation to public sector suppliers.<sup>33</sup> This leads to additional cost and complexity for both suppliers and the public purse, whilst also creating inconsistent standards.

### Boosting transparency and industry engagement

Despite government's efforts to streamline how tenders are advertised, there remain a number of ways in which they are publicised. Some local councils, the Ministry of Defence (MOD) and parts of the NHS, for example, often don't advertise commercial opportunities centrally on the national contract database, Contracts Finder. This has the potential to reduce the visibility of these opportunities to suppliers.

In some areas, local rules – usually in the form of a Standing Order – have been deployed in order to avoid advertising opportunities over £25,000, which goes against government guidance. Some buyers also continue to rely on their own portals such as the MOD's Defence Contracts Online.

As a result, some companies told us they were signing up to – and continuously monitoring – more and more databases in order to be sufficiently aware of all relevant commercial opportunities. While third-party services exist to collate this information, they are often expensive, meaning that manually tracking potential opportunities can be increasingly costly and time-consuming, especially for SMEs.

There is also variation in when opportunities are advertised with some agencies posting opportunities with very short deadlines. This gives suppliers little time to develop high-quality bids and can make participating particularly challenging for SMEs.

Nearly half (49%) of businesses surveyed by the CBI felt there had been no improvement in the transparency of commercial opportunities since 2015, with a further 29% stating that it had deteriorated over this period.<sup>34</sup>

In addition, while there is evidence that engagement with industry throughout the delivery phase of public contracts has improved, progress has been patchy with some sectors benefitting more than others.

Of the businesses surveyed, those involved in the delivery of information technology services, for example, often rated the performance of their primary public sector customer – be it a government department or local authority – as higher than the public sector average. Half stated they felt government was now more open to new ideas and feedback than in 2015 – compared to a third of companies across the public sector as a whole. The CCS's G-Cloud Framework is one example of this in practice, with the new G-Cloud 10 taking into account a number of industry recommendations.<sup>35</sup>



By contrast, financial service providers were, on average, less positive. Just 17% felt that government was now more open to new ideas and feedback and no financial services companies felt that the distribution of contractual risk between customer and supplier had become more balanced – compared to an overall average of 12%.

With such marked variation in performance, closing the gap between the best and worst public sector buyers therefore presents a considerable opportunity to improve standards across the public marketplace as a whole.

### **Developing commercial capability**

As government has acknowledged, although pockets of commercial excellence exist, there is a need to ensure that commercial skills are developed more consistently across the public sector.<sup>36</sup>

Significant funding cuts, for example, have contributed to local authorities having to make reductions to headcount and this has led to a decline in commercial capability in some regions. In particular, an increasing number of staff now take on commercial responsibilities in addition to their full-time roles which has hampered their ability to manage relationships with suppliers.

There is also evidence of variation across departments. Businesses were positive about improvements to industry engagement at the MOD, but less so other core spending departments, with some concerns that an increasing number of departments are devoting less time to commercial tasks – in light of being stretched by other demands.

In addition, too often poor use is made of the commercial capability that does exist. In particular, businesses voiced concerns that commercially capable individuals can be brought in too late to the tender process, meaning they are unable to address underlying issues with the design of contracts.

Commercial individuals also continue to be operating independently from their colleagues in policy and operational teams. This can mean contracts are designed with little understanding of the operational context in which they will need to be delivered – and crucially what policy outcomes partnering with industry is meant to deliver.

Concerns also remain that whilst there has been an investment in creating the right teams to design contracts, much less consideration has been given to the ongoing management of relationships with suppliers and the process of monitoring the performance of contracts, once an award has been made.

### **Government must therefore focus on driving consistent application of commercial guidance across the public sector**

While there is now a body of sensible commercial policy at the centre of government, the evidence above strongly suggests that it is not enforced in practice – even in some cases by procurement teams based within the Cabinet Office. Current guidelines also have no clear consequences for non-compliance, and don't apply to agencies across the wider public sector.<sup>37</sup>

If government is to maximise the impact of its efforts to improve public procurement, it will therefore need to take a new approach to ensuring the wider adoption of guidance and best practice.

Of course, business acknowledges that it is important that agencies retain a degree of flexibility to tailor provision to citizens' needs, but greater use of a system of 'comply or explain' whereby public sector customers are required to adopt certain central government guidance and standards, unless a valid justification is produced could help give sensible commercial policy more teeth.

In particular, government should look to mandate adherence to policy guidance on issues such as the transfer of risk, as well as the approach taken to balancing cost and other factors such as quality and social or environmental outcomes.

