



Procurement Bill call for evidence Public Bill Committee

Confederation of British Industry (CBI)
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CBI response to the Procurement Bill

The CBI is the UK's leading business organisation, speaking for some 190,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as world representation in Brussels, Washington D.C., Beijing, and Delhi, the CBI communicates the British business voice around the world. We work with policy makers to deliver a healthy environment for businesses to succeed, create jobs, and ultimately drive growth.

The CBI represents many suppliers to the public sector, of all sizes and from a wide range of industries. We welcome the opportunity to share our views and insights into the Procurement Bill and the broader package of reform, and believe that industry input into the Bill will drive the best chance of successful implementation.

The views in this paper were gathered from ongoing engagement with CBI members, including but not limited to our Public Sector Partners Council, Infrastructure Council, Construction Council, and Defence and Security Suppliers Forum, as well as individual conversations. Sectors represented include public services, healthcare, defence, construction, infrastructure, professional services, financial services, technology and digital solutions, manufacturing, transport, legal services, social housing providers, and energy providers.

The following points represent a combined response where industry has been in broad agreement and are not a comprehensive report of all comments made. Following some general comments, six key themes have been highlighted and the existing changes or proposed amendments within these categories are briefly discussed.

The Procurement Bill will help unlock the full benefits of public-private partnerships by making the process simpler, more transparent, and more focused on value for money. However, more can and should be done to foster innovation and tackle risk aversion to drive UK growth.

Industry welcomes the Procurement Bill and firmly believes that the proposed changes will lead to opportunities for better public private partnerships and higher quality public procurements. By making public procurement simpler, more transparent, and more focused on value for money, the Procurement Bill will help unlock the full benefits possible from procurements.

Businesses are particularly supportive of a number of the proposed changes and see them as being positive steps in the right direction. Cabinet Office and the Government Commercial Function should receive credit for the level of open engagement with stakeholders from various communities, including business, during the Consultation process behind the Procurement Bill. From the Transforming Public Procurement Green Paper through to the Learning & Development package currently being finalised, the extent of collaboration has been refreshing.

In particular, businesses welcome the renewed emphasis on whole life value instead of lowest upfront cost as being a significant move away from the unsustainable race to the bottom on price. Along with the changes from Most Economically Advantageous Tender to Most Advantageous Tender, the new rules will ensure public bodies can take non-economic factors into account during a procurement and reward those suppliers who can deliver positive impacts instead of cutting costs.

The move towards partnerships instead of transactions is also welcome, although more could be done to enable longer-term collaborative thinking than is often currently the case. By reassuring contracting authorities that early market engagement is not only permissible, but encouraged, the new rules will make it easier and simpler for public and private sector counterparts to discuss, design, and deliver the right solutions to the right problems.

For SMEs, this early engagement is essential to ensuring public sector opportunities are identified and seized wherever available. The digital platform for suppliers will reduce paperwork for businesses of all sizes and make it easier for public bodies to identify those suppliers who meet the criteria. Combined with the proposals to exclude the few rogue firms with a genuine history of illegal or unethical behaviour, these changes will improve competition and ensure good businesses are given the change to partner with the public sector.

The simplified rulebook and reduction in procurement processes also marks a move towards a less convoluted and more consistent procurement regime, designed to reduce uncertainty for all involved. Whilst questions remain about the practical impact of such changes, particularly for complex contracts in defence and utilities, the reforms offer a chance to remove unnecessary overlaps and duplications whilst retaining the key regulations. Businesses note that it is good to see these changes being done thoughtfully and with industry involvement.

However, there are still areas where businesses would welcome further changes within the Bill, secondary legislation, or accompanying guidance. Innovation, for instance, could play a much larger role in public procurement, both in terms of encouraging innovative solutions and accelerating the pull through of innovative goods and services to the front line. Yet the Bill fails to fully capitalise on the opportunities available, including by improving SME participation, supporting public bodies attempting innovative procurements, and emphasising sustainability and social value. These areas for future focus are discussed below.

To fully realise the benefits for communities, businesses, and public sector bodies across England, Wales, and Northern Ireland, the Bill can only be the first step in successful reform. Strong

implementation, training, and collaboration are needed to embed the Bill's changes in practice. The CBI has been and will continue to be a constructive partner to Cabinet Office on public procurement issues, and will be providing even greater focus on implementation and adoption of the new rules once the Procurement Bill receives Royal Assent.

