



Unite submission to the Cabinet Office Green Paper: Transforming public procurement consultation

This submission is made by Unite, Britain and Ireland’s largest union with over 1.3 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Executive Summary

- Unite has long campaigned for improvements to public procurement and the greater use of social value conditions to promote working rights, jobs and other social, economic and environmental benefits.
- While the broad principles expressed by this Green Paper are welcome, the content is vague and lacking in detail in many areas.
- Unite remains sceptical about the strategy pending the publication of any new legislation, particularly following the recent axing of the government’s industrial strategy.
- Given the experience of government’s procurement practice over the last 12 months of the pandemic, Unite believes there is diminished public trust in government’s integrity and accountability. Unite therefore does not support any “crisis” procurement being introduced into legislation.
- Any simplified public procurement legislation must maintain high levels of uniformity, transparency, accountability and integrity to enable fair and equal treatment of bidders.
- The UK should not sign up to new trade agreements that place restrictions on the ability of procuring authorities to utilise social value to its full potential.
- The benefits of insourced public provision should be embedded in pre-procurement stages of decision-making along with comprehensive and robust equality impact assessments.
- Any new unit created to manage government procurement strategy should have a prominent role for trade unions.
- There must be far greater overview, scrutiny and publicly available information about public procurement contracts, including a national register of suppliers and a full list of contracts that they each hold; far greater accountability and remedies for contract failure, improved capabilities for all procuring authorities to understand and enforce contract conditions on their suppliers and the public sector supply chain.
- This should include a transparent debarment process with proportionate sanctions on those companies that repeatedly fail to meet the conditions or deliver on their contracts.

- All public contracts must be subject to the same accountability and scrutiny as the public sector itself, including subject to full parliamentary and local authority democratic scrutiny and freedom of information legislation should be expanded to apply to public sector contractors.
- Any changes to the legal process for dealing with claims should be properly risk assessed and resourced. Procurement decisions must be subject to due process and the law and there should never be a case where the integrity of procurement is undermined by the lack of legal remedy or redress should bad decisions be taken or legal processes not be followed.

Introduction

- i) Unite welcomes this important consultation. Unite has long campaigned for improvements to public procurement and the greater use of social value conditions to promote working rights, jobs and other social, economic and environmental benefits.
- ii) For years the UK government used the European Union (EU) as an excuse, arguing that Procurement Directives imposed strict rules in relation to how services should be organised, tendered and financed. Unite and other trade unions have always argued that this was passing the buck, as opportunities existed within the Directive which would allow the government to use procurement to drive broader social, environmental and political aims. Now the UK has left the EU no such excuse exists. The decisions around public procurement now sit squarely with the UK government and it is welcome that the Green Paper is recognising that more can be done.
- iii) The consultation seem partially motivated by aligning UK procurement legislation with the rules held within the Agreement on Government Procurement (GPA) and other trade agreements notably the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Unite is concerned that the UK should not sign up to new trading arrangements that place restrictions on the ability of procuring authorities to utilise social value to its full potential.
- iv) It is also worth noting that the Green Paper does not appear to recognise that procurement is a devolved competency, so more information is needed about how this policy would impact on the UK devolved countries.
- v) The consultation opens a crucial debate around the need for public procurement to be far better integrated within a social and industrial strategy. The new change of track signalled is therefore welcome, although the lack of detail in many of the areas means that Unite remains sceptical pending the publication of the new legislation. However, Unite is very concerned about the recent axing of the government's industrial strategy in place of a more ad-hoc "plan for growth".
- vi) The UK's public procurement budget is worth over £292 billion, accounting for 32% of total public spending and 14% of GDP. Government therefore has a key role in using its spending power to create a stable, internal market to drive up living standards, provide employment and skills opportunities across the UK as well as promote trade unionism and collective bargaining.
- vii) In response to the UK Government Green Paper on Industrial Strategy in 2017¹, Unite set out our position on the potential benefits that positive procurement could deliver in being a key pillar of any UK industrial strategy. Procurement must be tied to clear public policy goals such as job creation and improving living standards, supporting equality of pay, providing community benefits

¹<http://www.unitetheunion.org/uploaded/documents/Unite%20submission%20to%20Industrial%20Strategy%20Green%20Paper%20April%20201711-31067.pdf>

through decent work, environmental standards and offering high quality apprenticeships linked to public investment in infrastructure and services.

- viii) Government spending can also be used to stimulate investment within the economy, creating incentives for companies to develop and build in our communities. Given the challenges of rebuilding after the pandemic, the ‘fourth industrial revolution’ and tackling the climate emergency, the importance of government spending cannot be underestimated.
- ix) More recognition is needed of the economic benefit of government spending on the UK economy as a whole. Spending money in the UK has a multiplier effect on our communities and stimulates economy activity across sectors through the creation of jobs, skills, investment demand and consumer spending. That spending is returned many times to the Treasury in tax returns. For example government spending on transport schemes delivers benefits of £4 for every £1 of government expenditure² – as well as benefits in environmental and public health considerations. Similar analysis has been carried out on other sectors such as health³ and domestic defence manufacturing⁴. In contrast, when the UK spends on goods and services abroad that multiplier effect does not benefit the UK in the same way. Even the government’s own prosperity report identified its value but government has still failed to act⁵.
- x) Unite believes that a distinction must be made between procuring services and procuring goods. Unite has been a consistent voice opposed to the outsourcing and privatisation of public services. For decades unions have been citing concerns about service fragmentation, increased and costly bureaucracy, attacks on service quality and a race to the bottom in terms and conditions of staff. From Unite’s bitter experience those concerns have been largely vindicated by over three decades of outsourcing policies - in no small part due the misuse, deliberate or otherwise, of procurement regulations.
- xi) In Unite’s experience privatisation of public services is rarely about anything other than reducing costs, dismantling collective bargaining and reducing accountability. At worst it is about gifting public assets and resources to private individuals or companies that make huge profits, much of which is funnelled offshore as a double loss to the taxpayer. Such experiences can be found across the board in our rail franchises⁶ and buses⁷, our public utilities like water⁸ and electricity