The success of this approach will, however, require the following:

- Standardised contracts or terms developed at the centre of government must be high-quality and look to maximise the ability for businesses of all sizes to compete.
- As a starting point, government should look to consult with industry around key issues such as risk to agree an accepted approach.
- A duty to comply – without a valid justification to not do so – must apply to all public sector customers and not just core spending departments.
- The definition of a valid justification must be developed carefully and in consultation with both industry and those responsible for buying and delivering services on the ground.
- There must be clear sanctions for non-compliance to ensure that agencies are incentivised to apply policies in practice.

Got right, an approach which supports greater consistency could have numerous benefits – most notably that agencies under increasing financial pressure can reduce inefficiency. This will not only prevent public funds from being wasted but also free up vital resources to reinvest into frontline services.

***Recommendation 2:***

*Government should drive greater adoption of good commercial guidance, such as through greater usage of a 'comply or explain' regime across the wider public sector.*

## INCREASING MARKET ACCESS

*The complexity of procurement continues to impede market access, and Brexit should be used as an opportunity to assess whether this can be reduced*

### **The complexity of public procurement seems to be deterring companies – and SMEs in particular – from bidding for contracts**

Government has been vocal about its commitment to reaching a target of one third of all government spending going to SMEs by 2022, and has taken a number of steps towards this goal.

Alongside efforts to speed up procurement processes, government departments are, for example, now each required to set out the provisions they have in place to support SMEs to benefit from their spending.

A small business crown representative has also been introduced within CCS to help drive cross-governmental initiatives to support SMEs<sup>38</sup> and more recently the Cabinet Office has announced that strategic suppliers will have to advertise subcontracting opportunities via Contracts Finder to boost SME involvement in the marketplace.<sup>39</sup>

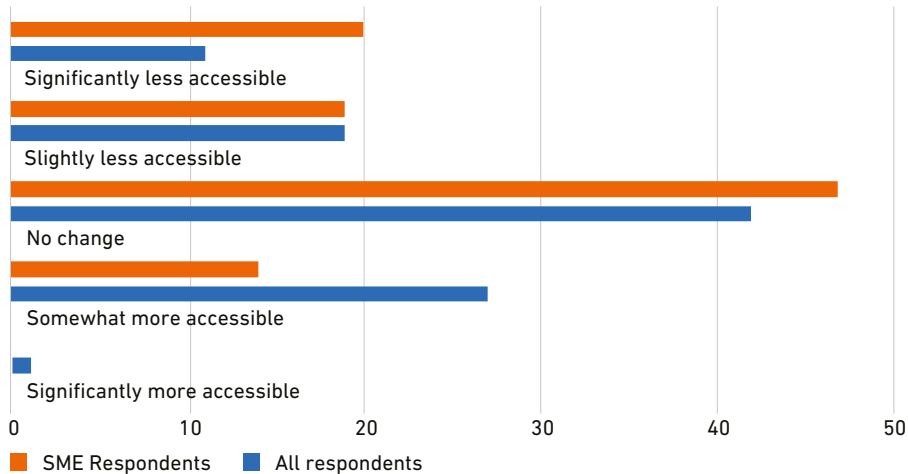
Steps have also been taken to disaggregate or break up contracts to enable smaller companies to work with government directly on large-scale projects or national frameworks. A number of new frameworks, for example, include regional lots to allow local and SME participants to compete for opportunities in the public sector.<sup>40</sup>

These efforts have resulted in notable successes. In 2015/16 SMEs benefitted from £12.2 billion worth of central government spending – equivalent to one pound in every four.<sup>41</sup> Over this same period, government's direct spend with SMEs also reached £5.6 billion – a significant increase from 2011/12 when this figure was less than £4.5 billion.<sup>42</sup>

While this is welcome progress, business believes that further change is needed if government is serious about meeting its target by 2022. Of the businesses surveyed, just 17% of respondents – and only 10 % of SMEs – felt that the overall ease of procurement processes had improved since 2015. And only around a quarter (22%) of businesses surveyed believed government contracts had become more accessible to SMEs since 2015 with a further third (34%) stating there had been no change over this period.



### Exhibit 1: In your opinion, have government contracts become more or less accessible to small and mid-sized businesses since 2015?



A key reason for this is that the overall complexity of contracting continues to place a significant burden on SMEs.

More specifically, we consistently heard from suppliers that the continued complexity of pre-qualification and the current application of framework agreements has prevented greater progress towards creating a more diverse marketplace.

