

Procurement Reform Bill Consultation

Respondent Information Form

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Dounreay Stakeholder Group

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Earnshaw

Forename

Robert

2. Postal Address

c/o DSG Secretariat

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3. Type of respondent Please tick appropriate box

- | | |
|--|-------------------------------------|
| Executive Agencies and NDPBs | <input type="checkbox"/> |
| Local authority | <input type="checkbox"/> |
| NHS | <input type="checkbox"/> |
| Other statutory organisation | <input type="checkbox"/> |
| Representative body for private sector organisations | <input type="checkbox"/> |
| Representative body for third sector/equality organisations | <input type="checkbox"/> |
| Representative body for community organisations | <input type="checkbox"/> |
| Representative body for professionals | <input type="checkbox"/> |
| Private sector organisation | <input type="checkbox"/> |
| Third sector/equality organisation | <input type="checkbox"/> |
| Community group | <input checked="" type="checkbox"/> |
| Academic | <input type="checkbox"/> |
| Individual | <input type="checkbox"/> |

If other please specify

4. Permissions – I am responding as...

Individual / Group/Organisation

Please tick as appropriate

- (a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Please tick as appropriate

Yes No

- (b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONNAIRE

AIM OF THE BILL

Q1. Do you agree with the proposed aim of the Bill?

Yes No Don't know/No view

– If you do not agree with the proposed aim, why not?

PART I: PUBLIC PROCUREMENT PROCESSES ARE TRANSPARENT, STREAMLINED, PROPORTIONATE, STANDARDISED AND BUSINESS-FRIENDLY

Q2. Should we place upon public sector bodies a general duty to conduct procurement in an effective, transparent and proportionate manner?

Yes No Don't know/No view

If yes to Q2 –

a) To support this general duty and other requirements being proposed for public bodies, would it be appropriate for public bodies to be required to publish annual strategic procurement plans?

Yes No Don't know/No view

Q3. Should public sector bodies be required to use a specified standard pre-qualification system?

Yes No Don't know/No view

Q4. Should the Bill be used to require public bodies to observe limits on minimum standards?

Yes No Don't know/No view

If yes to Q4 –

a) Should the annual turnover requirement be limited to no more than three times the annual contract value?

Yes No Don't know/No view

Q5. Should the Bill require public bodies to provide de-brief information to suppliers which bid for public contracts in Scotland in situations not covered by the 2012 regulations?

Yes No Don't know/No view

If yes to Q5 –

- a) In what circumstances should public bodies be required to provide de-brief information – to all suppliers which bid or only to suppliers which submit a written request for such information?

All suppliers who bid should have some form of feedback however one size will not fit all and flexibility is key. If a general debrief then all companies should be provided with this information. If a company submits a specific request then information should be forthcoming to allow that company to learn lessons for future contract bids.

- b) Should any requirement apply only to contracts of a certain value, for example contracts above £50k?

Yes No Don't know/No view

- c) What de-brief information should public bodies provide to suppliers? Should suppliers be given an option to receive information in writing or face to face?

We believe flexibility is key and that being prescriptive of when debriefs would take place would still lead to frustration for those who have not been successful in smaller cost contracts.

- d) What timescales should apply?

Again, needs to be flexible. A complex contract may require longer timescales for response than a smaller contract. To maintain a consistent approach of some order the debriefs should occur within say 1 month of contract award.

- e) Should exemptions apply?

Yes No Don't know/No view

– If yes, what exemptions should apply?

There will always be times when exemptions are required. However these would need to be transparent from the outset and consistency would be key in adhering to exemptions.

- f) What are the potential costs/benefits?

By setting out expectations in a clear, consistent, transparent and simple way must surely lead to cost and time savings for those companies who are working on contract documentation. By providing meaningful debriefs the supply chain will gain a better understanding of the specific requirements of the client and so should be able to focus better on any future requirements, which in turn may lead to cost/benefit for both the supplier (in terms of costs of bid preparation) and the client (in terms of obtaining the required response appropriate to the requirements)

- g) Should there be separate limits for construction?

Yes No Don't know/No view

– If yes, what limits should apply?

Q6. Should the Bill prohibit charges being levied for the issue of tender documents to tenderers?

Yes No Don't know/No view

Q7. How could any new arrangements outlined in Part I be fully enforced?

