

10 March 2021



Transforming Public Procurement Consultation response from The Housing Forum

Overall Response

Public housing construction projects are complex, involving a wide range of client, consultant, supplier and contractor expertise. Public sector contracts for housebuilding and estate regeneration are not let out by central government departments but by individual or partnered local authorities and housing associations using an existing form of contract.

Housing Associations have a degree of discretion in their budgetary management so they can roll funds into the next financial year or they can decide to invest more of their funding. Capital budgets for these development schemes cover several years and involve various funding sources including the client's own reserves, borrowing and in some cases, affordable housing grants from Homes England.

Local assessments of household formation and economic conditions will also influence the level of resources that fund these programmes.

Given the complexities of this form of procurement, it is our concern that no element of inquiry has been undertaken in drafting the consultation document to assess whether the proposals will be suitable for this sector in order to achieve the goals of individual housing organisations as well as supporting the government's housing ambitions.

Detail underpinning the procurement legislation is to be provided through mandated guidance in a future National Procurement Policy Statement which will centralise decision taking and potentially work against localised benefits arising from construction projects. Given the complex nature of projects we are calling for the introduction of specific guidance on framework agreements to reflect the actuality of the work commissioned.

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Assurance is needed that the future statement will reflect the individual nature of community-based housing. We are not convinced that this approach can achieve true social value and carbon neutral outcomes.

We do support the inclusion of public good in the principles of procurement but if this public good is defined by central government alone this could be unstable when governments change. Priorities are best set at community level and support placemaking locally. There would be benefit in clarifying the difference between public good and social value and how this will be measured if it is to be regulated in the future?

Previous reports from The Housing Forum have recommended that local authorities should have a duty to assemble large scale sites in growth areas – linked to existing towns and cities to reduce infrastructure costs (ABC of Growth)

A second report called for the streamlining of bidding processes for frameworks to reduce costs and more emphasis on competence, track record and innovation in the selection process of bidding. It needs to be carried out to a tighter timescale, with less submission materials and greater reliance on capability statements (Rationalising regulations for growth and innovation),

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Responses to selected questions

Q1

Do you agree with the proposed legal principles of public procurement?

Response: The consultation paper proposes enshrining in law the principles of public procurement: the public good, value for money, transparency, integrity, fair treatment of suppliers and non- discrimination

Whilst the legal principles are generally sound, we would expect to see proportionality specifically mentioned as one of the underpinning legal principles. The detail and definition of public good needs to be made available through the National Policy Procurement Statement; as there can be different drivers in different locations, public good needs to have regard to local sensitivity.

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Q2

Do you agree there should be a new unit to oversee public procurement with new powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities?

Response: Public sector housing construction procurement delivers housing projects across a range of programmes and platforms; major projects can develop and deliver over several years in phased or sequential programmes. The sector is complaint and regulated with unique sector specific requirements e.g., tenant and leaseholder consultation, building safety and section 106 planning requirements; MHCLG and Homes England also manage and supervise a range of funding programmes. What assurances will the new unit provide on their understanding of housing projects and how they differ from other areas of procurement. There needs to be a tolerance and understanding of innovation.

We are aware of the failures of recent large national procurement arrangements for goods and services, but these are in a minority – and occur where the overall capacity limit of service providers has not been tested.

Q4

Do you agree with consolidating the current regulations into a single, uniform framework?

Response: Broadly, yes, provided there is a full and unambiguous understanding of the impact

Q6

Do you agree with the proposed changes to the procurement procedures?

Response: Procedures should not constrain the tools of procurement; the concept should be one of negotiation, potentially in a number of ways which once deliverable is placed into a contract.

Q8

Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?

Response: The proposed reforms could go further - particularly in terms of quality and setting out how procurement can proceed and having awareness of the cost of bidding. However, unless these areas are put into improved specific and more detailed guidance, unnecessary loss of time, money and more uncertainty would arise.

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Q13

Do you agree that the award of a contract should be based on the “most advantageous tender” rather than “the most economically advantageous tender “?

Response: Agree. The award of contract decision should take account of social value, environmental issues, improvements to infrastructure and the impact of the project on the wider public sector. This must require assessing the broader valuation of elements that cannot solely be defined in a monetary sense, together with a better understanding of value. How will this be done? What are the positive behaviours sought and how will value link into wider agendas of health, skills etc.

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Q 22

Do you agree with the proposal to make past performance easier to consider?

Response: This can only be part of the mixture of assessments undertaken. Past performance can be influenced by client and commissioner actions in contract management as well as contractors and developers, so all parties will bear some responsibility. Assessment of delivery models at bidding stage and ongoing should be taken into account as well as governance, capability and capacity

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Q25

Do you agree with the proposed new DPS+ ?

Response: To date, where these are used and how they are used is counterproductive.

A DPS is, in essence an Approved List, meaning that when an opportunity is advertised, all on the list can bid followed by a short listing but often with very little explanation as to how the final list is arrived at. As this can often still lead to selection on lowest cost, with little, if any feedback to unsuccessful bidders, we recommend that a second stage be included; this will make it more suitable for complex contracts.

Q26

Do you agree with the proposals for the Open and Closed Frameworks?

Response: Not necessary; Current arrangements allow for extensions in exceptional circumstances justified by reference to the subject matter

Q27

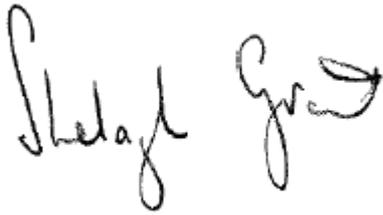
Do you agree that transparency should be embedded throughout the commercial life cycle from planning, through procurement, contract award, performance and completion?

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Response: This will principally be an obligation on the client to maintain an IT platform with data on successful and unsuccessful bids but without defining the relative characteristics and advantages of the winning bid. There should be clarity on the response to a challenge and on the management of the administration arising. How will the process be managed, monitored and resolved?

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