#### Lengthy pre-qualification

Pre-qualification to participate in public tenders remains both complex and lengthy. Businesses consistently told us that current processes were overly bureaucratic and repetitive with little obvious benefit to the outcome of the resulting tender.

Our evidence also suggests that this has not improved over time, with 88% of respondents (and over 90% of SMEs) stating that they believed the number of questions asked had not reduced compared to 2015.

As a result, public tenders can require a significant level of up-front investment from potential suppliers – which can be prohibitive to SMEs entering a bidding process. Complex – and often duplicative – processes also erode overall profit margins making the market a much less attractive proposition to businesses of all sizes.

*“There is far too much red tape involved with the pre-qualification process that excludes many regional contractors from being given the opportunity to tender for the work.”*

– CBI/BROWNE JACOBSON SURVEY RESPONDENT

This issue is particularly problematic in industries like construction. It has previously been estimated that the construction industry spends over £500 million on pre-qualification alone.<sup>43</sup>

#### **Ineffective use of framework agreements**

Because frameworks enable more organisations to purchase goods and services through a single agreement, they can reduce the administrative burden placed on suppliers which in turn means they are often able to offer more competitive prices.

By streamlining the overall procurement process, framework agreements also have the potential to support businesses of all sizes to compete for more public contracts. Our findings, however, suggest that too often in reality, frameworks lend themselves to larger suppliers, meaning supporting SMEs to access opportunities in the supply chain becomes even more critical.

Just a third of businesses surveyed stated that the current use of framework agreements had made it easier to tender for public sector opportunities – and for SMEs this was even lower at 19%.

#### **Exhibit 2: Do you think that the current use of framework agreements makes it easier to tender for public procurement opportunities?**



In part, this may be due to the fact that the process of entering a framework can still require a significant up-front investment. And with new versions of some frameworks being published annually the administrative burden this places on SMEs who wish to participate can still be sizeable.

Frameworks are also a closed system meaning other suppliers can be locked out of the market for a period of years. This can be problematic for SMEs particularly those who are specialists or have historically relied on government contracts. Greater use of dynamic purchasing systems, which have many of the advantages of a framework, but allow new suppliers to join at any time, may therefore support greater competition while still promoting more efficient processes.

For those who are successful at getting on a framework, there are also concerns that too often the upfront investment fails to lead to commercial opportunities.<sup>44</sup> While government cannot be expected to guarantee commercial success from participating in frameworks, greater openness about the opportunities on the table could help reduce supplier frustration and allow businesses to invest more intelligently.

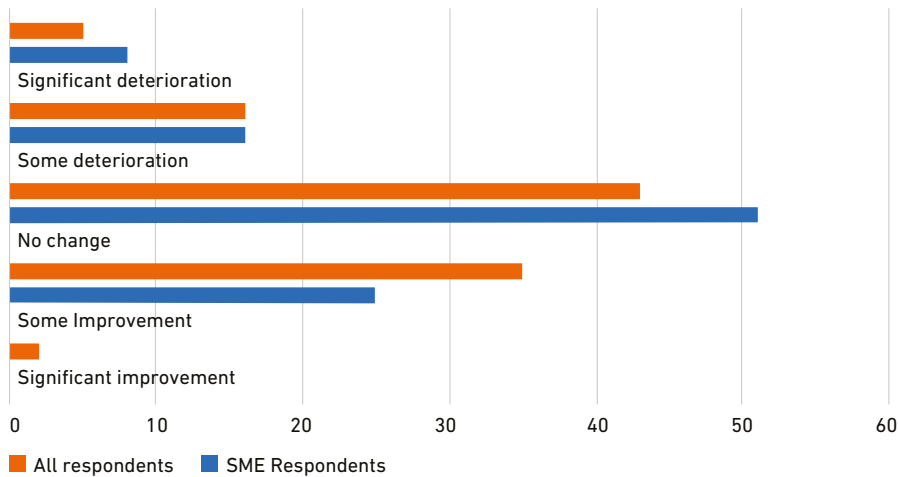
Without taking steps to address these issues, evidence suggests that government risks seeing reduced SME participation in government contracts. Work from the Federation of Small Businesses in 2017, for example, showed that the proportion of SMEs who have worked for the public sector has fallen since 2014.<sup>45</sup> And among those not already supplying government, the number of SMEs who expressed an interest in competing for public sector contracts had also fallen to just 10%.<sup>46</sup>

### **Engaging earlier with businesses can help demystify the procurement process and support suppliers of all sizes to compete**

Engaging with the market ahead of the formal tender process can benefit both government buyers and suppliers. Not only can it help public sector customers understand their requirements better, but it can also give businesses more time to prepare and support them to better understand the overall tender process – which is particularly crucial for SMEs and new entrants to the government marketplace.