Specific comments

1. Innovation in public procurement as a driver for growth

- 1.1 A public procurement regime that supports, encourages, and facilitates innovation is essential for a domestically strong, internationally competitive, and strategically advantaged UK. The scale of public procurement spend makes it a powerful lever for driving change and giving innovative businesses the environment needed to grow and collaborate with public bodies. Innovative growth sectors such as life sciences and digital technologies can benefit from clear support and even explicit market making by the public sector.
- 1.2 Businesses support the recognition in the Bill that public procurement can more quickly and consistently pull through innovative goods and services to frontline public services, but would welcome a more explicit focus on innovation. By expanding the emphasis on strategic procurement and innovation in the outlined National Procurement Policy Statement, and joining up the dots with the UK Innovation Strategy, the Bill could create a more innovative-minded ecosystem. This would enable public bodies and policy makers to consider the broader value of public-private partnerships to the UK as a whole.
- 1.3 Specific changes outlined in the Bill can provide necessary tools for contracting authorities seeking innovative solutions from procurements, if supporting guidance encourages their use effectively. These include: the new Competitive Flexible Procedure which will offer tailorable tender processes; the change from Most Economically Advantageous Tender to Most Advantageous Tender to allow recognition of non-economic factors in awarding contracts; the reduction in risk of challenges from unsuccessful bidders; earlier engagement will help bring suppliers and public bodies together to co-design and co-deliver solutions; and a digital platform for suppliers to help innovative SMEs more easily access public contracting opportunities. The Bill also provides greater flexibility for public bodies to try innovative approaches to procurement to deliver better outcomes.
- 1.4 However, there are multiple areas where the Bill could do more to support innovation, including in increasing the visibility and prominence, and addressing fundamental issues. The risk aversion of the public sector will continue to stifle innovation through procurement unless risk identification, allocation, and management are significantly improved. The proposed flexibility will not lead to meaningful change if public sector culture still encourages process-following instead of incentivising expertise. Investments in R&D and pilot schemes should be more explicitly supported, and the Competitive Flexible Procedure should include a model for small-scale, higher risk, innovative solution pilot schemes.
- 1.5 Businesses remain concerned about the lack of focus on Intellectual Property in public contracts, and the Bill does little to reassure them that public-private partnerships will not jeopardise the significant commercial benefits of their work. Proportional transparency is a clear requirement for contracts with innovative components, and this will become increasingly important as the public sector seeks ever more innovative solutions to problems.

- 1.6 With the growing emphasis on digital technologies and data in the public sector, the Bill should place a greater emphasis on how these can be used to drive efficiency and effectiveness in public contracts. Many businesses have found positive examples from working with forward-looking public sector bodies around digital and data, for instance the use of Digital Charters in HMRC's Future Locations Programme. The Bill could place a greater focus on the importance and value of digital and data in the delivery of public services and public contacts.
- 1.7 **Amendments summary:**
- 1.7.1 N/A

2. A fair and transparent procurement system

- 2.1 A fair and competitive public procurement regime relies on transparency, openness, and accessibility. Many businesses have experienced challenges around one or more of these factors in their experiences with the public sector and it is reassuring that the Bill has identified all as key criteria for a successful regime.
- 2.2 Public-private partnerships also depend upon the trust of the taxpaying population, and this trust can be difficult to maintain if unethical or illegal behaviours by a few policymakers or businesses tarnish the reputation of the vast majority who display exemplary behaviour. Transparency is vital to ensuring public procurements deliver for the citizens of the UK. Lessons from the COVID-19 pandemic have further emphasised the need for clarity behind contract awards.
- 2.3 Given the resources required to bid and deliver public contracts, businesses welcome guarantees that they will be competing on a level playing field and have a fair chance to win public work. There is widespread support for the initiatives already in the Bill, as well as proposed amendments (i.e. **Amendment 5**) to address unethical behaviour amongst influential ministers, MPs, and senior civil servants. The publication of tender feedback to improve clarity of award decision making will also help maintain confidence in the system amongst unsuccessful suppliers, and provide reassurance that competitions have been fairly run.
- 2.4 The Bill contains a number of proposals which will greatly strengthen the public sector's ability to decide who it does business with, although further changes would deliver even more meaningful partnerships. The digital platform for suppliers will not only make public contracts less resource-intensive to bid for by SMEs and new market entrants, but will ensure accurate and up-to-date information about bidding suppliers is available to public bodies. Businesses welcome this change, as long as it seeks to replace existing multiple systems
- 2.5 Allowing public bodies to consider past performance to challenge illegal or unethical practices and the even more explicit debarment list will ensure that suppliers who have been legally proven troublesome can be excluded from bidding for public contracts. However, more details are needed on the debarment process, the ability of firms to challenge addition and secure removal, and clear responsibility for the management of the list. Further, it is unclear why only negative past performance can be taken into account when many public bodies could benefit from also considering the positive performance of suppliers.
- 2.6 However, it is apparent that transparency and scrutiny must also retain elements of proportionality, particularly considering financial thresholds for reporting Key Performance Indicators on public contracts. For instance, the lowering of thresholds proposed in **Amendment 4** could temporarily increase transparency but would likely also catch a large number of projects deemed unnecessary of additional scrutiny and paperwork.