² <http://www.unitetheunion.org/how-we-help/list-of-sectors/road-transport-commercial-logistics-and-retail-distribution/transport-matters/>

³ <https://globalizationandhealth.biomedcentral.com/articles/10.1186/1744-8603-9-43>

⁴ <http://www.unitetheunion.org/uploaded/documents/FleetSupportShips-2018-05-1411-34321.pdf> Fleet Solid Support Ships: Supporting the Royal Navy, Supporting the United Kingdom’, CSEU, 15 May 2018 (prepared by Francis Tusa of Defence Analysis)

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756412/Cross_government_Prosperty_Fund_Annual_Report_2018.pdf

⁶ <https://www.mirror.co.uk/news/uk-news/board-gravy-train-rail-firms-9553889>

⁷ <https://www.standard.co.uk/news/transport/arriva-gets-330m-to-run-london-buses-but-pays-no-corporation-tax-8608941.html>

⁸ <https://www.ft.com/content/6c166cd4-d41f-11e7-a303-9060cb1e5f44>

generation⁹, Royal Mail¹⁰, our health¹¹ and social care services¹² and major public works and PFI contracts¹³, even with the lucrative consultancy contracts that shape our public discourse¹⁴.

- xii) Procurement rules apply once the decision to put a contract out to tender is made and Unite would like to see far more emphasis on the benefits of insourced public provision to be embedded in Cabinet Office decision-making, rather than a default to procurement and tendering.
- xiii) That highlighted, Unite is the biggest private sector trade union in the country representing hundreds of thousands of workers across the private sector in manufacturing, finance, construction, transport, services and retail. Those workers depend on the profitability and health of the companies where they work for their livelihoods, creating wealth and prosperity within the communities that they live.
- xiv) Many of these companies sell directly to the public sector and are often subject to government procurement policies. Unite responded to the 2019 consultation on Social Value in Government procurement¹⁵ and welcomed many of the metrics included within the consultation document although there remained areas that were absent. Unite has called for the expansion of the 2013 Social Value Act to include goods as well as services. Legislation instruction should be given to public bodies to secure contracts that make 'social value' a determining factor.¹⁶
- xv) In its response to the Taylor Review of Employment Practices in the Modern Economy, the government accepted "*the overarching ambition that all work in the UK economy should be fair and decent with realistic scope of development and fulfilment*" and that "*the case that good work can lead to greater performance and therefore increased productivity is strong*". It therefore committed to "*take the necessary steps to achieve this*" with the vision of "*good work and greater earning power for all*".
- xvi) Unite therefore believes that this "Good Work" strategic objective must be hardwired into government's procurement strategy to include criteria such as fair pay; participation and progression; wellbeing, safety and security; and voice and autonomy.
- xvii) All government contracts must set minimum standards that include strengthening and adherence to collective agreements to set a floor for terms and conditions. Procurement levers should be used to ensure all suppliers and contractors pay at least the real living wage, embed worker voice through collective agreements, recognised trade unions, include clear commitments on health and safety, equality and training, and prevent the use of zero hours contracts or other exploitative

⁹ <https://www.theguardian.com/business/2013/apr/16/big-six-energy-suppliers-tax>

¹⁰ <http://www.telegraph.co.uk/finance/newsbysector/supportservices/10960087/Botched-Royal-Mail-sale-cost-taxpayers-1bn-say-MPs.html>

¹¹ <https://inews.co.uk/news/health/virgin-care-no-corporation-tax-paid-profits-nhs-contracts-rise-8m-200m-turnover/>

¹² <http://hummedia.manchester.ac.uk/institutes/cresc/research/WDTMG%20FINAL%20-01-3-2016.pdf>

¹³ <http://www.bbc.co.uk/news/business-41778609>

¹⁴ <https://www.consultancy.uk/news/14069/uk-consulting-industry-grows-by-5-to-9-billion-but-faces-challenges>

¹⁵ https://apps.groupdocs.com/document-viewer/Embed/770f1aaf88338a551e363f1e245c8c97b48e4f0ed3f7f354db43361a0258953c?quality=50&use_pdf=False&download=True&print=False&signature=7LHosmV%2Fryzhk2P6ZZNoomf3fng

¹⁶ <https://www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources>

employment practices. Such an approach would drive competition on quality not cost and would also likely lead to greater insourcing of work.¹⁷

