

SOLACE RESPONSE TO:

Cabinet Office Consultation on Small Business, Enterprise and Employment Bill - Reforms to public procurement

November 2014

1. Executive Summary

SOLACE welcomes the opportunity to respond to the Cabinet Office's consultation on the Small Business, Enterprise and Employment Bill, and the proposed reforms to public procurement. SOLACE is the only representative body for all local authority chief executives and senior managers. As such, we are in a unique position to express the views of local authority professionals.

SOLACE and other local government bodies have collaborated enthusiastically with a range of Cabinet Office initiatives on commissioning, sourcing and procurement. Again, we have to express our disappointment at the proposals and do not support the imposition of yet more regulations on local government, not least because local government appear to be far more successful than central government in improving SMEs' experience of public sector procurement.

We support the intention of the Government to make procurement simpler and reduce barriers as the need arises, as well as the Government's aim for small businesses to gain better and more direct access to public sector contracts.

We acknowledge that the Government has committed itself to developing policies based on evidence – something SOLACE have supported - but would ask what alternative proposals have been made before reaching for the legislative lever which we feel should be used as a last resort?

This consultation appears to be a fishing expedition to justify use of an unnecessary power and risks inviting policy-making by anecdote. We would strongly oppose the development of secondary legislation based on this particular consultation exercise.

Furthermore - and as we have stated in each of the previous related consultation exercises – whilst the Government has committed itself to cutting public sector red tape and localism, the reason that local government has for years performed so much better at procuring from SMEs is due to our close understanding of and ability to foster SMEs and local markets. We do not welcome the introduction of new legislation that will meddle with – and threaten - this success.

Finally, local government has led the way in speeding up early payment of invoices to support business and has moved steadily to electronic invoicing. We do not need regulations to tell us how to do something that we have pioneered.

2. Background

SOLACE has welcomed the positive approach of the Cabinet Office to engaging with our sector in commissioning, sourcing and procurement initiatives. In response, SOLACE and other local government bodies have:

- Played a leading role in the development of the Commissioning Academy, sharing best practice and learning together with other parts of the public sector.
- Promoted good practice, including featuring Cabinet Office advice (e.g. procurement mythbusting) in SOLACE's guidance to its members.
- Promoted effective commissioning through publications such as "When The Salami's Gone: the SOLACE guide to commissioning and sourcing" (with which the Cabinet Office collaborated) and through dedicated sessions at SOLACE's last two Annual Summits and through its 2012 Winter Conference which was devoted to commissioning.
- Invited the Secretary of State to address the 2012 Annual Summit on efficiency and procurement issues.
- Launched a new SOLACE Policy Network on Commissioning made up of representatives from councils across the country to spread learning and promote good practice.
- Responded enthusiastically with our comments to previous Cabinet Office consultations around the Lord Young proposals, EU procurement reforms and core PQQ questions.

Given local government's positive engagement with the overarching agenda behind these proposals, SOLACE again expresses its disappointment that the Cabinet Office is envisaging extended new regulations to include local authorities. **SOLACE is opposed to the introduction of further regulations upon local government.**

If, following consultation, the Cabinet Office continues to be minded to pursue the proposals for public bodies in general, **we recommend that local authorities are exempted, given their independent status, knowledge, expertise and existing success in procuring from SMEs.**

3. SOLACE's Overall Response

Section 2: Consultation Questions

This section of the consultation document seeks feedback on specific questions on the following proposed measures that could be made under the SBEE Bill.

Measure 1 – duties to exercise procurement functions in an efficient and timely manner

Public procurement needs to be efficient in order to increase opportunities for small businesses, and reduce burdens and cost to both suppliers and procurers. In addition to specifying that timescales should be proportionate, regulations or guidance could cover other key elements of best practice procurement, such as pre-market engagement, contract management and prompt payment.

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.

- Adequate prior notice for SMEs to prepare for writing a bid - e.g. advertise contracts for a minimum period of (at least) 2 weeks before a deadline.
- Transparent contract advertising – i.e. advertise contracts on a range of free-to-access portals, national and/or locally, at the local authorities' discretion and informed by local circumstances and preferred working relationships with local suppliers.

- Opportunities for pre-tender engagement between procurement teams and SMEs.
- The ability for local authorities to use PQQs if felt appropriate to the nature of the contract – this will help SMEs judge whether or not the scope of a particular contract is within their reach, based on the resources they have available to them and prevent wasted time on writing and assessing bids for both the commissioner and provider.

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?

- Mandating this across all public sector contracts is unnecessary – trust and empower us to continue to use our best judgement based on our knowledge as procurement experts, rather than confine us with unnecessary legislation.
- As two polar extremes to consider – e.g. a small ad hoc maintenance contract for a youth centre vs. a town centre shopping arcade re-design. Let us use our judgement to assess what procurement policy will suit our local circumstances and needs, the scale of the projects and the needs and resources of the locally-based SMEs we intend to engage with.