- 2.7 **Amendments summary:**
- 2.7.1 **4 (Florence Eshalomi, Lab)** – Agree with principle but feel the additional burden on public bodies to publish these KPIs for lower value contracts will outweigh any transparency benefits.
- 2.7.2 **5 (Florence Eshalomi, Lab)** – Strongly support
- 2.7.3 **101 (Kirsty Blackman, SNP)** – Support
- 2.7.4 **103 (Kirsty Blackman, SNP)** – Support
- 2.7.5 **104 (Kirsty Blackman, SNP)** – Support
- 2.7.6 **108 (Florence Eshalomi, Lab)** - Support
- 2.7.7 **111 (Florence Eshalomi, Lab)** - Support

3. Competition and choice are essential for strong public sector markets

- 3.1 Competition and choice in public sector markets delivers value for taxpayers, greater innovation for citizens, and better solutions to the problems facing public bodies. Government and business have a joint responsibility to work together to ensure that these markets are strong, healthy, and responsive to the changing requirements of the public sector and UK communities. This includes ensuring that markets are accessible for new entrants, including SMEs, and are maintained over time to remain attractive and sustainable.
- 3.2 Businesses are pleased to see many proposed changes in the Bill which will help support the longevity of public sector markets and beneficial collaboration between suppliers and public bodies. Building on the work of the Commercial Playbooks (Sourcing, Construction, Consultancy, and Digital, Data, and Tech), the Bill contains a clear emphasis on value for money and encouraging strong evaluations and engagement with markets pre-procurement.
- 3.3 The government has repeatedly emphasised its commitment to increasing SME spend in recent year, and the Bill will help encourage and support SME participation. Specific provisions, such as revamped reserved contracts for SMEs or the requirement of contracting authorities to assess SME and VCSE suitability, are complemented by the general simplification of the procurement regime, the accessibility of the new digital platform, and the reduction of procurement procedures.
- 3.4 However, specific amendments designed to facilitate SME involvement (**Amendments 20-21**) are disproportionate and anti-competitive in their current form and require minor adjustments to ensure adequate support for SMEs instead of favouritism.
- 3.5 Market making and management is a vital role of government across the UK, and the Bill places strong emphasis on how contracting authorities can do this effectively within the remit of our international obligations. However, whilst government should use public spend to drive change, artificially restricting markets with anti-competitive principles (**Amendments 95-99**) will not only significantly increase burdens on public bodies but also lead to significant confusion and challenge within the market.
- 3.6 There is also concern amongst businesses that three proposed New Clauses (**NC3, 7, and 8**) are inappropriate for inclusion in the Procurement Bill, for being irrelevant to the subject matter and not relevant to the broader procurement regime. Whilst a review of Ministry of Defence procurement by the NAO is likely welcomed (**NC8**), this will dilute the purpose of the Procurement Bill, similarly with **NC7**.
- 3.7 There is strong concern within businesses that a proposed “public interest test” for outsourced contracts (**NC3**) is purely political and fails to account for current tests carried

out whether insourcing or outsourcing a contract. This type of practice may be better suited to inclusion in commercial guidance, such as the Playbooks.

