

MANAGEMENT COMMITTEE – 22 MARCH 2023

PUBLIC PROCUREMENT RULES – DEVELOPMENTS DURING 2022/3

Purpose of Report

1. The purpose of this report is to update Management Committee on the progress of the Procurement Bill that apply to ESPO's business (other than ETL and Eduzone).

Background

2. On 11 May 2022, the government introduced the Procurement Bill 2022-23¹ to Parliament.
3. The Procurement Bill has completed its passage through the Committee Stage in the House of Commons – the Bill will now progress to Report and Third Reading. Once the Bill receives Royal Assent, work to finalise the secondary legislation (Statutory Instruments, or regulations) will take centre stage. This will include a public consultation on the draft regulations.
4. Timetable: The government has promised a six-month implementation period before the provisions are activated to give contracting authorities and suppliers time to prepare. The Cabinet Office anticipates that the Bill should receive Royal Assent in the Spring, following which the necessary subsidiary regulations will be developed. Following the consultation, the final version of the secondary legislation will be laid in Parliament. And it is expected that this will be the earliest point at which six months' advance notice can be provided of the new regime coming into effect, which we believe will happen in spring 2024 at the earliest and according to recent updates from the Cabinet Office.
5. Training and Implementation: The Cabinet Office has developed a short guide outlining the comprehensive, centrally funded learning and development² package which will be available for contracting authorities. The government plan for the Learning and Development package to be made available once the law is clear, after royal assent for the act has been granted and the secondary legislation (regulations) have been made.
6. The Local Government Association (LGA) has responded to the Procurement Bill call for evidence issued by the House of Common's Bill Committee in early

¹ [Procurement Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

² [Getting ready for the new procurement act - update on the official learning and development offer for contracting authorities \(publishing.service.gov.uk\)](#)

January. The responses focussed on securing changes to the Bill bases on issues raised by councils. In particular, the response notes the importance of amendments proposed by Government recently to maintain the current exemptions which allow councils to collaborate and deliver services via in-house companies (vertical and horizontal exemptions). The response calls for the involvement of local government in the promised secondary legislation which will allow councils to reserve below threshold contracts to local suppliers, SMEs, and voluntary, community and social enterprises (VCSEs). The response also calls for the ability to specify shorter timescales to be maintained in certain circumstances and proposes a number of measures to facilitate a single digital platform.

Procurement Challenges

7. A full analysis of the latest draft bill is currently underway by senior procurement management in ESPO under the direction of the AD Procurement to understand its implications for our processes and documentation and extensive training needs. Further clarification with the Cabinet Office and legal assessment of the new rules will also be required to avoid any misinterpretation.
8. The analysis is already highlighting the need for more onerous reporting and heightened transparency requirements and a thorough review is being undertaken of the divisional structure by the AD Procurement to ensure that we retain our high standards of compliance and protect this critical source of rebate income. There are four areas where early consideration and action will get ESPO in the best shape to hit the ground running:
 - Processes and policies
 - Systems
 - People
 - Transition
9. All of this is particularly challenging whilst the division continues to carry significant vacancy levels and faces ongoing difficulties in recruitment and retention of experienced procurement professionals. There will be a need to run the new and old procurement regimes side by side during a potentially protracted transition phase. A project group under the leadership of the AD Procurement has been set up to identify and deliver the changes required.

Summary Review of the Bill

10. The Appendix to this report is a summary of the key elements of the Bill as at 14 December 2022. Where relevant, any notable differences from the existing public procurement regime have been addressed. However, it is worth noting that the Procurement Bill is likely to go through several drafts before it is finalised, and this summary does not represent the final position.

Conclusion

11. The reforms highlighted in this paper are intended to provide a shift towards a modern and flexible procurement regime and deliver better outcomes for taxpayers, service users, businesses and social enterprises involved.
12. Scotland will not be subject to the Bill because procurement is devolved. Although, they will be allowed to participate in joint procurements and use frameworks.
13. There are also provisions in the Bill for the new single central online platform which will underpin the new system and achieve a real step change in transparency and reduce duplication.
14. As mentioned in the summary above, the Procurement Bill may have further modifications as it progresses through the final stages House of Commons process and before achieving Royal Assent. The ESPO Procurement and Commercial team will also need to stay close to the development of the secondary legislation and regulations to ensure that it has the capacity and capability to embed the new procurement reforms.