Clear Guidance within text of all tender documentation

Q8. Please use this space to give reasons for your responses or if you have any further comments on the proposals in Part I. Please also use this space to give your thoughts on any definitions or potential impacts you would like us to consider in relation to this part of the Bill.

It is important to standardise basic PQQ information. A single point of contact of enquiry must be a positive one as the consistency in responding should be streamlined (and less time intensive).

Agencies/local authorities should ensure that local economic development plans capture an element of 'buy locally' to ensure that there is a benefit to the local area in question.

PART II: Making it easier for business, particularly newer businesses, SMEs and Third Sector organisations, to access public contract opportunities and sub-contracting requirements

Q9. Should the Bill include a general duty on public bodies to consider, for each and every requirement, how the specification of requirements may impact on the ability of newer businesses, SMEs and Third Sector organisations to compete?

Yes No Don't know/No view

Q10. How, in conducting the procurement process, might public bodies act to facilitate access by newer businesses, SMEs and Third Sector organisations?

While not having an answer as to how this could be done we believe it is not outwith those who have experience in procurement to be able to come up with a simple process that would allow this to happen. It is important that those public bodies responsible for procurement are fully aware of the capacities and capabilities of the organisations potentially able to satisfy their requirements. Liaison with local development organisations and eg local Chambers of Commerce may assist here also.

Q11. What in your view are the potential costs/benefits associated with such a duty?

The economic benefits for Scotland as a whole must be of value. If new, SMEs or third sector organisations are given the opportunity they will find themselves growing and provide more sustainability within their workforce.

Q12. How could such a duty be enforced?

Tender debriefs are important in this respect and also follow up action /dialogue with organisations who initially showed interest in tendering for the work ,but who subsequently did not submit a bid.

Q13. Do you agree that public sector bodies should be required to use a single specified online portal to advertise and award all contracts?

Yes No Don't know/No view

If yes to Q13 –

- a) What level do you think the threshold should be set for:
- goods and services contracts
 - works contracts.

Q14. Should the Bill place a duty on public bodies to publish contract documentation?

Yes No Don't know/No view

Q15. What do you see as the advantages/disadvantages to requiring that public bodies publish contract documentation?

Full Transparency minimises suspicions of fair play

Q16. What are the resource implications for buyers/suppliers if commercially sensitive information had to be removed from every contract prior to publication?

Q17. Could a requirement to publish contract documentation¹ inhibit competition by deterring suppliers from bidding for public contracts, and subsequently have a detrimental effect on the value for money achieved on behalf of taxpayers?

Yes No Don't know/No view

¹ The documentation between the public body and the supplier that form the contract

Q18. Would the publication of contract registers by public bodies be a better alternative to publishing full contract documentation?

Yes No Don't know/No view

Q19. Would publication of contract documentation lead to greater transparency in the procurement process?

Yes No Don't know/No view

Q20. Would publication of contract documentation improve value for money by ensuring that public bodies took greater care to ensure that contracts are of a high standard?

Yes No Don't know/No view

Q21. Should all "major contracts" be defined as one which is a public contract as defined by the EU procurement Directives and has a total estimated value over the contract duration that matches or exceeds the threshold applicable to public works contracts as defined by the EU public procurement Directive (currently £4.3m)?

Yes No Don't know/No view

Q22. Should the Bill place a duty on those in receipt of major contracts to advertise sub-contract opportunities on a single specified online portal?

Yes No Don't know/No view

If yes to Q22 –

a) Should the duty extend to all contractors through the supply chain to do the same?

Yes No Don't know/No view

Q23. Are there other ways in which the Bill could achieve the desired policy objective (making it easier for SMEs and Third Sector organisations to access and compete effectively for contracts)?

Problem with above questions is that the major contracts are likely to have been awarded on the basis of a set strategy for subcontractors (ie the main contractor will probably have already entered into a commercial agreement with subcontractors as part of his pricing strategy in order to win the contract). It is suggested that the Bill encourages such engagement with desired subcontractors/supply chain as part of the tender process and ensures that there is some clarity as to the precise requirements in this respect.

Q24. How could any new arrangements outlined in Part II be fully enforced?

Q25. Please use this space to give reasons for your responses or if you have any further comments on the proposals in Part II. Please also use this space to give your thoughts on any definitions or potential impacts you would like us to consider in relation to this part of the Bill.

