

## Prevention WG submission by states parties

### UK reform - ideas to highlight

#### Background

Negotiated in 2003, the [UN Convention Against Corruption](#) is the only universal legally binding instrument guiding the fight against corruption globally. Procurement is a core component of this treaty and is addressed by the UNCAC's subsidiary body, the Prevention Working Group. At the 10th Conference of States Parties to the UNCAC in December, the UK supported the adoption of the first-ever dedicated [resolution on public procurement](#), bringing much needed updates on principles and practices for the digital age.

The UNODC is collecting good practices ahead of the Sept 2-6 Prevention Working Group session on Public Procurement. The formal note verbale deadline has passed but the team is still gladly accepting inputs from states parties in line with the [questionnaire](#).

These inputs will be relevant to the formal agenda, and be set aside for review in preparing the future guidance on digitization of public procurement [mandated by the resolution](#), scheduled for drafting ahead of CoSP 11. States may choose which parts of the questionnaire to respond to, and can submit any additional supporting information they feel is important so the questions are a guide rather than a strict requirement.

We would love the UK to submit a response to the Note Verbale questions to ensure the UK's experience and best practices across the Transforming Procurement agenda, the Procurement Act 2023 and the digital processes around it are reflected in the guide and discussions. We think that these will be a strong example that other states can learn and benefit from.

#### **Question 1.**

*Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention. In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:*

- *Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;*
- *Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;*
- *Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;*
- *Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;*
- *Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;*

## Overview

Following the UK's exit from the EU, the UK had an opportunity to develop and implement a new procurement regime. The Procurement Act 2023 ("Act") has been designed to:

- create a simpler and more flexible commercial system that better meets our country's needs while remaining compliant with our international obligations;
- open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts;
- take tougher action on underperforming suppliers and make it easier to exclude suppliers who pose unacceptable risks;
- embed transparency throughout the commercial lifecycle so that the spending of taxpayers' money can be properly scrutinised.

The Act is available to view [here](#) and comprehensive guidance is available [here](#).

## Principles & Objectives

The Act (Part 2) sets out the principles and objectives for covered procurements. "Covered procurement" means the award, entry into and management of a public contract; public contracts are contracts above the relevant financial threshold that are not exempt. The Act requires that all covered procurements must have regard to the importance of—

- delivering value for money;
- maximising public benefit;
- sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions; and
- acting, and being seen to act, with integrity.

In carrying out a covered procurement, a contracting authority must also:

- treat suppliers the same unless a difference between the suppliers justifies different treatment. If a contracting authority considers that different treatment is justified in a particular case, the authority must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage;

- have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and consider whether such barriers can be removed or reduced; and
- have regard to the national procurement policy statement which sets out the Government's strategic priorities in relation to procurement (except in respect of a limited range of covered procurements).

## **Conditions of Participation and Award Criteria**

The Act (section 22) sets out the rules on conditions of participation. The Act permits contracting authority to set conditions of participation to apply in a competitive tendering procedure only where they are used to ensure that suppliers have the legal and financial capacity or technical ability to perform the specific contract. The supplier must satisfy any conditions set if they are to be awarded the contract.

Published guidance on Conditions of Participation is available [here](#).

The process by which tenders in a competitive tendering procedure are assessed in order to determine the most advantageous tender (i.e. to identify the supplier(s) that will be awarded the contract) is key to achieving value for money and the successful delivery of public services. The Act regulates this process by making provision for rules on award criteria and assessment methodologies, addressing abnormally low tenders and refining award criteria.

Published guidance on Assessing Competitive Tenders is available [here](#).

## **Procedures & Timing**

There are two competitive tendering procedures in the Act: the open procedure and the competitive flexible procedure. The competitive flexible procedure provides contracting authorities with more opportunity and flexibility to design their own competitive tendering procedure. However, in designing and carrying out their procedure, contracting authorities must meet their obligations in relation to the procurement objectives (found at section 12 of the Act)

and meet the procedural requirements applicable to the competitive flexible procedure, such as those relating to time limits and transparency.

