

# Procurement Lawyer's Association

## Transparency – a new dawn?

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- Overview on transparency aims
- Key dates
- Consultation on the draft Procurement (Transparency) Regulations (“PTRs”)
- Assessment Summaries
- Notices
- Conclusion

# £300 Billion a year



£300 billion a year is spent on public procurement

£1 in every £3 of public money spent annually



# Aim of the reforms



- Shake up our outdated procurement system
- Place VFM, public benefit, transparency and integrity at the heart of the system
- Transparency agenda runs through each part of the Bill
- Aim to deliver world-leading standards of transparency in public procurement

The Procurement Bill – a summary guide to the provisions 16 June 2022

# Key Dates



- Plan to commence new Regime October 2024
- Next hearing for the Procurement Bill (“PB”) is on 24 October 2023 – in the House of Lords
- Updates and general CPD information

[https://docs.google.com/forms/d/12QBPAS1T8-Fe1xHAt0426O7T-T1WoqolPR29lGnWSws/viewform?edit\\_requested=true](https://docs.google.com/forms/d/12QBPAS1T8-Fe1xHAt0426O7T-T1WoqolPR29lGnWSws/viewform?edit_requested=true)

- Consultation on secondary legislation (2<sup>nd</sup> relates to transparency) closed on 25.8.23

- Consultation Document

<https://www.gov.uk/government/consultations/part-2-consultation-on-draft-regulations-to-implement-the-procurement-bill> pdf

- Transparency SI

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117026/0/230713\\_Final\\_version\\_for\\_consultation\\_Procurement\\_Act\\_Transparency\\_Regulations\\_202X.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117026/0/230713_Final_version_for_consultation_Procurement_Act_Transparency_Regulations_202X.pdf)

# Assessment Summaries - Aims



- Ensuring suppliers continue to receive an explanation as to why they did or did not win the contract
- Drive consistency across Assessment Summaries (“AS”) by clearly indicating what needs to be addressed and reducing the potential for differing interpretations
- Reduce the time taken to create summaries (compared to standstill letters) by removing the obligation to provide the relative advantages of the winning bid
- Enables summaries to be drafted once only

# Assessment Summaries (1)



PB S 50(3), PTRs Reg 21

- Provided to bidders who submitted an assessed tender before the CA notice can be published and must include:
  - Award criteria
  - A summary of the assessment methodology
  - How the tender was assessed against each award criterion by reference to a score
  - The score against each award criterion (“A”)
  - Except where the tender was given the highest score, the reasons why the tender was not given the score immediately above A



# Assessment Summaries (2)



PB S 50(3), PTRs Reg 21

- Where a criterion is arranged into different strands for assessment, how the tender was assessed against each strand
- Total score, and any sub-total score, for the tender against all award criteria
- For an unsuccessful tender, an explanation of why the tender was unsuccessful including whether because it failed to satisfy a condition of participation, was disqualified or other reason with an explanation of that reason

# Assessment Summaries (3)



- For an unsuccessful bidder, the same information in respect of the winning bidder redacted for confidentiality
- All assessment summaries must be provided to all suppliers at the same time
- Nothing in Reg 21 prevents a CA from providing other information in an Assessment Summary
- Not mandated (but encouraged) for a call-off under a framework
- Provided to UBs privately, WB AS sent to all UBs

# Assessment Summaries



- Transparent feedback is key to a fair process - codifying that may (should?) reduce poor practice
- Providing feedback to the winning bidder is novel and welcome – evens the playing field
- Eliminating the requirement for CRAST will mean that there is feedback even where the UB scored higher than the WB
- Provided before CA Notice published, may give time for UB to secure more feedback and reduce the claim forms issued

# How could we make them even better?



- Consider inclusion of key procurement documents – Scores (moderated and raw), evaluation report?
- Standardise feedback to bidders whose bid was not assessed
- Any other ideas?

# The Notices (1)



Stage	Notice(s)
Planning	Pipeline Planned procurement Pre-market engagement
Tender	Tender Mandatory Transparency Dynamic Market Below-Threshold Contract

# The Notices (2)



Stage	Notice(s)
Award	Who bid, who selected
Contract	Contract Detail Below Threshold Contract
Implementation	Performance Payment Contract change Contract end

# Transparency Notice (1)



S.44(1) Procurement Bill, Reg 21 PTRs

- Key information in TN
  - Subject matter, whether a special regime contract
  - The justification for a direct award
  - If an award to an excluded supplier, the justification
  - If relevant, explanation of why it has not received any suitable tenders
  - Estimated value
  - Risks that could jeopardise satisfactory performance but may not be addressed in the contract
  - Whether supplier(s) identified and if so name of supplier
  - Confirmation that any conflict assessment has been prepared

# Transparency Notice (2)



S.44(1) Procurement Bill, Reg 21 PTRs

- Requires a CA to publish a Transparency Notice before awarding a direct contract under the S.44 Direct Award provisions
- Unlike a VEAT, it is mandated (save for user choice contracts)
- Required in conjunction with a Contract Award Notice
- There is no mandated timescale



# Contract Change Notice (1)



S.75 Procurement Bill, Reg 30 PTRs

- New requirement
- Reasons the CA considers it is permitted to make the change
- An explanation as to why the change falls within one of the permitted reasons
- Details of change – price or time
- Estimated date modification will be (1) made and (2) will have effect
- Confirmation that a conflicts assessment has been prepared

# Contract Change Notice (2)



S.75 Procurement Bill, Reg 30 PTRs

- Whether a voluntary standstill period applies
  - The Green Paper stated that the publication of a CCN would commence a mandatory standstill period. This was removed following representations from stakeholders who asserted that this could impact on contract delivery
- Dealt with in the consultation – results awaited
- Removal of a mandatory standstill significantly weakens the force of this provision

# Conclusions



- Scope and detail of the transparency requirements expanded to every stage of the procurement process, a marked improvement on the current regime
- What transparency means is codified in much more detail
- Making a success of it will require detailed training (which is in train and starting imminently)
- Cautious optimism and approval, but it could be even better – see above...

Thank you for listening