Recommendation

15. Members of Management Committee are asked to note the contents of this report.

Equal Opportunities Implications

16. None

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APPENDIX

Structure of the Bill

The main structure of the Bill is as follows:

Part 1: Key Definitions- Sections 1 to 10

Part 2: Principles and Objectives- sections 11-14

Part 3: Award of public contracts and procedures- sections 15-65

Chapter 1 – Preliminary Steps- sections 15-18

Chapter 2 – Competitive Award- sections 19-40

Chapter 3 – Direct Award- sections 41-44

Chapter 4 – Award under frameworks- sections 45-49

Chapter 5 – After award, standstill periods, and notices- sections 50-53

Chapter 6 – General provision about award and procedures- sections 54-65

Part 4: Management of Public Contracts- sections 66-79

Part 5: Conflicts of Interest- sections 80-82

Part 6: Below-threshold contracts- sections 83--87

Part 7: International Obligations- sections 88-90

Part 8: Information and Notices- sections 91-96

Part 9: Remedies for breach of statutory duty- sections 97-103

Part 10: Procurement Oversight- sections 104-106

Each Part is summarised below:

PART 1: KEY DEFINITIONS

Part 1 of the Bill sets out the key definitions that are used throughout the Bill, including:-

Definition of Contracting Authority

- The Cabinet Office has confirmed that the intention is for coverage under the Bill to remain as it currently is under the PCR 2015, subject as follows.
- The wording of the new definition has been changed again:

“contracting authority” means— a public authority, or in the case of a utilities contract, a public authority, public undertaking or private utility, other than an excluded authority.

“public authority” means a person that is— wholly or mainly funded out of public funds ..., or subject to public authority oversight, and does not operate on a commercial basis (but see subsection (9));

This new term **“commercial basis”** is, at first sight, potentially very wide, though Parliament’s Explanatory Note 51 helpfully states “Subsection (4) clarifies what is meant by “operating on a commercial basis” by providing examples of matters to be considered in determining whether the test is met. If the person relies directly or indirectly on a public authority to ensure its ongoing operation, or is unable to bear its own losses, then this might be a factor which indicates that it is not operating on a commercial basis. If the person benefits by contracting on terms that would not be available to another because of their connection with a public authority, then that might indicate that it is not operating on a commercial basis. If the person operates on a market that is subject to fair and effective competition (for example, there are no market access restrictions and contract opportunities are available via competitive procurement), then that might indicate that it is operating on a commercial basis.”

It might be that the email from Steven Sinclair of NEPO of 19 December 2022 to ESPO and YPO, expressing concerns about the meaning of “commercial basis” had not taken into account the helpful sub-section (4) although it was in place at the time of his email.

An external solicitors firm has commented on sub-section (9), “An organisation that does operate on a commercial basis but which, as a controlled person (commonly known as a Teckal subsidiary under the current rules), is awarded an exempted contract (relying on the vertical Teckal exemption) is to be treated as a public authority in relation to any relevant sub-contract. This appears to confirm the current legal position that a Teckal subsidiary is to be treated as a contracting authority...”

Exempted Contracts

- Regulations 10 to 17 of PCR 2015 covers various contract types which are wholly or partially exempt and these exemptions have largely carried over, and Schedule 2 sets out what is considered an “exempted contract” under the Bill.
- It includes the new replacement tests for the current Teckal and Hamburg Waste exemptions under regulation 12 of PCR, which cover awards between linked contracting authorities (referred to as “vertical arrangements” and “horizontal arrangements” respectively). The Bill links the definition of a controlling authority to the Companies Act 2006, the vertical arrangements only allows for a single contracting authority to be the controlling authority for the purposes of the new test, removing the possibility for jointly controlled Teckal entities.

One set of rules

- There are currently four sets of regulations covering procurement: Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016, Defence and Security Public Contracts Regulations 2011
- Section 10(6) of the Bill creates a concept of “special regime contracts” for the purpose of referring to (a) concession contracts; (b) defence and security contracts; (c) light touch contracts; and (d) utilities contracts. Each type of special regime contract has its own dedicated section within the Act, containing bespoke provisions in addition to the general provisions.