To commence a competitive tendering procedure, a tender notice must be published on the central digital platform and will include, for example, information in relation to the contract subject-matter, estimated value, the award criteria and assessment methodology. The tender notice will be published alongside any associated tender documents (or will provide an explanation of how such documents are to be provided). The associated tender documents are used to supplement the information set out in the tender notice. They provide further detail about the procurement and could include, for example, the specification, the award criteria and assessment methodology for the award criteria (if not fully set out in the tender notice), and terms and conditions of the contract. The contracting authority may not provide associated tender documents if all the information necessary to allow suppliers to prepare a tender is contained in the tender notice. When used, associated tender documents must generally be provided free of charge and electronically.

Published guidance on Competitive Tendering Procedures is available [here](#).

The Act specifies certain minimum time limits, which a contracting authority must comply with during a competitive tendering procedure. As well as ensuring that suppliers have reasonable time to prepare, for example, for the submission of tenders, the minimum time limits set out in the Act ensure compliance with the UK's international obligations on public procurement. The Act also sets out the considerations that apply in setting time periods more generally, such as requiring that the time limits are the same for each supplier.

Published guidance on Time Periods is available [here](#).

## **Transparency**

The Act will:

- help to open up opportunities with the public sector to a greater range of businesses, driving down price and increasing innovation;
- give contracting authorities the data they need to collaborate better, drive value for money and identify cost savings in their procurements;
- give ministers, legislators and auditors detailed information to allow them to monitor for signs of waste and inefficiency;

- enable civil society to spot red flags for potential corruption; and
- allow taxpayers to see how much is being spent through procurement on and in their local area.

We will achieve this by:

- extending the scope of publication requirements to cover the whole lifecycle of procurement
- implementing the Open Contracting Data Standard so that data across the public sector can be shared and analysed at contract and category level
- establishing obligations on contracting authorities to capture potential conflicts of interests for individuals working on procurements;
- establishing a single digital platform for supplier registration that ensures commonly used supplier data is stored and easy to drawn from; and
- mandating the publication of a transparency notice whenever a decision is made to directly award a contract – currently transparency notices are voluntary.

Published guidance on the various Notices is available [here](#) under each of the relevant sections (Plan, Define, Procure, Manage).

## **Oversight & Remedies**

Procurement oversight is intended to monitor and help ensure compliance with the requirements of the Act, through the provision of recommendations and guidance, following any investigation of a contracting authority's compliance. This will also help to ensure the benefits of the legislation are achieved, while encouraging contracting authorities to apply best practice standards across public procurements.

The Act (Part 10) comprises three provisions which enable the procurement oversight regime to support contracting authorities' compliance with the requirements of the Act:

- Section 108 (Procurement investigations) provides that an appropriate authority may investigate a relevant contracting authority's compliance with requirements of the Act (and may publish the results of the investigation) and require a relevant contracting authority to

provide documents and give assistance in connection with the investigation, as is reasonable;

- Section 109 (Recommendations following procurement investigations) provides that, following a procurement investigation, an appropriate authority may issue a recommendation (a “section 109 recommendation”) to a relevant contracting authority, if it considers that the contracting authority is engaging in action which is causing, or that is likely to cause, a breach of any requirement of the Act. The contracting authority must have regard to the section 109 recommendation; and
- Section 110 (Guidance following procurement investigations) provides that, following a procurement investigation, an appropriate authority may publish ‘lessons learned’ guidance, to support compliance with the requirements of the Act by contracting authorities generally. Contracting authorities must have regard to this guidance.

Published guidance on Procurement Oversight is available [here](#).

Contracting authorities are under a statutory duty to comply with the Act and the Procurement Regulations 2024. A breach of statutory duty may cause loss or damage to a supplier. As such, it is important that contracting authorities can be challenged and that civil remedies are available to compensate suppliers for any loss or damage or remedy the situation and to incentivise contracting authorities to comply with the Act. The remedies provisions are set out in Part 9 of the Act and published guidance is available [here](#).