- xviii) The UK government does not have to look far to see that more can be done to deliver on these aims. In Wales, for example, Unite welcomed the announcement of the ‘Code of Practice for Ethical Employment in Supply Chains’, by the Welsh Government that will work towards eliminating illegal and unethical employment practices on all public sector contracts including in the supply chain¹⁸.
- xix) The code which was developed by the Workforce Partnership Council with the strong involvement of trade unions is a potent step in the right direction. In particular, companies bidding for public sector work in Wales will be expected to conform to fair work practices and not employ workers on zero hours contracts, via umbrella companies or on false self-employment contracts.
- xx) Such provisions must be adopted by all UK central government departments to ensure that all infrastructure spending is tied to supporting employment rights throughout all investment by the public sector. For example, public investment in HS2, Hinkley Point or CrossRail2 should not only support the procurement of UK manufactured goods, such as steel, but should include protections for contracted workers. The endemic race to the bottom and undercutting in the construction sector is all too often a major feature of huge PFI infrastructure contracts in new build hospitals, schools and roads and only serves to promote inequality, vulnerable and insecure employment models and a low pay culture across swathes of major construction sites in the UK¹⁹.
- xxi) Looking internationally, there are significant examples across the European Union of governments using social value procurement to drive their political and industrial aims including in Germany, France and Spain²⁰.
- xxii) Even in the United States a statutory goal was introduced that 5% of federal contract value is awarded to women-owned SMEs and Federal contracts can be set aside for women-owned small businesses. This target was established in 1994 and finally met in 2016.
- xxiii) Now the UK has left the EU, Unite is strongly advocating the explicit use of social value to be rolled out through public procurement in order to deliver a culture change across the public sector. That leadership can be used to encourage all parts of the public sector such as local government; the NHS and elsewhere to develop a more dynamic approach to social value procurement.
- xxiv) To restate our policy, Unite believes that UK procurement must be used for the following:
- Keeping services in-house, recognising that there is no automatic obligation on the public sector to outsource or put services out for tender and that the public sector can and should be the provider for most public services;
 - Raising employment standards including requiring trade union recognition and adherence to collective agreements, banning from procurement contracts companies that exploit workers through blacklisting; banning zero hours contracts and umbrella companies; promoting direct employment as well as introducing a real living wage which would be applied to all workers employed on public sector contracts not just those employed directly by the public sector;

¹⁷ https://europa.eu/youreurope/business/public-tenders/rules-procedures/index_en.htm

¹⁸ <http://gov.wales/topics/improving-services/better/vfm/code-of-practice/?lang=en>

¹⁹ <https://www.ucatt.org.uk/ucatt-uncovers-appalling-systematic-abuse-vulnerable-workers-pfi-hospital>

²⁰ <http://ec.europa.eu/DocsRoom/documents/17261/attachments/1/translations/en/renditions/native>

- Promote equality including processes to monitor, audit and address gender, race and disability pay gaps and reduce pay ratios between the highest earners and those on average wages;
- Regional development and supporting employment including supporting British manufacturing jobs by procuring goods within the UK;
- Ensuring suitable skills, training and career opportunities are in place to facilitate the delivery of sustainable procurement including high quality apprenticeships and positive actions to ensure diversity;
- Driving industry standards and impose minimum standards on contractors, that spell out the high standards expected from those assigned public contracts and be consistent with social, economic and environmental policies, aims and benefits. The process itself must allow for a review of a company's performance on a number of key indicators including health and safety, employment practices, skills and training, equality, ethical and human rights and environmental and social responsibility;
- Ethical and responsible trading standards, such as by the procurement of food and drink, staff uniforms and other manufactured goods, used within the public sector to consider the local and global ethical supply chain, and exclude companies found to be complicit with human and labour rights abuses, or breaches in international law.

Consultation Questions

CHAPTER 1

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

- 1.1. As stated within the introduction above, Unite is supportive of moves to improve the use of public procurement to drive broader strategic goals and drive up working conditions, decent jobs and other social and environmental aims and public goods. This is a key part of government's strategic armoury for implementing policy and now that the UK has left the EU there is no excuse (legitimate or otherwise) to not use procurement in this way.
- 1.2. The principles listed cover the major themes that need to be included to implement such a policy but as they stand they are extremely vague and broad. Unite would like to see far more detail of what these principles will mean in practice including explicit rules on promoting collective bargaining, decent work, investing in jobs, promoting equality and concrete action to meet global obligations to tackle climate change²¹.
- 1.3. Unite welcomes the consultation's statement that the principles outlined "*will underpin the regulatory framework and demonstrate our commitment to tackling corruption in public procurement by ensuring open, transparent, non-discriminatory behaviours and processes are the foundation of procurement.*"
- 1.4. Without further detail however, Unite remains sceptical of this government's commitment to value for money, transparency, integrity, tackling corruption and fair treatment. In the last 12 months during the Covid crisis we have witnessed behaviour that has been so far

²¹ <https://www.un.org/sg/en/content/sg/statement/2021-03-02/secretary-generals-video-message-powering-past-coal-alliance-summit> <https://unfccc.int/news/climate-commitments-not-on-track-to-meet-paris-agreement-goals-as-ndc-synthesis-report-is-published>

from the principles expressed within the Green Paper that it is hard to trust the government's seriousness in this matter.