PART 2: PRINCIPLES AND OBJECTIVES (SECTIONS 11-14)

Principles

Section 12 of the Bill provides that, in carrying out a covered procurement, a contracting authority must have regard to the importance of:

- Delivering value for money.
- Maximising public benefit.
- Sharing information for the purpose of allowing suppliers to understand the authority’s procurement policies and decisions.
- Acting, and being seen to act, with integrity.
- Section 11 (2) and (3) state that in carrying out a covered procurement, a contracting authority must treat suppliers the same unless a difference between the suppliers justifies different treatment that does not put a supplier at an unfair advantage or disadvantage.
- These objectives and requirements do not entirely replicate the existing obligations of contracting authorities to treat economic operators equally and without discrimination, and to act in a transparent and proportionate manner. Proportionality has not been included but is included elsewhere in the Bill- clause 20(3) provides that a contracting authority must ensure that a competitive tendering procedure is a proportionate means of awarding a public contract, having regard to the nature, complexity and cost of the contract.

National Procurement Policy Statement

- Section 13 covers the National Procurement Policy Statement (NPPS) and states that a contracting authority must “have regard” to the NPPS that is current from time to time.
- This duty to have regard to the NPPS does not apply where awarding contracts under a framework or dynamic market.

- Private utilities are not required to have regard to the NPPS.
- The Bill does not expand on what “have regard to” means in this context.
- The Bill appears to put the NPPS onto a statutory footing, which may result in procurement challenges based on a breach of a statutory duty to have regard to the NPPS.

PART 3 – AWARD OF PUBLIC CONTRACTS AND PROCEDURES (SECTIONS 15-65)

Chapter 1 – Preliminary Steps (sections 15-18)

Pre-market engagement

- Sections 15 to 17 introduce the following new notices:
 - Planned Procurement Notices and
 - Preliminary Market Engagement Notices.
- A planned procurement notice will operate much as a Prior Information Notice does currently to alert the market to procurement coming up and to potentially commence a procurement in “qualifying” circumstances.
- A preliminary market engagement notice is published to communicate to suppliers that the Authority intends to carry out a market engagement exercise.
- Section 93 of the Bill states that further regulations may be issued around the content of notices.
- There appears to be no mandatory requirement to publish these notices as the word “may” is used.

Chapter 2 – Competitive Award (sections 19-40)

MEAT to MAT

- Section 18(1) sets out the core obligation to award a contract to the supplier that submits the Most Advantageous Tender and confirms that this is the tender that best satisfies the award criteria in accordance with the published assessment methodology and weightings. (This is a departure from the current regime where a contract must be awarded to the Most Economically Advantageous Tender (MEAT)).
- The new regime will allow contracts to be awarded to the Most Advantageous Tender, widening the possibility of award to contracts that best further general procurement policies, including social value.

Competitive Tendering Procedures

- Section 20 of the Bill introduces a new combination of competitive procedures and provides that, before awarding a public contract under section 18, a contracting authority must carry out a competitive tendering procedure which is defined as either:
 - A single-stage procedure without a restriction on who can submit tenders (open procedure);
 - Such other competitive procedure that the authority considers appropriate.
- In essence these procedures comprise either a traditional open procedure or a procedure that can be designed by the authority.
- Whatever procedure is adopted, it must be proportionate to the nature, complexity and cost of the contract- section 20(3).
- This will allow greater flexibility to design more bespoke procedures within a broad framework.

Conditions of Participation (Selection Criteria)

- Section 22 deals with the “selection criteria” (as referred to under the PCR 2015) and referred to in the Bill as “conditions of participation”, it is aimed at ensuring suppliers have the legal and financial capacity and the technical ability to perform the contract.
- Section 21(5) gives the authority to discretion to set these conditions, but these must be proportionate to the cost, nature and complexity of the contract.
- Section 21(4) prohibits any condition of participation that requires a supplier to have been awarded a particular contract previously, or to have particular qualifications without accepting equivalents, or that breaks the rules on technical specifications in section 24.

Award criteria – link to subject matter of the contract

- The requirement that the award criteria be linked to the subject matter of the contract is retained generally from the PCR 2015. This is set out in section 22 of the Bill, which states that the award criteria which must relate to the subject matter of the contract, be sufficiently clear, measurable, specific and proportionate.

Refinement of award criteria

- The PCR 2015 provided that the award criteria may not be amended once published in the contract notice and procurement documents. However, section 24 of the Bill introduces a flexibility to refine the award criteria and relative

weightings during a procurement, provided that:

- it is not an open procedure;
 - the ITT document has not yet been issued; and
 - there are no suppliers who have been excluded from the process who would have been able to progress had the refinement been in place at the time of their exclusion.
- The procurement documents must have reserved the right to make this refinement, and the making of the refinement triggers an obligation to republish the tender notice/documents.
 - A reform is not permitted if, had it been made earlier, it would have allowed one or more suppliers (that did not progress beyond an earlier round or selection process) to have done so.