It is encouraging therefore that almost 36% of businesses felt that pre-market engagement had improved since 2015. Business welcomed the increasing number of 'supplier days' where businesses can ask questions to get an understanding of exactly what the tender is trying to achieve and the processes this will involve. The development of webinars and online guidance for upcoming tenders is also a positive step and provides an ongoing resource for suppliers as they go through the different steps of the contractual process.

### Exhibit 3: Has pre-market engagement improved since 2015?



Despite this, however, there are concerns in some sectors that pre-market engagement has increasingly become a process driven exercise, focussed on presenting basic information about upcoming tenders to a group of suppliers.

This misses the opportunity to harness pre-market engagement to enter into useful dialogue with their supplier base. It was suggested, for example, that these sessions could be a useful forum for discussing the advantages and disadvantages of government's current approach, as well as sharing insights from previous contract successes.

In addition, we also heard from a number of businesses who felt that often government was concerned that engaging too early with the market may be viewed as steering the procurement rather than simply ensuring the best outcome is achieved. This means that in practice pre-market engagement occurs too late to have any meaningful impact on the tender process, causing further frustration for business – and limiting the ability for earlier dialogue to support greater SME participation.

### **Larger firms can play an important role in supporting SMEs to thrive in public sector supply chains**

Alongside working directly with government, thousands of SMEs up and down the UK are part of complex public sector supply chains. This means larger contractors have a vital role to play in enabling SMEs to benefit from the significant public sector market in the UK.

Larger prime contractors can help SMEs avoid the complexity and up-front costs associated with bidding for many public tenders. With larger balance sheets, these businesses can also more comfortably shoulder up-front costs associated with complex projects, whilst still working with SMEs to ensure they benefit from relevant public sector opportunities.



Increasing the visibility of contracts within public sector supply chains can help SME participation to grow even further and industry welcomes government's recent announcement that its strategic suppliers will have to advertise contracts in public sector supply chains over £25,000 on Contracts Finder.<sup>47</sup>

Should this approach prove successful, business should work with government to see this requirement applied more widely to increase the number of opportunities visible to SMEs.

**Government should seize our exit from the European Union as an important opportunity to review the effectiveness of public procurement practices**

Business views the UK's departure from the European Union (EU) as an important moment for reflection and an opportunity for government to consider how the effectiveness of public procurement in the UK could be improved.

While the scale of reforms that can be implemented will be heavily influenced by the outcome of the wider trade negotiations, there is clear appetite from industry for some level of change.

The EU market for public contracts is significant for UK businesses, with the European Commission estimating that (excluding utilities) public expenditure on goods, publicly-procured work and services in the EU amounted to £1.5 trillion in 2015.<sup>48</sup> Businesses therefore want to maintain access to this market.

But, only a third (30%) of businesses surveyed stated that post-Brexit the most desirable outcome would be continued adherence to all EU procurement procedures and regulations. In particular, the bureaucracy of public sector tenders is viewed as a barrier to getting more companies involved in the marketplace and industry would welcome further steps from government to address this, whilst still maintaining a commitment to key EU principles including transparency and open competition.

Many of the businesses we heard from also pointed to inconsistent implementation of public procurement regulations being a key issue when competing for contracts. There is clearly therefore an opportunity to make some improvements to public contracting in the UK without divergence from current regulations.

Yet currently there is some concern that this opportunity is not being fully exploited. In particular, some businesses are concerned that Brexit has stretched and distracted government departments from the task of improving procurement, rather than being a catalyst for change.

A third of companies surveyed suggested that the ongoing EU negotiations had affected government's commercial relationship with its suppliers, but of these 96% said the impact had been negative. In particular, we heard that government is less likely to engage with suppliers – both about individual contracts and their long-term ambitions – in light of being stretched by the demands of the ongoing negotiations.

With transition agreed – in principle at least – government should now use this critical period to work closely with industry to design an approach to public procurement which can support public sector suppliers of all sizes to thrive post-Brexit.

***Recommendation 3:***

*Government should seize the opportunity of the UK's departure from the EU to evaluate opportunities to reduce complexity related to the public procurement regulations, especially for SMEs.*

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