

London Heads of Procurement Network

Submission to the Public Procurement Consultation - Small Business, Enterprise and Employment Bill

1. This paper sets out comments in response to the Consultation document on the Public Small Business, Enterprise and Employment Bill.
2. The comments set out below are from the London Heads of Procurement Network (LHOPN). LHOPN is a forum that enables Heads of Procurement in London to share information, develop initiatives, discuss and debate key issues affecting public sector procurement. The comments set out are, therefore, from a significant representative body of procurement professionals.
3. London local government recognises the important role of procurement in supporting the continued delivery of high quality, value-for-money services to local residents, particularly in the current public finance environment. London local government spend approximately £9 billion each year on a diverse range of goods and services. This represents approximately 15 per cent of all local government third party expenditure. These figures are significant and highlight not only the important role procurement can play in supporting the government's deficit reduction programme, but also in supporting local, regional and national economic growth.
4. ***The LHOPN has concerns about the approach the Government is taking to implementation of reforms to public procurement. We do not believe that the practical implications of these proposals have been properly thought through. The LHOPN is concerned that the on-going good work London's local government is undertaking in driving forward a 'SME friendly' agenda, evidenced by the high percentage of work awarded to SMEs, will be undermined by an approach that, in our opinion, has not been fully debated.***
5. Responses to the questions set out in the Consultation are provided below.

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Chair, London Heads of Procurement Network

(Divisional Director Commercial, Contracts and Procurement, LB Harrow)

Q1. Please explain the key points which you feel are essential for i) ensuring an efficient and timely process for public sector contracts, and ii) ensuring that the considerations of small businesses are integrated into the procurement strategy.

There is a general view across LHOPN that better understanding of public procurement processes by small businesses when bidding for public sector contracts would help the considerations of small businesses being integrated into the London local government procurement strategy.

There are a number of key points LHOPN feel need to be recognised to ensure a coherent approach from London's local government and small businesses.

- The Lord Young Review suggestion that the removal of the PQQ stage will encourage more SME engagement with public sector tenders is viewed as a cause for concern. By removing the PQQ stage LHOPN considers that i) the length of time to evaluate will increase for London's local government and ii) SMEs will be discouraged from applying for contracts as they will be required to complete a full quotation/tender on all occasions without first understanding whether they meet the minimum requirements.
- Procurement strategies should recognise and ensure that the qualitative aspects of service delivery are given due weighting in tender evaluations as such aspects can account for a significant proportion of whole life costs.
- Public sector buyers should be fully conversant with whole life costing principles, and these should be applied to tender evaluations.
- LHOPN would like to point out that London's local government generally have a high element of SME engagement such as with the Federation of Small Businesses.
- There is an ever increasing burden, for reporting, on local authority procurement departments who are challenged with diminishing resources.

Q2. In 2012 the Minister for the Cabinet Office mandated that Lean sourcing principles should be applied to all procurements across central government, and that all but the most complex procurements be delivered within 120 working days; should this policy be applied across all public sector procurements? Can you identify and explain any scenarios where Lean sourcing principles may not be suitable?

LHOPN take the view that London local government generally work to Lean Procurement principles. It is imperative London's local government have a detailed understanding of the definition of "most complex procurements". In procurements requiring public sector buyers to report to Members the outcomes of the tender and seek approval to award a contract, the reporting cycles and the summer recess of Authority meetings can add up to 12 weeks to a procurement process. This would be required before the standstill period and the contract documentation and signature/sealing stages. Such reporting requirements would consume significant portions of the 120 working days. This is viewed as another example of how the Lean Sourcing Document is in need of amending in order to reflect the arrangements now included in the new EU Regulations.

Q3. Can you identify and explain any existing practices in public sector procurement which result in unnecessary delays or additional costs?

London's local government has already gone a considerable way to ensure that existing practices in public sector procurement are relevant and value added. Each local authority has its own financial regulations that require approval by elected members over a certain threshold. These processes and approvals are valid to ensure that Best value principles are applied and that spend is sufficiently scrutinised. In terms of procurement costs, it is likely that the increasing litigious nature of public sector procurement could produce further work and information requirements, thereby resulting in a public sector procurement potentially not realising cheaper prices.

Under the recent consultation on the draft Public Contracts Regulations, the planned abolition of PQQs for below threshold procurements will extend the time required to evaluate quotations and tenders. This could result in the quantum of bidders' costs being increased as the new process would require more involvement in the tender process for potentially unsuitable bidders.

Too often there is a failure to engage with procurers at an early stage of the process which can result in inappropriate procurement approaches being taken.

Q4. For low value procurements not subject to the EU Public Procurement rules, what do bidders believe is the minimum number of days required for submitting a full Invitation to Tender response? Where there are different scenarios which affect the number of days, can you explain your rationale?

The LHOPN believes that care should be taken into consideration regarding prescriptive timescales of this nature because of the number of variables within procurements such as the nature of the services, works or goods, the size of organisation responding, the environment for service delivery, the risks involved. Low value procurements do not necessarily exclude some areas of complexity.

With regards to the minimum number of days for an ITT submission LHOPN generally believe that too short a period would reduce bidders' opportunities to return an optimum bid, whereas too long a period may be seen as partly non-productive.

The smart approach to this would be based a set of guiding principles as to what time is required for any particular tender process to be effective for both bidders and procurers. LHOPN consider this to be a smarter way forward, thereby allowing the professionalism of public sector buyers to take into account the relevant variables within each procurement.

Q5. Can you identify specific areas of the procurement life cycle (including but not limited to pre-market engagement, commercial strategy, sourcing, tender evaluation, contract management) where you think the public sector can improve? How can the proposed measure in the Bill help deliver these improvements?