See response to Q23

PART III: SMARTER USE OF PUBLIC PROCUREMENT TO ENCOURAGE INNOVATION AND GROWTH

Q26. How could the Bill help businesses develop and commercialise new or novel goods, services and works for internal and international markets?

By using a point of contact means that all information 'sits' in one place – this may be of use to the economic development agencies who could use the 'case studies' to market the innovative 'made in Scotland' to the rest of the world.

Q27. Do you support our proposals to stimulate new businesses opportunities and inward investment in facilities to provide new, sustainable products and services for the public sector?

Yes No Don't know/No view

Q28. Should the Procurement Reform Bill make it a requirement that purchasers must permit the submission of variant bids?

Yes No Don't know/No view

Q29. How could any new arrangements outlined in Part III be fully enforced?

Q30. Please use this space to give reasons for your responses or if you have any further comments on the proposals in Part III. Please also use this space to give your thoughts on any definitions or potential impacts you would like us to consider in relation to this part of the Bill.

When awarding contracts and attempting to encourage innovation and growth, the type of contract being offered should be considered. In particular the contract should be such that organisations undertaking the works can use the works as means to grow the abilities and aspirations of their employees.

PART IV: TAKING ACCOUNT OF SOCIAL AND ENVIRONMENTAL SUSTAINABILITY ISSUES THROUGH PUBLIC PROCUREMENT

Q31. Should those awarding major contracts² be required to consider including community benefits clauses?

Yes No Don't know/No view

If yes to Q31 –

a) Should those awarding major contracts be required to publish details of the benefits those clauses are intended to deliver and the outcomes **or** a statement explaining why the contract is not considered suitable for the inclusion of community benefit clauses?

Yes No Don't know/No view

b) Should those awarding major contracts be required to consult communities regarding Community Benefits they would wish to see delivered?

Yes No Don't know/No view

c) Should those awarding major contracts be required to consider extending community benefit clauses to sub-contractors?

Yes No Don't know/No view

Q32. Should those in receipt of major contracts be required to publish training and apprenticeship plans for those contracts?

Yes No Don't know/No view

Q33. Should we use the Procurement Reform Bill to promote greater use of supported businesses by the public sector?

Yes No Don't know/No view

If yes to Q33 –

a) How can we ensure that public bodies consider use of supported businesses as part of their approach to procurement?

Use it as a criteria when assessing tenders.

b) Should we make it a statutory requirement that public bodies have at least one current contract with a supported business?

Yes No Don't know/No view

Q34. Should we use the Bill to place a legal requirement that public bodies nominate a “Champion” for supported business to act as a focal point for enquiries and liaison?

Yes No Don't know/No view

² A question on defining a “major contract” features earlier in the document.

Q35. Should public sector bodies be placed under a general duty which requires them to demonstrate the extent to which what is being procured will promote or improve the economic, social, health and environmental well-being of the relevant area?

Yes No Don't know/No view

If yes to Q35 –

a) In conducting the process of procurement, should public sector bodies act with a view to securing that improvement?

Yes No Don't know/No view

b) What are the key issues that should be set out in the guidance?

Use of existing locally available resource. Training issues(eg re-skilling, apprenticeships). Access to school leavers ,graduates etc. Use of locally available materials. Environmental impacts (eg lots of heavy traffic on roads , noise , wastestreams , emissions). Ability of local communities to absorb influx of temp resource . Opportunitites to support local schools, colleges activities. Compulsory liaison with Local Enterprise organisations such that activities planned can be viewed in terms of short term and long term development strategy for area.

Q36. How could any new arrangements outlined in Part IV be fully enforced?

By considering your criteria very carefully when assessing tenders and ensuring transparency of the criteria that the tender will be assessed against making sure that one criteria cannot over-ride all others, ie having threshold criteria for some topics could mean that only one overriding criteria can negate all others. The percentage against each criteria should ensure that all criteria being assessed has the ability to change the end result.

Also consider compulsory engagement with local enterprise organisation for contracts of significant value and /or potential local community impact

Q37. Please use this space to give reasons for your responses or if you have any further comments on the proposals in Part IV. Please also use this space to give your thoughts on any definitions or potential impacts you would like us to consider in relation to this part of the Bill.