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

- The Government's proposed introduction of further legislation that will create further bureaucratic burdens for already over-stretched local authorities and SMEs.
- Removing the option to use PQQs reduces the quality and quantity of information available to an SME about an opportunity and would be used to make an informed judgement about whether to bid for a contract or not. PQQs are a useful tool to have available in order to prevent wasted time for both local authorities and SMEs.

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?

- A minimum of two weeks from advertisement to close of invitation to tender seems a sensible baseline.
- Different scenarios will relate to the complexity of the contract, budget, scale, geography, expertise required, desired organisational characteristics of the provider (e.g. green, social responsibility, size of turnover, based locally) etc.

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?

- Government to introduce and finance a programme of free to attend “best practice in the public sector: working with SMEs” events – covering the public sector's (i.e. not just the Government's) desired standards around best practice, with the flexibility for local authorities' to take account of individual local circumstances and SMEs' needs and resources. These should offer a positive opportunity for local authorities, central government and SMEs to network, share contacts, knowledge and best practice regionally and locally – and also avoid the need for further legislative burdens.

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?

- Allow local authority procurement teams to make an informed judgement based on the scale of the resources they have available to them and the nature of their local circumstances. The implication that you might want to legislate for this is quite absurd and naïve.

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

- Highlight examples of desired best practice in terms of advertising requirements and duration between advertising and ITT closing date.
- Ban the use of pay-to-advertise/view opportunity portals for public sector contracts – this will benefit SMEs and cut out the ‘middle man’.

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.

- We are not convinced that any additional enforced bureaucracy will help deliver a more efficient procurement process, despite the positive intentions.

Measure 2 – a duty to make available, free of charge, information or documents, or processes necessary for any potential supplier to bid for a contract opportunity

Charging suppliers to access public procurement opportunities and documentation is a barrier for small to medium sized businesses. This requirement on public authorities will help suppliers to access public sector business in a fair, open and transparent manner.

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.

- No – not in any circumstance. Pay to access portals restrict SMEs from accessing opportunities and their use should be discouraged.

Measure 3 – a duty to accept electronic invoices

The Government wishes to increase take-up of e-invoicing by legislating to ensure that all public authorities are capable of accepting electronic invoices in public procurement, so that there is a more efficient environment for suppliers and improved payment performance. In April this year the European Parliament and Council agreed the directive on e-invoicing in public procurement. A data standard will be tested and formally referenced in the Official Journal of the European Union (OJEU) by the 27th of May 2017. The directive sets no intermediate dates before May 2017 for development of a draft standard

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?

- Antiquated computer systems and lack of scanning facilities. It should be considered best practice that any 21st century local authority should be working using (at least) a Windows 2007 compatible ICT system. In 2014, it should also be considered best practice to expect the SMEs that local authorities engage with use modern ICT too.

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

- Electronic invoice submission facilities and 31 day payment terms (from submission of invoice to payment to supplier) are clear basic standards but do not need any new regulations.

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

- Local government already aspire to deliver best practice in this area.
- Any additional enforced regulation and bureaucracy will not help to deliver a more efficient procurement process, despite the positive intentions. Any authorities that have not yet moved to electronic invoicing will be wanting to do so when they can afford to do it properly and in a way that integrates effectively with their ERP systems.

4. Closing Remarks

Local government does not require further central rules in order to make it work well with SMEs and local enterprises; it does so naturally already. We have previously highlighted evidence suggested that local government has been far more successful than central government in making SMEs and the third sector part of our supply chain, and continue to emphasise this point.

SOLACE continues to agree that more could be done across government – but not through the introduction of further unwelcome and constricting legislation that limits our ability to suit the needs of our unique local circumstances. We reiterate our point that “one size does not fit all”. Procuring across not just the vast range of local government services, but also of items as different as simple commodities, specialised intelligence or ICT partners, requires both flexibility and innovation to ensure efficiency is maintained and SMEs are able to engage.

By introducing further legislation around procurement the Cabinet Office threatens the leading and innovative role that local authorities play in encouraging SMEs while the issues the Government wishes to address, can be done without reaching first for the lever of legislation. We acknowledge that local authorities need to continue to ensure value for money and excellent quality standards, but are also clear that we understand the importance of supporting the local economy in these difficult times.

SOLACE are enthusiastic about working with the Cabinet Office and other allied partners to promote good practice. We again stress that councils already achieve great success in encouraging SMEs to bid for and win work.

Our responses to this consultation continue to be conditioned by our overall criticisms of the Cabinet Office’s approach to the overarching issue.

SOLACE would welcome the opportunity to discuss and identify potential alternatives to the Cabinet Office's efforts to introduce new legislation that would help achieve the Government's goals within this area.

5. Notes

The Society of Local Authority Chief Executives and Senior Managers (SOLACE) is the professional body representing Chief Executives and Senior Managers in UK local authorities and other public sector organisations.

SOLACE is committed to promoting public sector excellence and seeks to influence debate around the future of public services to ensure that policy and legislations are informed by the experience and expertise of our members.

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