Excluding suppliers

- Regulation 57 of the PCR 2015, (and the CCS SQ) set out the mandatory and discretionary exclusion grounds. New terminology is introduced in the Bill, notably, “excluded” suppliers (excluded on a mandatory ground) and “excludable” suppliers (excludable on a discretionary ground).
- The mandatory grounds are set out in full in Schedule 6 and the discretionary grounds in Schedule 7. A supplier can also be excluded/excludable if an associated supplier is itself excluded- section 26(3). A similar regime applies in relation to sub-contractors at section 28.
- There are also extra sections permitting exclusions for “improper behaviour” at section 30 or where the supplier is a threat to national security at Section 29.

Modifying a procurement

- The PCR 2015 are silent on making modifications to the terms of a procurement process that is ongoing. However, section 31 of the Bill allows a contracting authority to modify the terms of a procurement provided the tender deadline has not passed and consideration is given to amending timelines. Any modification of this sort triggers an obligation to re-publish the Tender Notice.
- Section 31 provides that the terms of a procurement may be modified prior to the deadline for submitting tenders (for the open procedure) or the deadline for submitting a request to participate or, where there has been no invitation for such request, the deadline for submitting the first tender (for other competitive tender procedures).
- Modifications can be made after these deadlines provided they are not “substantial” (as defined in clause 31(3) of the Bill) or the procurement relates to the award of a light touch contract.

Dynamic market

- The new regime expands DPS into a “dynamic market”, advertised via a “dynamic market notice” with the intention that dynamic markets could be used for more sophisticated requirements than presently.
- Sections 34-39 of the Bill set out the basics for how a dynamic market is to be procured and operate and confirms that a fee may be charged (as a % of the value of an awarded contract).
- At this stage it is difficult to comment on how it is intended to operate in practice.

Chapter 3 – Direct Award (sections 41-44)

Direct Award

- Section 41 of the Bill covers “direct award in special cases” and requires publication of a transparency notice.
- Schedule 5 to the Act sets out a list of situations where a direct award may be made. Some of these are new whilst others are based on Regulation 32 PCR 2015:
 - the contract is for production of a prototype or otherwise novel goods/services (New)
 - only a single supplier can supply the requirement
 - the procurement is for additional/repeated goods, services or works
 - the contract is for a commodity (New)
 - in the context of insolvency proceedings, the direct award to a particular supplier will obtain advantageous terms to the authority (New)
 - the contract is for strictly necessary goods, services or works and cannot be awarded following a competitive tendering procedure for reasons of extreme and unavoidable urgency
 - the contract is for a light touch service which is a user choice service – intended to allow direct awards for e.g., personal social care (note no transparency notice is required under this ground)
- Section 43 allows a procurement to “switch to direct award” where no suitable tenders have been received and helpful sets out a definition of “suitable”. This mirrors Regulation 32(2)(a) (although a new element under the Bill is that a transparency notice must be published in this situation).

Chapter 4 – Award under frameworks (sections 45-49)

Open and closed Frameworks:

- Under the PCR 2015, Frameworks may last for a maximum of four years (unless exceptional circumstances justify a longer term). New suppliers may not join an established framework.

- There will continue to be “closed” frameworks of a 4-year duration which operate as frameworks do currently.
- There is a new concept of an “Open” framework which will be of potentially longer duration and allow suppliers to join during the lifetime of the framework.
- However, the open frameworks will work differently to how it was originally implied in the Green Paper. Section 49(1) defines an open framework as one that provides for the award of successive frameworks on essentially the same terms.
- There will be no four-year time limit for each framework that forms part of a series of open frameworks (section 47(5), However, section 49(2)(c) imposes a maximum time limit for the open period of 8 years from the day the first framework under the scheme is awarded to the day the final framework under the scheme expires.
- If the terms and conditions are to change, a new competitive tendering process must be held. This will make it easier to renew frameworks where there is no material change to the scope or terms/conditions, without having to run a full new tender process.