1.5. The content of the National Procurement Policy Statement will therefore be crucial. The Outsourcing playbook and Construction playbook have not had a meaningful impact on UK procurement policies and Unite would like to see far stronger conditions within the National Procurement Policy Statement particularly in promoting decent pay and conditions, collective bargaining, equality and insourcing. Unite would strongly recommend that the conditions highlighted in paragraph xxiv should be included in the Strategic National priorities statement.

2. 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?

2.1. Unite has called for there to be far greater overview, scrutiny and information about public procurement, including a national register of suppliers and a full list of contracts that they each hold; far greater accountability and remedies for contract failure, improved capabilities for all procuring authorities to understand and enforce contract conditions on their suppliers and the public sector supply chain.

2.2. Unite would like to see more resource for National Audit Office scrutiny with greater teeth should procurement decisions be found to not meet high standards of public integrity as we have seen this last 12 months.

2.3. Unite would also support strengthening public sector capacity to manage and monitor contracts. It is therefore crucial that large scale investment is put in place to bring the skills and resources back into the civil service and local authorities so that they are able to make decisions systematically and consistently, as well as holding companies to account for contract failure or abuses within their supply chains.

2.4. Unfortunately the proposals under consultation are too vague. There is no detail about the makeup of the unit, who will sit on it, how it will be accountable, or what powers it will have. Should any such unit be created these questions urgently need answering.

2.5. Given the experience of public procurement this last year Unite is concerned that such a unit must be properly constituted, accountable and scrutinised.

3. Where should the members of the proposed panel be drawn from and what sanctions do you think they should have access to in order to ensure the panel is effective?

3.1. If such a unit is created the meetings and decisions must be open to full public scrutiny and accountable to parliament. There must also be a prominent role for trade unions on it and that role should include shaping strategic procurement policy, enforcement of workers' rights, collective bargaining and other conditions at work.

3.2. Unite would also like to see sanctions up to and including debarment from public contracts for suppliers that have been found to seriously breach employment rights (such as

involvement with blacklisting of workers, modern slavery or corporate manslaughter), as well as involvement with human rights abuses, breaches of international law or environmental disasters.

CHAPTER 2

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

- 4.1. Unite is broadly in favour of greater clarity and simplification of UK procurement regulations. As with so much of this consultation the key issue is what will be in any new regulations. It is impossible to endorse major changes to regulations without seeing the detail.
- 4.2. Procurement regulations must remain transparent, accountable and fair. There must be clear legal routes to remedy decisions. The Green Paper discusses “flexibilities” to be maintained and expanded from consolidating the legislation but without details. Unite would like to see this clearly laid out and explained to understand the implications of any proposed changes.
- 4.3. The experience of the last year makes Unite extremely concerned by the potential for corruption, nepotism and incompetence arising from any new procurement regulations. There should never be a case that public officials or elected politicians can grant contracts to their personal contacts as we have witnessed during the pandemic. Unite is therefore withholding judgement until any draft regulations are published.

5. Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained?

- 5.1. Unite would need to see the proposed new legislation to make detailed submissions on this issue but believes that any new procurement rules covering transport and utilities that move the UK away from EU directives must enable the government the freedom to continue delivering service in house or bring service back into public ownership. There must also continue to be safeguards to protect strategic UK assets and infrastructure such as train lines energy or water supplies, and the jobs and skills involved, as these services are crucial to our economy, security and community welfare.
- 5.2. This question also requires far more detail to fully understand the government’s intentions. There are significant areas where the legislation is skirted over. For example there is only one reference to the Single Source Contracts Regulations in the consultation. Unite believes that Single Source Contracts Regulations should continue to be pursued noting the Ministry of Defence (MoD) had to cancel and restart the Fleet Solid Support (FSS) procurement exercise which had initially been planned on international competition.
- 5.3. Unite believes that the defence exemptions from general international procurement obligations have served the UK well, as a crucial method to protect baseline sovereign defence manufacturing capabilities. Cabinet Office must provide more information about how they will protect the UK’s manufacturing base, skills, capacity and research and development through procurement. The central procurement unit must also have an

appropriate level of sector-specific expertise so sectors like aerospace, pharmaceuticals, chemicals, food and automotive manufacturing continue to thrive in the UK.

5.4. It is also notable that the proposals do not look to amend the conditions on local authority procurement. Unite would also like to see amendments to local authority legislation to remove the obligations on local authorities to put certain services out to tender and prevent insourcing of service despite substantial evidence that such services offer far greater democratic control and value for money than many of the contracted out services.

CHAPTER 3

6. *Do you agree with the proposed changes to the procurement procedures?*

6.1. Unite is concerned that the proposed changes to the procurement procedures will open risks and may undermine the legal principles proposed in the Green Paper, especially around transparency, equal treatment and integrity.

6.2. The risks highlighted in the Green Paper (Chapter 3. Para 69) point to increased confusion, divergence in process used by procuring authorities and the potential therefore for unfairness and decision-making that undermines the credibility of the process.

6.3. Unite believes that if procurement procedures are to be simplified they must maintain the similar levels of uniformity and transparency to enable fair and equal treatment of bidders. For Unite the priority is to improve the content and conditions within procurement contracts and their enforcement.

7. *Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?*

7.1. Unite does not support “crisis” procurement being introduced into legislation. The experience of the Covid-19 crisis has seriously eroded trust in government competence and integrity when making crisis decisions.