LHOPN recognises it is imperative Public Sector organisations improve on their approach to market engagement pre contract and also post contract management to ensure that efficiencies identified during tenders are realised. It must be recognised that London's London local government often have insufficient resources assigned to improve on the delivery of these stages of the procurement lifecycle.

Q6. What resources e.g. number of people, commercial expertise, frequency of meetings with suppliers, should the public sector commit to the management of contracts? Where there are different scenarios such as contract size or complexity, can you explain your rationale?

Similar to question 4 above, LHOPN consider that there is no one size that fits all.

There will be contracts that will require a light touch management approach whereas as other contracts will require an intensive and a structured programme approach to ensuring the contract operates effectively. The appropriate resources should be identified at the point of tender with the relevant skills sets going forward for the management of any contract. Unfortunately, sufficient resources are rarely available for good contract management principles to be applied.

Q7. How can the Government ensure that procurement pipelines showing future business opportunities are made more accessible and relevant?

LHOPN support the use of e-sourcing and the publishing of contract information to assist in the showing of future business opportunities. Effective search tools with standard data dictionaries should be provided for users of the service avoiding vague information where possible. These tools should be developed and publicised to improve on the awareness of procurement pipelines. The type and quality of information provided to bidders should aid in accurately deciphering the relevant opportunities.

Q8. Could additional transparency measures, such as rights for public sector organisations to publish pricing data and contract documents, help deliver efficient and timely procurement processes across the public sector? Please explain further.

Pricing data:

The view is that there is insufficient transparency of pricing information to enable Local authorities to share information. As a result private sector companies are charging local authorities widely differing prices for the same product/service; London authorities have direct evidence of such practice. The existing Public Procurement Regulations are a barrier to public sector organisations sharing pricing information with each other and this is preventing more efficient and better pricing from being obtained. Local authority procurers are seeking to place more products and services on a catalogue basis (e.g. the joint Crown Commercial Service/local government Local Authority Software Applications (LASA) framework agreement) but this approach does not work in all cases. LHOPN considers that this area is in urgent need of being overhauled

Contract documents:

It is difficult to see how post contract publishing would deliver efficient and timely procurement processes; however it is conceivable that some unsuccessful bidders could learn more about successful bids, which could thereby develop the market. However, some private sector organisations would prefer not to publish pricing data and parts of the contract documentation for reasons of commercial confidentiality and sensitivity, and in some cases publishing this information could become counter productive for companies who refuse to engage in some procurements as a result. Specifications are also often reviewed and changed in subsequent procurements.

Q9. Is there any justification for applying charges to access information or documents in order to bid for a public sector contract opportunity, or to secure accreditation from a public body? Please explain further and provide examples where possible.

LHOPN considers that charges for access to information or for documentation should not be applied as this is likely to prove counter-productive. Charging suppliers to access public procurement opportunities and documentation is deemed to be seen as a barrier for small to medium sized businesses. Often flexibility is provided on the type of accreditation, i.e. Councils do not always specify accreditation but evidence of equivalent. Some "accreditation" -SSIP - covers a number of schemes, all inexpensive and improvements local government have taken on board from working with SMEs

Q10. Can you identify any potential barriers which may prevent i) public sector organisations accepting electronic invoices from suppliers, and ii) small to medium sized businesses having the ability to issue electronic invoices? How can these barriers be removed?

i) LHOPN hold the general view that true e-invoicing is not a barrier to small businesses and creates a level playing field. Experience of this has shown that some contractors and suppliers have had difficulty in software and system compatibility and providing data in the format required. London local government should consider the complexities involved with the various forms of financial management systems suppliers may use and the ability to match their e-invoicing tools to type of supplier and their technical capabilities. The use of portals has resolved some of these problems.

ii) There is a general consensus across LHOPN that smaller businesses including some sole traders may not have the capacity, systems and ability to manage their accounts electronically. Some sole traders in particular may be competent in their field of work and provide best value to a public sector organisation, but may not be "e savvy". Mandating electronic invoicing upon such suppliers could exclude them. It may be possible to provide simple apps for such sole traders to use for invoicing which could receive inputs into prescribed data fields and prescribed formats. For simple transactions, it may also be possible for prescribed invoices to be already entered onto the system and the sole trader uses an order number to activate them.

Q11. Please explain the key points which you feel are essential for delivering an efficient electronic invoicing system for public sector organisations and suppliers.

LHOPN recognises access to technology for both public sector organisations and suppliers can aid with the delivery of an efficient e-invoicing system. Having the technology which can fit in with existing systems for both public sector organisations and suppliers and having clear standards for both sides should ensure that are not different solutions for different markets/organisations. So whilst different companies may offer different technological solutions to e-invoicing, it is essential that the format and data standards that are used by each are the same to avoid companies having to provide e-invoicing data in different formats according to the Authority they are dealing with. A framework, for call off, of an e-invoicing third party who would be generally better placed to manage the implementation and supplier on boarding for each of the main platforms would be useful.

Q12. Do you believe that electronic invoices will ensure that the public sector pays its suppliers more promptly? Please explain further.

LHOPN supports the notion that electronic invoices aid prompt supplier payment. Current experience across London's public sector has proven that electronic invoices are processed more effectively than hard copy invoices. These allow more efficient and effective processing of invoices to payment as there are less errors, the actual receipt of invoice is more secure than non electronic methods, data fields and formats are more controlled thereby reducing errors and missing posted invoices are avoided.

However, experience across London local government have shown, delays are often with receipts/approvals/service exception processes with various steps for checks in service areas - e-invoicing will not in itself eliminate this.