## **Question 2.**

*Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement. States parties and signatories may wish to provide information on measures that:*

*Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.*

*Information sought may, in particular, include the following:*

- *Description of any electronic system of public procurement, including, for example: The means by which tender invitations are published;*
- *The inclusion of all pertinent information on the award of contracts;*
- *Ways in which applications may be submitted (including the use of electronic procurement platforms);*
- *Ways in which the criteria to be used for selection and award are publicized.*
- *Any other ways, in which technology is used in the procurement process Any other ways, in which technology is used to detect corruption or identify irregularities.*

## **Central Digital Platform & Notices**

The central digital platform referenced in the Procurement Regulations 2024 (“the Regulations”) comprises an enhanced version of Find a Tender (FTS) (the UK’s replacement of the EU’s Tender Electronic Daily site to search and apply for high value contracts in the UK’s public and utilities sectors) providing the new procurement notices and a new Supplier Information, Registration and Sign in Service (SIRSI). The central digital platform will be supported by a single place of registration for both parts of the service and suppliers will be able to access both FTS and SIRSI using the same account on one single platform.

The central digital platform will enable:

- contracting authorities and suppliers to register and receive a unique identifier through a Supplier information Service. This will ensure that published data is correctly attributed to specific parties and processes preventing duplication.
- suppliers to submit and store certain core organisational information as required by the Regulations in order to participate in any public sector procurement. This information will not be available to the general public;
- contracting authorities to publish notices and other information as required for procurements regulated by the Act in the machine-readable Open Contracting Data Standard (OCDS) format; and
- contracting authorities, suppliers and the public access to public procurement data on the enhanced FTS.

To support the new procedures and transparency requirements set out in the Act, we will introduce new notices throughout the commercial lifecycle. These notices will:

- be published by contracting authorities to the central platform and be available publicly for viewing and analysis;
- create unique identifiers for all contracting authorities, suppliers and procurement processes (and contracts) to ensure that published data is correctly attributed to specific parties and processes. This will prevent duplication of records and will link together all records associated with each procurement (and each supplier and contracting authority), facilitating tracking and analysis.
- contain structured data enabling analysis of:
  - planned procurements (so suppliers can get ready to bid);
  - live procurements (including timelines, values and category codes);
  - contract awards (including the winning supplier and, for high value contracts, who else bid);
  - progress of contract (including performance measured against key performance indicators);
  - changes to the contract (including major amendments to scope or value); and
  - termination.

It will also be possible to analyse:

- what buyers are contracting for by category and value;
- the timing of procurements and the use of the new procurement procedures; and
- supplier details will enable beneficial ownership analysis to understand who is working for the public sector.

The data will also enable contracting authorities and the Procurement Review Unit to conduct 'red flag' analysis to identify potential areas of concern for further investigation.

Guidance on Publication of Information and the Central Digital Platform will be published in due course. Published guidance on the various Notices is available [here](#) under each of the relevant sections (Plan, Define, Procure, Manage).

## **Electronic Communications**



The Act (section 96) requires a contracting authority in so far as practicable to communicate with suppliers electronically, and take steps to ensure that suppliers participating in the procurement communicate electronically. Subject to limited exceptions, contracting authorities may only use electronic communication systems which are free of charge and readily accessible to suppliers, generally available or interoperable with other generally available systems, and accessible to people with disabilities. In practice, this means that contracting authorities should make use of emails, e-procurement systems, virtual conferencing and share or publish key information electronically. This applies from the start of a procurement and throughout the period of the contract until it ends.

This is intended to allow suppliers to freely see and access information in relation to tender opportunities and not be deterred by 'paywalls' which can limit the field of competition. Electronic communication systems are intended to help facilitate suppliers' participation in procurements and to reduce barriers to participation, which could particularly disadvantage small and medium-sized enterprises.

Guidance on Electronic Communications will be published in due course.

### **Question 3.**

*Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect. Examples of the types of challenges States parties and signatories may have faced include:*

- *Challenges in developing the proper legislative framework;*
- *Coordination challenges between government agencies responsible for integrity in procurement and other bodies;*
- *Communication challenges between government bodies, agencies responsible for integrity in procurement, and business community representatives;*
- *Other implementation challenges; and*
- *Financial challenges with respect to maintaining sufficient and consistent funding for government bodies and other government agencies responsible for integrity in procurement and management of public finances.*

[No response provided]

**Question 4.**

*Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.*

[No response provided]