7.2. While the specific timing of the pandemic was hard to predict, the possibility of a pandemic was widely recognised and its arrival was statistically overdue. Yet when it arrived the UK appears to have been wholly unprepared following a decade of public sector cuts and austerity. Unite does not think that legislation should provide a loophole to cover for poor planning and incompetence.

7.3. The UK government should have a comprehensive industrial strategy in place with full understanding of the industrial capacity at its disposal should an extreme crisis such as a pandemic, natural disaster or conflict require rapid procurement. Such crises can therefore be planned for, for example with the creation of strategic lists of suppliers ready for such eventualities drawn up in a transparent and rigorous way. As we highlighted earlier in this submission, Unite is very concerned about the recent axing of the government’s industrial strategy in place of a more ad-hoc “plan for growth”. The government should be reinvigorating an industrial strategy rather than abandoning it.

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

- 8.1. Innovation is supported when procurement invests in long-term strategic skills and jobs within our communities. The government should be using UK procurement to source manufactured goods from UK suppliers be that medical equipment and supplies, vehicles, buses and trains, to British produced steel and other strategically important resources.
- 8.2. Wages paid to UK based workers are overwhelmingly spent in the UK, creating a multiplier effect for local communities. The government should use procurement as a broader tool to spend UK taxpayers' money which creates multiple benefits for the UK rather than spending abroad.
- 8.3. The national value framework should be applied when making procurement decisions, so that in addition to cost and capability, decision makers take into account UK prosperity via onshore design, build and maintenance rather than buying off the shelf from abroad on short-term economic grounds, growing our industrial capability and level of international influence. It should be used to convince the Treasury to make the right decision as opposed to their traditional framework of just playing off cost with capability.
- 8.4. Sectors like aerospace and shipbuilding are a case in point. Many defence projects are long term, thus there are good political and economic reasons for supporting defence technologies and the companies that produce them to onshore jobs. For every pound spent via UK government orders manufacturing goods here, the Royal United Services Institute (RUSI) estimates that 36% is returned via taxation. In contrast, some estimates claimed that by 2020 nearly 25 pence in every pound of UK defence spend was with US companies such as Boeing. Such policies not only limit multiplier benefits here, they result in a loss of sovereign capability and freedom of action; benefits achieved via onshore research and development and the cross-fertilization opportunities these brings to other sectors flowing from developed technologies (e.g. an expansion in the use of Sustainable Aviation Fuels and other net zero-emission technologies for commercial flight); and ultimately the highly skilled jobs created via the development, manufacture and maintenance of these technologies.
- 8.5. The March 2019 government announcement of a £1.51bn deal to purchase five E-7 Wedgetail aircraft from US manufacturer Boeing, replacing the current E-3D Sentry aircraft, to deliver the UK's Airborne Early Warning and Control (AEWAC) capability, is an example of such large air defence deals going abroad, with only modifications to the E-7 AEW standard being done here.
- 8.6. Such decisions not only limit multiplier benefits here but can result in a loss of sovereign capability, freedom of action and jobs, with some 50,000 jobs in UK defence manufacturing estimated to have gone over the past decade. This destroys our capability to independently produce new fighter aircraft and prevents the UK from being a significant partner in multi-national programmes in the medium term with potentially no way back.

9. Are there specific issues you have faced when interacting with contracting authorities that have not been raised here and which inhibit the potential for innovative solutions or ideas?

9.1. Not applicable

10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?

10.1. Not applicable

11. What further measures relating to pre-procurement processes should the Government consider to enable public procurement to be used as a tool to drive innovation in the UK?

11.1. There must be comprehensive and robust equality impact assessments carried out in the pre-procurement stages of the processes to make sure that the decisions have no discriminatory impact on people or communities covered by protected characteristics under the Equality Act.

11.2. Unite would like to see far more emphasis on the benefits of insourced public provision to be embedded in Cabinet Office decision-making before procurement decisions are made, rather than a default to outsourcing and tendering. There should be a statutory presumption that delivering public services in the public sector is the default option unless there is a strong case to the contrary.

11.3. Building up public sector capacity to deliver services and hardwiring employment conditions into contracts would improve innovation within contractors as they will be expected to compete on quality rather than a race to the bottom through cutting workers terms and conditions.

12. In light of the new competitive flexible procedure, do you agree that the Light Touch Regime for social, health, education and other services should be removed?

12.1. Unite would need to see more detail about how this new competitive flexible procedure will work in practice, but if the only difference is the lowering of the threshold, Unite would have no objection.

CHAPTER 4

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

13.1. As stressed above, Unite supports moves to allow contracts to be based on other criteria than simply cost. Unite has stressed that the EU regulations already provided the UK government with far more flexibilities than were being used, however amending the definitions to make it clearer that this is possible and encouraged would be welcome.

13.2. As with so much within this Green Paper, the detail of the provisions and guidance is crucial. The terminology “most advantageous tender” seems mostly designed to align the UK with other trade arrangements such as the GPA and CPTPP. Unite continues to have

significant reservations about the latter and would like to see strong protections within our domestic procurement rules to prevent social and environmental dumping throughout the UK's public sector supply chain.

14. Do you agree with retaining the basic requirement that award criteria must be linked to the subject matter of the contract but amending it to allow specific exceptions set by the Government?