Charges for use of Frameworks:

- Section 45(7) states a framework may provide for the charging of fees as a fixed percentage of the estimated contract value of a contract awarded to the supplier.
- Explanatory note 292, however, states, “Subsection (7) sets out that fees can be charged to suppliers that are party to a framework but only when they are awarded contracts under that framework. Those fees **must** be set as a percentage of the value of the contract to be awarded under the framework. This enables contracting authorities to charge a supplier a fee each time they are awarded a contract under the framework, by reference to a percentage of the value of that contract.” This does not accord with the subsection which uses the word may. Some ESPO framework agreements provide for payment to ESPO of a fee which is not a percentage.

Chapter 5 – After award, standstill periods, and notices (sections 50-53)

Debrief letters

- The Response to the Green Paper suggested that authorities would be required to send an Award Notice, and to provide participants with certain evaluation documents for the winning bidder (redacted for commercial sensitivity). It also suggested that all bidders be provided with their own, unredacted, evaluation document(s) to enable them to compare the relative advantages of the winning bid against their own.
- However, section 50 requires contracting authorities to send a Contract Award Notice (separate from the Award Notice) and include with this an “assessment

summary”, including information about the contracting authority’s assessment of the tender, and the most advantageous tender submitted.

- There is useful confirmation in section 51(3) that there is no need to apply a standstill period to certain types of direct award (e.g. extreme or unavoidable urgency, to protect life, etc.) or to a light touch contract.
- The standstill period is changed to 8 working days (rather than 10 calendar days ending on a working day).

Chapter 6 – General provision about award and procedures (sections 54-65)

- Section 54 states certain minimum time limits for the participation period (the selection stage) and the tendering period (the award stage).
- There are no minimum timescales for light touch contracts but in setting time limits regard must be had to the general principles set out in section(1).

Abandoning a procurement

- Section 55 introduces a new requirement to publish a procurement termination notice in circumstances where a procurement is abandoned.

Excluding suppliers/debarment

- Section 59 requires a contracting authority which has excluded a supplier to give notice to an “appropriate authority” within 30 days of this exclusion.
- Under section 60, the appropriate authority may decide to investigate whether the supplier is an excluded supplier (mandatory exclusions) or an excludable supplier (discretionary exclusions)
- Section 62 states that this report is then used by the Secretary of State to determine whether the supplier should be added to a Debarment List (a notice and an explanation must be provided to the supplier).
- Section 63 states that a supplier may apply to be removed from the Debarment List
- Section 64 contains a right of appeal by suppliers, but the appeal process is to be dealt with in secondary legislation and not in the Bill itself, meaning that, as yet, we do not have sight of the intended appeal route.

Past performance

- Public Contracts Regulations 2015 (PCR 2015), Regulation 57(8)(g) provides a discretionary ground to exclude serious poor performance where this has led to early termination/payment of damages or similar. Under the Bill this ground is expanded to also include a situation where a supplier has “failed to remedy” a breach following the authority having exercised a contractual right to require it to do so. This represents a widening of the ground.

- Schedule 7(12)(3) sets out this discretionary ground for “failure to remedy”.
- Section 52(6) and 70 sets out provisions to make transparent supplier performance against key KPIs etc. this section applies to contracts valued at over £5 million.
- Where a performance failure is more serious, and has not been remedied, this must be assessed and published within 30 days of the relevant failure (does not apply to Light Touch regime contracts).

Supplier Registration System:

- Explanatory note 28 confirms that a single digital platform is to be used for supplier registration although at this stage the Bill is silent on this and who will hold responsibility for it.

PART 4 – MANAGEMENT OF PUBLIC CONTRACTS (SECTIONS 66-79)

Implied Terms

- At present terms around prompt payment of invoices are implied into public contracts via Regulation 113 and 113A PCR 2015. This continues in the Bill and is supported by a new obligation to publish a Payments Compliance Notice (section 68).

Contract modification

- Presently public contracts may be modified in one of the six “safe harbour” situations set out in Regulation 72 PCR 2015. The current safe harbours are retained at Schedule 8 and extended with:
 - a new safe harbour for modifications required due to the materialisation of a “known risk”; and
 - a new safe harbour in situations where section 41 would also apply to allow the contract to be awarded directly (due to urgency and the need to protect life).
- The old safe harbour for transfer to a new supplier on insolvency is retained, although there is no requirement that the succeeding supplier meet the original selection criteria.
- Section 73(3) clearly defines substantial modifications:
 - increase or decrease of the term by more than 10% of the maximum term provided for at award; and/or
 - changes overall nature or scope; and/or
 - materially changes the economic balance in favour of the supplier.