PART V: DEALING WITH INAPPROPRIATE CONDUCT AND POOR PERFORMING SUPPLIERS

Q38. Should the Bill include measures to ensure that the public sector deals appropriately with poor performance and poor standards of business ethics on the part of contractors?

Yes No Don't know/No view

Q39. Should contractors that fail to adhere to appropriate standards of conduct, performance and business ethics be excluded from competing for public contracts?

Yes No Don't know/No view

If yes to Q39–

a) What should that form of exclusion be?

It would dependent on the severity of the conduct standards – if a company was to win a contract on the back of many promises of 'socio economic benefit' to the local area and then did nothing after winning the contract they should be banned for xx years or xx contracts. Again it would be important to set out the expectations clearly so companies were well aware of what would be expected of them.

Q40. How could any new arrangements outlined in Part V be fully enforced?

Part of this could be via community groups/bodies – if a company was to promise an area some benefit following a contract award and it wasn't forthcoming I'm sure the community would be happy to tell you. However, we recognise that this would not cover all issues and further measures would need to be put in place.

Q41. Please use this space to give reasons for your responses or if you have any further comments on the proposals contained in Part V. Please also use this space to give your thoughts on any definitions or potential impacts you would like us to consider in relation to this part of the Bill.

PART VI: APPLICATION AND COMPLIANCE

Q42. Should the Bill adopt the same approach to defining public contracts as in the EU Directive and implementing Scottish Regulations?

Yes No Don't know/No view

If yes to Q42 –

a) What should our approach be to local exemptions?

Q43. Should we include specific provisions which explicitly exclude from coverage, contracts between public bodies which are non-commercial? (e.g. those that are in pursuit of shared service initiatives.)

Yes No Don't know/No view

Q44. Should all of the proposals discussed in this consultation paper apply to the procurement of health and social services?

Yes No Don't know/No view

If no to Q44 –

a) From which of the proposals should the procurement of health and social services be exempt and why?

b) Should the Bill include additional provisions which apply only to the procurement of health and social services?

If yes to Q44 –

c) What should be included in the Bill to deliver its proposed aims in the context of health and social care procurement?

Q45. Should the Bill apply to utility activities conducted by Private Sector bodies?

Yes No Don't know/No view

Q46. Should the Procurement Reform Bill apply in full or in part to contracts awarded by public bodies in furtherance of utility activities as defined in Directive 2004/17/EC, given effect in Scotland by the Utilities Contracts (Scotland) Regulations 2012?

Q47. How could any new arrangements be fully enforced?

Q48. What sanctions might be appropriate for failure to comply?

Q49. Should the Single Point of Enquiry have a role in relation to enforcement of the provisions of the Bill?

Yes No Don't know/No view

If yes to Q49 –

a) Should it do so on the basis of statutory powers?

Yes No Don't know/No view

Q50. Please use this space to give reasons for your responses or if you have any further comments on the proposals in Part VI. Please also use this space to give your thoughts on any definitions or potential impacts you would like us to consider in relation to this part of the Bill.

Living Wage through procurement

Q51. Should procurement activity be used to encourage contractors to pay the living wage to their employees engaged in the delivery of public sector contracts?

Yes No Don't know/No view

If yes to Q51 –

a) To what extent, in what form and at what stage should contractors be encouraged through procurement processes to pay a living wage?

At the PQQ stage – if companies are not providing a living wage before they take on a contract why would they up their wage bill following the award of a contract.

b) Would it be appropriate to promote payment of the living wage in all public contracts or only contracts of a certain type or of a certain value?

One size will not fit all – as in the case of new business or SMEs it may be that those working within these 'new' organisations have accepted that a living wage is not possible until the company becomes more sustainable moving forward. It may be that a certain value should apply but would leave that to those more experienced in this area to answer.

c) What are the potential benefits and costs associated with promoting payment of the living wage through procurement activity?

Could provide more local employment as living wages would probably be a 'cheaper' option that migrating a workforce from one area to another – meaning that not only do they have to pay living wage there is an additional charge for travel and subsistence. If local labour, on a living wage, was utilised more then the cost would be negated through the savings on travel etc.

d) What are the implications for private and voluntary sector suppliers, public bodies and the market?

e) How can public bodies determine the wider social and economic implications of promoting payment of the living wage in a particular procurement process?