14.1. In principle Unite supports this approach but without seeing the specific guidance and exceptions proposed it is not clear how this will work in practice.

14.2. Unite would support contract criteria that included the promotion of workers' rights, collective bargaining agreements, trade union recognition, health and safety conditions, decent pensions, investing in UK based jobs, conditions on paying full UK tax and the enforcement of international law, environmental concerns, equalities, skills and apprenticeships, prevention of modern slavery and the promotion of mental health and wellbeing.

15. Do you agree with the proposal for removing the requirement for evaluation to be made solely from the point of view of the contracting authority, but only within a clear framework?

15.1. In principle yes, but more information is needed to understand what will be in the "clear framework".

16. Do you agree that, subject to self-cleaning fraud against the UK's financial interests and non-disclosure of beneficial ownership should fall within the mandatory exclusion grounds?

16.1. Yes, these issues should be included. Unite would like to understand far more about the "self-cleaning process" and assurances that this can be rigorously monitored to prevent employers circumventing the regulations.

17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?

17.1. Exclusion processes, combined with social value contract criteria, allow government to use its considerable financial leverage to drive up standards across the economy and supply chains.

17.2. Unite would support the inclusion of tax evasion as another grounds for exclusion and also exclusion processes based on evidence of serious breaches of workers' rights, equality and other human rights, such as modern slavery or the use of an illegal blacklist of trade union activists, or complicity in war crimes or environmental disasters either in the UK or abroad.

18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?

18.1. Yes

19. Do you agree that non-payment of taxes in regulation 57(3) should be combined into the mandatory exclusions at regulation 57(1) and the discretionary exclusions at regulation 57(8)?

19.1. Yes

20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?

20.1. Yes

21. Do you agree with the proposal for a centrally managed debarment list?

21.1. Yes in principle, Unite would like to see government take a far more serious approach to enforcement of contract conditions with proportionate sanctions on those companies that repeatedly fail to meet the conditions or deliver on their contracts.

21.2. Unite is demanding that any ethical procurement policy to feature a straight forward requirement to prevent blacklisting and other serious abuses of employment rights. For example, any company with a history of blacklisting that has not demonstrated it no longer blacklists to be prevented from tendering for government contracts and removed from preferred supplier lists. In May 2016, Unite won significant levels of compensation and a public apology for workers systematically denied employment for their trade union activities by companies including the now liquidated Carillion, Balfour Beatty, Laing O'Rourke and Sir Robert McAlpine. Yet from our members' experiences we believe blacklisting is a contemporary problem that continues to blight the lives of workers across the construction industry.

21.3. The UK government must also put in place similar exclusions for those companies that have been found to breach international law or be complicit with war crimes or human rights abuses throughout their global supply chains, including evidence of modern slavery, corporate manslaughter and involvement with environmental disasters.

21.4. Consideration will be needed to prevent individuals simply leaving one company and setting up a new phoenix company to avoid being barred. Systems must be in place to police the list and prevent companies liquidating and their assets being purchased by the original owners under a new trading name.

21.5. Such a debarment list will require a central register of contracting companies that maps contracts, ownership and key performance indicators (KPIs) on contract delivery clearly so that contractors can quickly see the past record of companies. There should never again be a case where companies like Carillion, G4S or Serco repeatedly win contracts without sanction, despite high profile failures.

21.6. Far greater detail is needed as to how this will work in practice but contracting authorities should have the ability to attach greater conditions on certain suppliers and reclaim contract values should contractors fail to deliver on their promises as has happened with Test and Trace and PPE contracts in the last year.

- 21.7. The process itself must allow for a review of a company's performance on a number of key indicators including health and safety, employment practices, skills and training, equality, ethical and human rights and environmental and social responsibility. Statutory guidance needs to be in place to drive up employment standards, and include trade union recognition and adherence to collective agreements as necessary in order to be awarded any public service contracts. This is in keeping with the acceptance of this direction of travel by the strategic leaders of the industry, accepted by the Construction Leadership Council, and supported by the recent Joint Industry Board report²² in support of direct employment in the electrical contracting sector.
- 21.8. Government reform of the procurement system includes the contractual requirement for direct employment of construction workers employed on public sector infrastructure contracts. Construction workers should not be employed using umbrella companies, false self-employment or any other of the plethora of definitions of employment 'intermediaries' which exist to bypass fair employment models. Furthermore, all contracts awarded must abide by existing industry collective agreements. Unite believes it is necessary to ensure that the ability to end a contract must be available if, or when information comes to light e.g. evidence of blacklisting is uncovered and to remove contractors who breach rules on collective agreements. Companies should also be banned for the lifetime of the contract and importantly, these same companies must be excluded from future bids if they fail to act responsibly or make appropriate remedial action.
- 21.9. To embed a fair and ethical procurement system legislation must ensure that procuring authorities unequivocally stipulate the necessity that contractors involved in publicly financed infrastructure projects deliver fair treatment of workers. This is best identified in construction through direct employment contracts of employment. Procurement reform needs to ensure that companies abide by existing sectoral collective agreements. Penalties should be applied to awarding contractors if sub-contractors are found to have exploited workers; up to and including removal from the contract. The obligation should remain with the main contractor to ensure accountability in the decision they have taken as to the suitability of the sub-contractor to undertake the work.
- 21.10. Unite is clear that the only way of preventing exploitative practices in public sector infrastructure projects is to ensure closer scrutiny of projects and also meaningful engagement with the workforce through independent trade unions. There continues to be a pressing need to protect construction workers from unscrupulous employers, agencies and intermediaries that seek to profit from inscrutable means of engagement.
- 21.11. The revelations that some of the UK's largest companies were named in The Consulting Association documents as blacklisting workers for trade union membership, political association and/or for raising health and safety issues shows that there is still work to be done. UK procurement legislation must allow public bodies to exclude bidders where there is evidence of a breach of labour law obligations.