Contract Change Notice:

- Contract Change Notices will be required for all contract amendments, except where the amendment does not change the scope of the contract, and:
 - increases or decreases the value by less than 10% (goods and services)/15%(works), or
 - increases or decreases the initial contract term by less than 10% of the original contract term.
- Contract Change Notices will not be needed for Light Touch Regime contracts.
- Where it is required, the Contract Change Notice must be published before the change is made and under section 75 an authority may elect to hold a voluntary standstill period.
- If the change is over £5 million in value, this will be a “qualifying modification” and under section 76 will require a copy of the modified contract to be published within 90 days of the date of the modification.

Terminating a Public Contract

- At present Regulation 77 PCR 2015 implies a right to terminate in certain circumstances into a public contract. This continues via section 72 of the Bill. In addition, section 79 brings in a new obligation to publish a contract termination notice where a public contract is terminated or expires in various ways.

PART 5 – CONFLICTS OF INTEREST (SECTIONS 80-82)

Duty to identify and mitigate, conflicts assessments

- Regulation 21 PCR 2015 requires authorities to identify and mitigate conflicts of interest. This continues in sections 80 to 82 of the Bill, with a new requirement at section 82 to prepare a formal conflicts assessment ahead of publication of the Tender Notice.

PART 6 – BELOW-THRESHOLD CONTRACTS (SECTIONS 83-87)

- At present Part 4 of the PCR 2015 contains the “Contracts Finder” regime for the publication of information about under-threshold contracts, as well as a restriction on holding a separate selection stage for an under-threshold contract, and certain implied prompt payment terms. The same appear to continue in the new regime.
- The de minimis thresholds are increased to £12,000 for a contract awarded by a central government authority) and £30,000 otherwise. A new concept of a “below-threshold tender notice” is introduced.

PART 7 – INTERNATIONAL OBLIGATIONS (SECTIONS 88-90)

- The UK is party to certain international agreements, under which certain UK contracting authorities are required to extend entitlements to access the UK

procurement regime to the goods, services and suppliers of other states. This Part of the Bill gives effect to these obligations (and lists at Schedule 9 the relevant international agreements).

PART 8 – INFORMATION AND NOTICES (SECTIONS 91-96)

Transparency:

- The range of notices required has been expanded.
- Further guidance may be expected to be introduced on the content and form of the notices.
- Section 93 states that secondary legislation may be made governing the form and content of notice.

PART 9 – REMEDIES FOR BREACH OF STATUTORY DUTY (SECTIONS 97-103)

Review system

- At present a claim must be made in the High Court, which can be burdensome for both suppliers and authorities. This remains although the government continues to seek routes to improve and speed up the system, ne proposal is to appoint a specialist procurement law judge, working alongside court reform proposals.

Automatic suspension

- Section 98(2) and 99 empower the court to lift the automatic suspension of entry into a public contract or its modification, or extending it, suspending the procurement, suspending contract performance, suspending the making of a contract modification.
- section 91 (2) sets out a new test for the court to apply in deciding how to exercise these powers:
 - a) have regard to the public interest (including consideration of avoiding delay, e.g. for interests of defence, security or continuing public services;
 - b) have regard to the interest of suppliers (including whether damages are an adequate remedy for the claimant); and
 - c) any other matter the court considers appropriate.

Disclosure of evaluation documents

- The consultation response trailed a requirement that tenderers be provided with selected evaluation documents for the winning bidder (redacted for commercial sensitivity). Also, that all bidders would be provided with their own, unredacted, evaluation document(s) to enable them to compare the relative advantages of the winning bid against their own.
- It is not clear that this idea has translated into the draft Bill.

PART 10 - PROCUREMENT OVERSIGHT (SECTIONS 104-106)

Creation of a Procurement Review Unit (PRU)

- The Public Procurement Review Service (PPRS) currently deals with informal complaints from tenderers, publish findings and issue guidance to authorities, but has no formal enforcement powers. The response to the consultation trailed a new Procurement Review Unit to sit above the PPRS. Its role would be to focus on non-compliance and systemic and institutional challenges, building on work done by PPRS (which will continue to exist as a subset of the PRU). It would have a power to make recommendations and an authority will have a duty to implement these.
- Sections 104-106 of the Bill implement these ideas and cover oversight of procurement. However, the PRU is not expressly named, but an “appropriate authority” is empowered to investigate an authority’s compliance.