- 3.8 **Amendments summary:**
- 3.8.1 **20-21 (Florence Eshalomi, Lab)** – Disagree on the use of the phrase “especially” and would support amendment if replaced with “including”.
- 3.8.2 **95-99 (Richard Burgon, Lab)** – Strongly disagree with a strict mandatory exclusion criteria being added into the Bill as it would a) be largely unenforceable particularly in relation to supply chains, overseas suppliers, and the procurement of goods; b) would lead to artificial market manipulation, potentially disadvantaging British or other suppliers who adhere to the principle in favour of non-compliant but cheaper overseas suppliers; c) add significant uncertainty to suppliers and contracting authorities to audit and assess the adherence of suppliers in advance of a procurement process. This would be better suited to recognition within Social Value criteria as a recognition of a supplier’s performance and behaviour.
- 3.8.3 **NC3 (Florence Eshalomi, Lab)** – Strongly disagree with the principle-led approach to requiring a public interest test only for outsourced services, and not for all other types of contract provision, including insourced. This amendment is based on an assumption not based on evidence that insourced contracts are more “in the public interest” than outsourced contracts, and creates in “insourced by default” approach which negates the choice of contracting authorities.
- 3.8.4 **NC7 (Florence Eshalomi, Lab)** – This is inappropriate to be placed within the Procurement Bill as it is not relevant to broader Procurement Regulations and out of keeping with the purpose of the Bill.
- 3.8.5 **NC8 (Florence Eshalomi, Lab)** - This is inappropriate to be placed within the Procurement Bill as it is not relevant to broader Procurement Regulations and out of keeping with the purpose of the Bill.

4. Procurement principles to strengthen public-private partnerships

- 4.1 The CBI is a staunch advocate for principle led public procurement which works for businesses, citizens, and the UK as a whole. Rather than a transactional approach to procurement, far more benefits can be unlocked if a longer-term partnership mentality is adopted, revolving around co-design, co-creation, and co-ownership. Most businesses who work with the public sector will do so over a long period and see their public sector clients as colleagues rather than customers.
- 4.2 Businesses welcome many of the proposals in the Bill which will facilitate true partnership, including early engagement between suppliers and public bodies and a greater emphasis on contract management. A significant complaint with current procurement practices is that public bodies come to market too late in the process and thereby miss out on potentially more effective solutions which could deliver more efficient and high-impact solutions. This fear of early engagement is driven by fear of legal challenges and changes in the Bill should make it clearer what is and isn’t permitted under current rules.
- 4.3 Similarly, whilst procurement is a vital part of successful public-private partnerships, contract management during the life of a project is where the majority of value is delivered and has often been an untapped opportunity to deliver value and success in public spending. Whilst upskilling by Cabinet Office across central government is already underway, the broader ecosystem created by the Bill will help support commercial teams across the UK’s public sector to manage contracts and partnerships more effectively.

- 4.4 Public procurement has a large role to play in helping the UK achieve its strategic objectives and it is often the case that the already over-burdened public sector commercial teams have too many competing priorities to deliver all effectively. The proposed National Procurement Policy Statement (building upon PPN 05/21) will provide a vital tool for clearly establishing how individual procurements can support broader strategic objectives.
- 4.5 However, it is vital that the NPPS remains focused on the most important and most relevant aspects of public procurement that are applicable regardless of what is being procured, from who, or by whom.
- 4.6 **Amendments summary:**
- 4.6.1 **22 (Florence Eshalomi, Lab)** – support
- 4.6.2 **105 (Kirsty Blackman, SNP)** – whilst the principle is generally sound, this is inappropriate for the NPPS.
- 4.6.3 **New Clause 2 (Florence Eshalomi, Lab)** – agree with putting principles back into the Bill after being initially proposed in the Green Paper.

5. Embedding social value and environmental sustainability

- 5.1 Public procurement touches a number of key industries which are essential to both levelling up the UK as well as protecting our planet for future generations, and it is right that both are at the heart of the future procurement regime. Businesses support the emphasis on both social value and environmental sustainability in the Bill and are glad to see that proposals will accelerate the momentum already generated instead of trying to reinvent the wheel.
- 5.2 Social Value is an already proven tool for delivering social, economic, and environmental benefits as part of public-private partnership and suppliers to government are often well-versed in the requirements around social value. Good approaches to social value can maximise the impact of every pound spent and when done in genuine partnership with suppliers can have a significant positive impact for communities and the environment. Businesses welcome the renewed focus on social value both in the Bill and in proposed amendments (**Amendment 9**).
- 5.3 However, there is a missed opportunity in the Bill to unlock a significant amount of inherent or existing social value which currently goes ignored by current procurement rules. Many companies have inherent social value (i.e. minority owned, SME, social enterprise, charity) or existing social value (i.e. company wide programmes, existing initiatives) which the current requirements for “additional” social value fail to recognise. This is damaging to suppliers (large and small) who may already be generating significant amounts of social value and which contracting authorities may benefit from more than a requirement for additional new social value. Furthermore, the requirement for additional social value can add significant burdens to suppliers and contracting authorities, and deliver suboptimal or misaligned programmes.
- 5.4 As a way of benefitting SMEs, VCSEs, and an amendment to the Bill should be made including the recognition of inherent or existing social value, alongside or in place of additional social value.
- 5.5 On environmental sustainability and decarbonisation, it is also good to see an emphasis on climate change in the Bill or amendments (**Amendment 100, NC5**). Given the multitude of challenges faced by businesses in the current economic crises, businesses welcome that there are no additional burdens beyond existing and proven measures (PPN 06/21) and welcome the company wide approach to carbon reporting.
- 5.6 **Amendments summary:**