²² [https://www.jib.org.uk/documents/content/files/Report Summary.pdf](https://www.jib.org.uk/documents/content/files/Report%20Summary.pdf)

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

22.1. Yes

23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

23.1. Simplification of the selection stage sounds positive in principle, but without further detail of the selection criteria proposed and the rigor of vetting suppliers it is hard to say for sure. The selection process should hardwire strategic social value aims in as well, so that issues like conditions of employer or payment of UK tax can be assessed early on in the process.

24. Do you agree that the limits on information that can be requested to verify supplier self-assessments in regulation 60, should be removed?

24.1. Yes

CHAPTER 5

25. Do you agree with the proposed new DPS+?

25.1. Unite does not have a strong policy position on the existence of specific procurement tools as long as those tools are transparent and accountable and do not lock in bad practice. The design and content of the tools and procedures must embody wider social value aims, be carefully thought through and risk assessed so as not to lock in bad practice or lead to perverse results (see below).

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

26.1. Unite does not have a strong policy position on the existence of specific procurement tools as long as those tools are transparent and accountable and do not lock in bad practice. The design and content of the tools and procedures must embody wider social value aims, be carefully thought through and risk assessed so as not to lock in bad practice or lead to perverse results.

26.2. For example Unite members who work as British Sign Language Interpreters have had severe concerns about the National Framework Agreements that govern contracting arrangement in the Crown Commercial Services (CCS), the Ministry of Justice (MoJ) and NHS Shared Business Services (NHS SBS).

26.3. These Framework Agreements have damaged their profession and negatively impact on deaf people's lives and their access to services. The Frameworks design incentivised the introduction of unethical agencies through bulk contracting. This drove unstable below market rate contracts, the introduction of unqualified and inexperienced interpreters, undermining accountability for deaf people and their ability to complain, introduced unsafe working practices and lone working, and in many cases led to deaf people not receiving the

interpreter services they need and are entitled to. Unite members drew up a “Dossier of Disgrace”²³ that detailed the issues caused by these frameworks.

26.4. In addition our National Union Of Professional Interpreters and Translators (NUPIT) branch which represents spoken language interpreters has raised reservations about the operation of the CCS and MoJ Frameworks and has raised concerns, particularly in relation to the way in which interpreters are engaged as self-employed contractors through agencies rather than direct employment by the courts and other government agencies. The danger of this model was recently highlighted by the failure of a sub-contracting agency from thebigword on the MoJ Framework contract, Debonair, which went into liquidation leaving many interpreters owed substantial sums for work they had undertaken. Unlike employees of companies that are liquidated these interpreters cannot access support mechanisms such as the Government Redundancy Fund which not only enables impacted employees to claim redundancy pay but also unpaid wages. NUPIT raised our concerns over Debonair with the MoJ

26.5. Any Framework agreement, DPS+ or other tool set up should undertake a full risk assessment and be tested against the full range of social value criteria so as not to lock procuring authorities into bad processes that produce perverse outcomes.

CHAPTER 6

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

27.1. Unite broadly welcomes the proposals to improve publicly available data on procurement contracts. Following the collapse of Carillion, Unite called for a complete overhaul of public oversight for government projects. There should be a clear set of steps that any state contracts for goods and services with the private sector should have clearly stipulated rules on service quality, as well as staff terms and conditions, the payment of full UK tax and other social and environmental concerns.

28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?

28.1. Unite supports moves that make public sector contracting data more transparent, easier to access and monitor. Having an agreed standard for the data is only one part of this. Public procuring authorities need to significantly improve their ability to manage contracts

29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?

29.1. There should be a central record of all contracts with the public sector and central oversight of companies operating multiple contracts. Following the Carillion collapse it was recognised that a small number of quasi state companies are delivering the majority of public contracts and these must be far better regulated. Better oversight could have

²³ <https://unitetheunion.org/media/2058/nubslidossierofdisgrace-002.pdf>

prevented Carillion being awarded new contracts despite repeated profit warnings and financial alarm bells. It would also have prevented the repeated awarding of contracts to tarnished companies like G4S despite numerous scandals and failures to deliver²⁴.

29.2. Unite believes that all public contracts must be subject to the same accountability and scrutiny as the public sector itself, including subject to full parliamentary and local authority democratic scrutiny and freedom of information legislation should be expanded to apply to public sector contractors.

29.3. Outsourced workers should be included in employers' gender pay gap reporting and pay ratio reporting, alongside any future pay reporting. Contractors should be required to report on the number of outsourced workers who perform work for those companies in their annual reports and accounts.