- 5.6.1 **9 (Florence Eshalomi, Lab)** – Support
- 5.6.2 **10 (Florence Eshalomi, Lab)** – Agree in principle but adds significant complications for contracting authorities when carrying out procurements.
- 5.6.3 **89 (Florence Eshalomi, Lab)** – Agree in principle but this requirement is disproportionate to the benefits gained and would add significant burden to contracting authorities to assess this requirement, on top of other existing commitments to social value already in the Bill.
- 5.6.4 **100 (Kirsty Blackman, SNP)** – Support
- 5.6.5 **107 (Florence Eshalomi, Lab)** – Strongly oppose as this duplicates an existing line in Clause 13 on “consideration of public good” and may confuse or complicate requirements.
- 5.6.6 **New Clause 5 (Florence Eshalomi, Lab)** – Businesses strongly support initiatives to embed carbon reporting in public procurement (e.g. PPN 06/21) and support the aim behind this proposal, particularly as it is on a company-wide basis and not contract-by-contract.

6. Building UK resilience including cyber security

- 6.1 Given the strategic importance of many public-private partnerships to the UK’s sovereign capabilities, public safety, and key public services, it is appropriate that resilience is at the heart of the Procurement Bill. Experiences from the COVID-19 pandemic have highlighted the importance of not only being aware of the challenges facing firms, but also how to mitigate these challenges when needed.
- 6.2 Businesses therefore support the strong focus on building resilience and secure supply chains for public contracts, including identifying and negating potential security, military, or human rights risks. As outlined in Section 2.4, giving contracting authorities the ability to consider and decide who they are contracting with on factors other than lowest cost will help build resilience in the relevant sectors (**Amendment 11**). It will be important to identify overlaps with the National Security Bill and measures outlined in that.
- 6.3 The importance of supporting domestic industrial capabilities, particularly in light of the growth of innovative sectors and businesses, is a particularly essential question for public procurement and the defence sector. Yet implementing strict requirements without a strong evidence base may hamper the effectiveness of the Bill from the outset. As a first step to identifying the benefits of prioritising British businesses in strategic defence contracts, government should commit to an investigation to assess the positive aspects that may come from procuring domestically in order to inform future policy changes (**Amendment 12**).
- 6.4 The growing risk of cyber attacks on UK public bodies, including their private sector partners, means it is essential that cyber security is supported in the Bill and businesses support amendments which further highlight the importance of cyber security considerations (**Amendment 7**). Businesses would like to see a greater emphasis on “duty of care to customers” and supply chains in public contracts, to ensure genuine partnership around potential risks arising from cyber security issues.
- 6.5 **Amendments summary:**
 - 6.5.1 **7 (Florence Eshalomi, Lab)** – strongly support
 - 6.5.2 **11 (Florence Eshalomi, Lab)** – strongly support
 - 6.5.3 **12 (Florence Eshalomi, Lab)** – agree with the principle but feel that this requirement may be subject to challenges and present significant barriers to international competitiveness in the defence sector. An approach based on greater use of existing mechanisms, such as social value, may deliver more meaningful and sustainable change. As a first step, government should establish an assessment of the benefits that may come from procuring from British firms in defence contracts to provide a solid evidence base for future policy decisions.
 - 6.5.4 **NC1 (Florence Eshalomi, Lab)** – whilst details are still vague, in principle businesses would support the creation of a committee to assess the security implications of specific

contracts. However, there are issues around naming and shaming countries and whether these countries may actually be identified as competitors or threats in the upcoming Integrated Review refresh.