29.4. Bad decisions, poor practice, waste and service failings should never be allowed to hide behind commercial confidentiality as it is now. NHS contracts are a case in point. Current clinical contracts held by private organisations, do not have to provide data on, nor publicly report their staffing ratios or qualifications despite delivering services that range from sexual health screening, pathology to blue light ambulance call outs²⁵. A litany of public failures shows that the lack of scrutiny is leading to failure²⁶.

CHAPTER 7

30. Do you believe that the proposed Court reforms will deliver the required objective of a faster, cheaper and therefore more accessible review system? If you can identify any further changes to Court rules/processes which you believe would have a positive impact in this area, please set them out here.

30.1. Improving the review system to make it more efficient and limit the costs to the public purse are in principle to be welcomed, but Unite is concerned that these changes could undermine the transparency and accountability of procurement decisions. Procurement decisions must be subject to due process and the law and there should never be a case where the integrity of procurement is undermined by the lack of legal remedy or redress should bad decisions are taken or legal processes are not followed.

30.2. Unite is particularly concerned that any changes do not undermine the ability of trade unions or community groups to mount legal challenges to bad procurement decisions using judicial review or other legal remedies. Such legal avenues are crucial in holding decision makers accountable and making sure decisions are conducted appropriately and all concerns are considered.

²⁴ https://en.wikipedia.org/wiki/Controversies_surrounding_G4S

²⁵ <http://www.nhsforsale.info/contract-alert.html>

²⁶ <http://www.nhsforsale.info/database/impact-database/impact-reports-and-overviews/contract-failures.html>

31. Do you believe that a process of independent contracting authority review would be a useful addition to the review system?

31.1. Any changes to the legal process for dealing with claims should be properly risk assessed and resourced. Procurement decisions must be subject to due process and the law and there should never be a case where the integrity of procurement is undermined by the lack of legal remedy or redress should bad decisions be taken or legal processes not followed.

32. Do you believe that we should investigate the possibility of using an existing tribunal to deal with low value claims and issues relating to ongoing competitions?

32.1. Any changes to the legal process for dealing with claims should be properly risk assessed and resourced. Procurement decisions must be subject to due process and the law and there should never be a case where the integrity of procurement is undermined by the lack of legal remedy or redress should bad decisions be taken or legal processes not followed.

33. Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages?

33.1. It is of course preferable that issues get resolved before contracts are signed and Unite supports the motivation to head off costly damages. It is crucial though that any reforms do not provide contracting authorities the cover to conduct unfair procurement exercises as the repercussions do not provide a serious enough incentive to act fairly.

34. Do you agree that the test to list automatic suspensions should be reviewed? Please provide further views on how this could be amended to achieve the desired objectives.

34.1. More details of the proposals would be required for Unite to comment.

35. Do you agree with the proposal to cap the level of damages available to aggrieved bidders?

35.1. Unite is sympathetic to proposals to cap damages in order to disincentivise speculative claims whereby companies seek compensation for loss of profits without strong grounds. The case of Virgin Care taking legal action against the NHS shows how wasteful outsourcing and public procurement can be, especially where there is a public sector solution. There does however have to be a meaningful deterrent against poor procurement practice.

36. How should bid costs be fairly assessed for the purposes of calculating damages?

36.1. Unite believes that there is an important balance to be met between preventing the waste of public money on damages and preventing poor procurement practice or potential corruption.

37. Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?

37.1. Unite is concerned by the introduction of crisis exemptions for following procurement rules. The last twelve months have shown what happens when procurement processes are

circumvented creating unfairness, waste and major failures of integrity. The distribution of billions of pounds of PPE contracts, Test and Trace and other major responses to the Covid-19 crisis are a national scandal and Unite would like action taken to hold those responsible accountable.

38. Do you agree that debrief letters need no longer be mandated in the context of the proposed transparency requirements in the new regime?

38.1. The need for debrief letters appears to be contingent on other transparency and data publishing arrangements being in place. As this has not yet been finalised or detailed it is premature to support withdrawal of debrief letters as transparency is crucial to a fair procurement process.

CHAPTER 8

39. Do you agree that:

- ***businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?***
- ***there should be a specific right for public bodies to look at the payment performance of any supplier in a public sector contract supply chain?***
- ***private and public sector payment reporting requirements should be aligned and published in one place?***

39.1. Yes, Unite supports these proposals. Payment delays can have major impacts on companies throughout the supply chain which can impact directly on workers and job sustainability.

39.2. Unite would like these issues to also include obligations on public bodies to have liability and responsibility for employment rights and terms and conditions throughout public sector contract supply chains meaning that workers lower down the supply chain can appeal direct to the contracting authority about abuses and public bodies can intervene in support of workers' rights within any supplier in a public sector contract supply chain.

40. Do you agree with the proposed changes to amending contracts?

40.1. Unite would need to see more details in the legislation. As raised above Unite is concerned by the proposals for crisis procurement which could open a significant loophole to transparent procurement processes and challenge the integrity of the system.

41. Do you agree that contract amendment notices (other than certain exemptions) must be published?

41.1. Yes

42. Do you agree that contract extensions which are entered into because an incumbent supplier has challenged a new contract award, should be subject to a cap on profits?

42.1. Yes, Unite would argue that there should be caps on all profits made from public sector procurement so that the public sector can be sure of value for money. If there are high levels of profit to be extracted from public sector contracts then there should be conditions on the contract for those profits to be shared with public sector contracting authority as efficiency savings.

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